Summary of the CARES Act
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Barry Sunshine, Senior Tax Partner – Contact (516) 542-6300

On Friday, March 27, 2020, the CARES Act was signed into law, intending to jump start our economy by providing employers with very aggressive provisions to retain employees and giving much needed tax incentives. Many of these provisions will require a lot of guidance from the Department of Labor and the Treasury Department. This guidance is expected to be released in the very near future. The discussion below is intended to provide small business owners with a summary of the provisions contained in the bill.

Payroll Protection Act

The Small Business Administration is offering to make payroll protection program ("PPP") loans to small businesses with the purpose of retaining employees and cover certain necessary business overhead costs. Under the CARES Act, Congress has set aside up to $350 billion dollars to help fund these loans. Under this program, the assistance is for a "small business" which is defined as one that has less than 500 employees (full and part time). In the past, borrowings from the SBA had a fair amount of "red tape" and required the business owner to submit a lot of paperwork to get the SBA approval. This program removes the red tape, expedites the loan process and provides for no personal guarantees from the business owners. The PPP loan is available for independent contractors and self-employed individuals.

Currently, there are only a few banks that offer SBA loans but it is expected that many more banks will be participating in this program. In effect, the banks will act as administrators for the SBA and monitor this SBA program. This new SBA program is nothing like we have seen before.

Generally how it works –

Applying with the SBA – while it is believed that the current system will be overwhelmed with applications, the federal government and SBA intend to develop a more streamlined process to apply for these loans. The SBA's goal is to get small businesses money within 2 weeks from the application's submission. Under the current system, the SBA won't meet its 2 week goal. We expect that all banks will be able to process the PPP loans.

It should be noted that anyone applying for these SBA loans needs to complete the loans properly, otherwise it will slow down the receipt of the money. The loan maximum amount is 2½ times the business's average monthly payroll, with a maximum amount of $10 million.

In general, the PPP loan terms are for the loans to be paid back over a 10 year period at an interest rate not greater than 4%.

Loan forgiveness program –

Under this provision, a small business will not be required to repay a portion of the principal balance of the loan. The purpose for this forgiveness, or grant, is to assist small businesses, and this is the first time such a program was ever implemented by the federal government. The amount of the forgiveness is 8 weeks of payroll, rent, utilities and interest on any business mortgage payments after the PPP loan is received. The intent of this program is to assist small businesses retain their employees to "keeping small businesses whole". Any amount that is not forgiven will have to be paid back over the 10 year period.

Even though this forgiveness is in the form of a grant to small businesses, there are some very specific restrictions to qualify, and the loan provisions carry many "foot-faults". If the business has any of these foot-faults, then it will lose its ability to have a portion of the loan forgiven.

Any debt that is forgiven will not be considered taxable income. In addition, this provision can't be combined with the small business claiming the payroll tax credit discussed below.

Some tax provisions of the CARES Act affecting businesses

Deferral of payment of employer's payroll taxes –

From March 27, 2020 until the end of the calendar year, any employer share of the F.I.C.A. tax (the 6.2% rate) will be deferred and remitted to the IRS as follows – 50% on December 31, 2021 and the remaining 50% on December 31, 2022. Previously, these FICA taxes are payable when payroll is paid. In effect, Congress is giving employers an interest free loan until the above payment dates.

Employer payroll tax credit –

A refundable payroll tax credit of 50% of wages (limited to $10,000 per employee) is allowed for small businesses whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. Also, a small business is eligible for the credit if its business experiences a greater than 50% reduction in quarterly receipts over its prior year's similar quarter's revenue.

In computing the wages eligible for the credit, all wages are included for employers with 100 employees or fewer. For those employers with greater than 100, the only employee wages eligible for the credit includes those employees that have been furloughed or face reduced hours as a result of the employer's closure or reduced gross receipts.

This payroll tax credit is not available to those small businesses that have any SBA loan (as discussed above) forgiven.

Changes to net operating losses "NOL" –

NOL generated in 2018, 2019 and 2020 can be carried back up to 5 years. The NOL is not limited to any 80% limitation. Previously, NOL's can be only carried forward, and it was subject to a percentage limitation of use. For those that have 2018 net operating losses, they should consider filing amended tax returns to carry back their NOL's.

Removal of limitation of losses for individuals and trusts – Section 461(l) limitation

Individuals and trusts are no longer limited to $250,000 ($500,000 married filing jointly) of business losses to offset other income for the years ended 2018 to 2020. Previously, aggregate business losses greater than this limitation were disallowed and treated as a NOL in the subsequent year. Any taxpayers subject to this limitation in 2018 should consider filing amended tax returns to recoup income taxes to deduct 100% of their business losses and possibly carry back any net operating losses.

Change to business interest expense limitation –

Certain taxpayers were subject to a limitation that caused some business interest expense to be nondeductible and carried forward. This limitation was based on 30% of adjusted taxable income. For 2019 and 2020, the CARES Act increases this 30% limitation to 50%. This will allow those taxpayers subject to the business interest expense limitation to deduct more business interest. Taxpayers that were subject to these business interest expense limitations should consider filing an amended tax return if the taxpayer filed his 2019 tax return.

Allowing bonus depreciation for qualified improvement property.

Effective January 1, 2018, The Act allows bonus depreciation as qualified improvement property ("QIP"). QIP includes qualified leasehold improvements, qualified retail improvement property and qualified restaurant property. Under this new law, QIP is 15 year property for tax deprecation purposes. Prior to this law change, the depreciable life was 39 years and wasn't eligible for bonus depreciation.

Some tax provisions affecting individuals of the CARES Act –

2020 recovery checks –

A lot has been written on this and basically the government will be issuing $1,200 checks to individuals with adjusted gross income less than $75k per person. For those with adjusted gross income greater than $75k and up to $99k will get a reduced check. Those individuals with adjusted gross income greater than $99k will not get a check. Families with qualifying children will get $500 per each child in addition to the $1,200 check. There is no action required to get these refund checks from the government as they will be issuing the refunds based on adjusted gross income reported on previously filed tax returns. For married couples filing joint tax returns, the $1,200 checks are doubled, as are the $75k and $99k limitations.

Waiver of Required Minimum Distributions –

Individuals over 72 are required to receive a distribution from his or her retirement plans in the form of a required minimum distribution ("RMD"). This law allows the RMD to be ignored for 2020.

Changes to retirement plan withdrawals –

Any early distributions from a retirement plan up to $100,000 are not subject to the 10% penalty tax, for certain individuals. Those individuals (or family members) include those that have tested positive with the Corona virus or experienced financial hardship for reasons of being quarantined, being furloughed or laid off (there are other reasons). The taxpayer can elect to report the distribution over a 3 year period or repay the distribution back to the plan within 3 years.

Charitable Contributions –

This law allows a taxpayer is deduct $300 of certain charitable contributions even though the taxpayer doesn't itemize his or her deductions.

In addition, certain contributions will not be subject to the 60% annual limitation on AGI in 2020. In 2019 and earlier, charitable contributions are limited for individuals to 60% of adjusted gross income. Any excess is carried over to the subsequent year (up to 5 years).

Exclusion of up to $5,250 of employer's payment of a student loan –

Effective March 27, 2020 and afterwards, an employer can pay a student's loan under an educational assistance program, and exclude that payment from the employee's income, but the employer can still deduct such payment. Previously, employers couldn't pay a student loan under an educational assistance program and exclude such payment from the employee's income.

The above represents some of the CARES Act provisions and if you have any questions then please feel free to call us.