

April 2020

Client Advisory

## COVID-19 Legal Digest: New Jersey Extends Tax Filing Due Date; Impact of the CARES Act on the Small Business Reorganization Act; Family Law: Stimulus Checks and Co-Parenting Arrangements

### New Jersey Extends Tax Filing Due Date: No Word on Payment Due Date

Earlier today, the Governor and Legislative leaders announced that the April 15th due date for **FILING** 2019 New Jersey individual and corporate tax returns has been extended to July 15. Details have not been released yet, but we would assume that taxpayers need not file formal extensions of time to file their returns.

However, and this is very important, the **PAYMENT** of 2019 balances due and quarterly estimated taxes (all of which are due on April 15) was not addressed. As of the time of this writing, there was no indication that the State will, or will not, extend the payment due date. We hope that it will, but until the State advises otherwise, payments currently remain due on April 15.

If you have questions, please contact [Gordon Moore](#), who heads up Archer's [Tax Group](#), at 856- 354-3087 or [gmoore@archerlaw.com](mailto:gmoore@archerlaw.com), or any of your contacts here at Archer.

### Impact of the CARES Act on the Small Business Reorganization Act

While certain elements of the CARES Act have received much press and public attention recently - including stimulus checks expected to reach some 150 million Americans - a much lesser-known provision embedded in the CARES Act stands to potentially affect a large number of small business owners who have been impacted by the 2020 coronavirus pandemic. That provision broadens the eligibility requirements for a business seeking to take advantage of the recently passed Small Business Reorganization Act ("SBRA").

### **The SBRA: A Significant Change for Small Businesses Filing for Bankruptcy**

The SBRA was passed into law last year and became effective on February 19, 2020. The SBRA seeks to address problems encountered by small business debtors in reorganizing under the provisions of the United States Bankruptcy Code (the "Bankruptcy Code"). Many small businesses found traditional chapter 11 proceedings too difficult and expensive, and not a practical tool for reorganization. Small businesses would often end up in liquidation under chapter 7 of the Bankruptcy Code, or simply abandon the notion of filing bankruptcy altogether.

The SBRA created a new Subchapter 5 under chapter 11 of the Bankruptcy Code. Subchapter 5 aims to provide businesses with debts under a certain threshold a faster, more streamlined, and less expensive option for reorganizing than under chapter 11. Some of the benefits of filing bankruptcy under Subchapter 5 include:

- An expedited case schedule, including early status conference and a plan submission deadline of 90 days.
- Only the debtor may file a proposed plan, and no separate disclosure statement is required.
- Owners are able to retain their interests in their business and there is no "new value" rule applied to equity holders.
- A trustee is appointed, but primarily to assist in the formulation of the plan.
- No unsecured creditors committee is appointed.
- A plan may be confirmed even without an accepting "impaired class" so long as the debtor's disposable income is put to plan payments to creditors, with the plan period being anywhere between three and five years.
- If the debtor completes the payments required under a confirmed plan, it receives a discharge of the remaining debt.

### **The CARES Act Nearly Triples the Debt Limits for Eligibility under Subchapter 5**

Prior to passage of the CARES Act, a debtor (whether an entity or an individual) had to be engaged in business and have total debt, secured and unsecured, not exceeding \$2,725,625 in the aggregate. The CARES Act raised this debt limit to **\$7,500,000**. At least 50% of those debts must come from business activity (excluding debts owed to affiliates or insiders), and the debtor's principal activity cannot be a single-asset real estate operation. The small business debtor would need to file bankruptcy within one year of the effective date of the CARES Act and elect to proceed under Subchapter 5 in order to take advantage of the increased debt ceiling.

With the CARES Act nearly tripling the debt limits for eligibility under Subchapter 5, many more small businesses which have been adversely impacted by the COVID-19 pandemic will be able to benefit from a more cost-efficient and faster reorganization process under Subchapter 5.

If you believe that filing for bankruptcy under Subchapter 5 may be right for you or your business, or have any questions about any other bankruptcy or restructuring issue affecting your business, please contact [Douglas Leney](#) at 215- 246-3151 or [dleney@archerlaw.com](mailto:dleney@archerlaw.com).

### **Family Law: Stimulus Checks and Co-Parenting Arrangements**

Those with past due child support obligations can expect their federal stimulus funds to be intercepted. Consistent with a federal program started by the US Treasury in 1996, states report past child support arrears to the Treasury, which has the authority to collect the arrears (New Jersey uses a minimum reporting amount of \$500). Those receiving child support paid through Probation in New Jersey should expect a payment toward outstanding arrears if the obligor is eligible for a stimulus check and the arrears total is at least \$500.

We have also seen a number of issues arise concerning those involved in co-parenting arrangements, as altered work schedules and residential conditions may present health risks to the children. The following are some issues which parents and guardians should be aware of in these circumstances:

- Existing family court orders incorporating a parenting time schedule remain in full force and effect. Family court judges expect co-parents to communicate and make changes to their schedule to accommodate the best interests of their children.
- Co-parents should not use the pandemic to unreasonably deny parenting time. A parent who is denied parenting time may have the opportunity to request make-up parenting time on a non-emergent basis, and a court is more likely to grant that application if the non-custodial parent can show they made reasonable attempts to accommodate safety concerns.
- If one parent is required to work outside the home, the parenting time schedule should continue so long as adequate safety measures are in place. There may be some situations where parenting time exchanges pose a serious health risk to the child or other family members. In that case, parents should work to accommodate each other.

- In some situations, an emergent application to the court may be necessary. While New Jersey courts remain open and available to hear emergent applications, the Court will likely focus solely on the child's health and safety and will prioritize the child's best interests over a parent's demand to exercise parenting time.

If you have questions or need assistance, please contact the attorneys in Archer's [Family Law Group](#) in: Haddonfield at 856-795-2121; Princeton at 609-580-3700; Hackensack at 201-342-6000; Philadelphia at 215-963-3300; New York at 212-682-4940; Wilmington at 302-777-4350.

### **Contact Us**

Please reach out to your Archer contact or any member of [Archer's COVID-19 Task Force](#) with any questions you may have.

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