



Butterfield + Co.
CPAs, Inc.

March 31, 2020

To our Clients and Friends,

The Federal government has recently passed several new pieces of legislation in an effort to mitigate the economic and societal damage caused by the Coronavirus Disease 2019 (COVID-19) pandemic. This letter presents some of the provisions enacted as part of the legislation passed to date. As always, you can call on us to help you sort through the options and implement strategies that make sense for you.

Postponement of Tax Deadlines

In accordance with President Trump's emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the IRS issued Notice 2020-18, which provides that the due date for all income tax returns and income tax payments previously due on April 15, 2020, is automatically postponed to July 15, 2020, for all affected persons. The IRS notice also extends the due date for making 2019 individual retirement account, health savings account, and Archer MSA contributions to July 15, 2020.

Any person with a federal income tax payment or a federal income tax return due April 15, 2020, is considered affected by the COVID-19 emergency and is thus an "affected taxpayer." This postponement applies to individuals, trusts, estates, partnerships, associations, companies, and corporations. Neither you nor your business must file a Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, or Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.

The new due date for filing federal income tax returns and making federal income tax payments is July 15, 2020. There is no limit on the amount of your tax payment that may be postponed. In addition, the period beginning on April 15, 2020, and ending on July 15, 2020, will be disregarded in calculating any interest, penalty, or addition to tax for failure to file the income tax returns or to pay any income taxes due. Interest, penalties, and additions to tax with respect to such postponed filings and payments will begin to accrue on July 16, 2020.

The relief provided in Notice 2020-18 is available solely with respect to federal income tax payments (including payments of tax on self-employment income) and federal income tax returns due on April 15, 2020, in respect of your 2019 tax year, and federal estimated income tax payments (including payments of tax on self-employment income) due on April 15, 2020, for your 2020 tax year. No extension is provided for the payment or deposit of any other type of federal tax, or for the filing of any federal information return.

While delaying filing a return will make sense for many taxpayers who owe additional taxes, it may be less attractive for taxpayers who are expecting a refund (the IRS is expected to continue processing returns and issuing refunds in the coming months).

The Families First Act

The passage of the Families First Coronavirus Response Act (Families First Act) on March 18, 2020 will have a significant impact on both individuals and businesses. In addition to containing four new tax credits for businesses and self-employed individuals, the Families First Act includes the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act, which are aimed at helping employees who have lost wages due to business closures.

Families First Act Paid Leave Requirements. The Families First Act generally requires employers to provide an employee with paid sick time to the extent that the employee is unable to work or telework due to a need for leave in any of the following situations:

- 1) the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- 2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- 3) the employee is caring for an individual who is either subject to a quarantine order or is self-quarantining (as described in the previous two items);
- 4) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- 5) the employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) due to COVID-19 precautions; or
- 6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Full-time employees are entitled to 80 hours of paid sick time. Part-time employees are entitled to paid sick time equal to the average number of hours that the employee works over a two-week period. Paid sick time under this provision does not carry over from one year to the next. Additionally, a notice of the requirements under this law must be posted in a conspicuous place on the employer's premises.

The Families First Act requires that certain employers provide public health emergency leave to employees under the Family and Medical Leave Act of 1993. This requirement generally applies when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable,

due to a public health emergency. A public health emergency is defined as an emergency with respect to COVID-19 declared by a federal, state, or local authority. The first 10 days of public health emergency leave required under the law may consist of unpaid leave, after which paid leave is required. The paid leave is for the duration of the period provided in the Families First Act, which is a maximum of 10 weeks. The amount of required paid leave under the provision is based on an amount not less than two-thirds of an employee's regular rate of pay, and the number of hours the employee would otherwise be normally scheduled to work. Additional guidance is provided for employees with varying schedules. The paid leave mandated by the Families First Act may not exceed \$200 per day and \$10,000 in the aggregate.

Families First Act Employer Tax Credits

Paid Sick Leave Credit: For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days. For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period. A similar credit is available for self-employed individuals.

Child Care Leave Credit: In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child-care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit. This credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the child-care leave credit. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period. A similar credit is available for self-employed individuals.

Eligible employers who pay qualifying sick or child-care leave can retain an amount of the payroll taxes equal to the amount of qualifying sick and child-care leave that they paid, rather than deposit them with the IRS. The payroll taxes that are available for retention include withheld federal income taxes, the employee share of social security and Medicare taxes, and the employer share of social security and Medicare taxes with respect to all employees. If there are not sufficient payroll taxes to cover the cost of qualified sick and childcare leave paid, employers will be able file a request for an accelerated payment from the IRS.

Eligible employers are businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family and medical leave under the Families First Act. Eligible employers can claim these credits based on qualifying leave

they provide between the effective date (which is defined as not later than 15 days after the date the Act was signed on March 18) and December 31, 2020.

CARES Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act - a massive economic relief package with numerous tax breaks – was signed into law on March 27, 2020.

For individuals, the most important form of tax-related relief may be the recovery rebate tax credits, which are direct payments (sometimes referred to as “stimulus checks”) the government will be making to those with income under a certain level. For businesses, key tax-related provisions include a payroll tax credit to encourage employee retention, an extension of the time for paying employment taxes, and a small business loan program with provisions for converting qualifying loans to grants (which do not have to be repaid).

The following are the key tax provisions of the CARES Act.

CARES Act Tax Relief for Individuals

Direct Payments: Single individuals and joint filers can expect to receive a payment of \$1,200 or \$2,400, respectively, plus \$500 for each qualifying child. However, the rebate is reduced (but not below zero) by 5% of the amount by which the taxpayer’s adjusted gross income exceeds (1) \$150,000 in the case of a joint return, (2) \$112,500 in the case of a head of household, and (3) \$75,000 in the case of a single taxpayer or a taxpayer with a filing status of married filing separately. Rebates will be issued based on 2019 income tax returns, or 2018 returns for individuals who haven’t yet filed in 2019. The rebates are eligible for electronic disbursement to any account to which the payee authorized, on or after January 1, 2018, the delivery of a refund of taxes or of a federal tax payment, including federal retirement benefits.

Using Retirement Funds Without Penalty: The CARES Act waives the 10% early withdrawal penalty for coronavirus-related distributions from retirement plans and provides the option of recontributing the funds for up to three years after such distributions are made. A “coronavirus-related distribution” is any distribution from an eligible retirement plan made: (1) on or after January 1, 2020, and before December 31, 2020, (2) to an individual (i) who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention, (ii) whose spouse or dependent is diagnosed with such virus or disease by such a test, or (iii) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, the closure or reduction of hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury.

Required Minimum Distribution Rules Waived for 2020: The CARES Act waives the required minimum distribution rules for 2020 for defined contribution plans, including an eligible deferred compensation plan, and individual retirement plans.

Above-the-Line-Deduction for Charitable Contributions of Up to \$300: Individuals, whether they itemize deductions or not, can take a deduction of up to \$300 for charitable contributions made during 2020 and the limitations on the amount of charitable contributions that a taxpayer may take an itemized deduction for are loosened. In addition, the CARES Act loosens the deduction limitation on contributions of food inventory.

Repayment of Student Loan Debt Excluded from Income: The CARES Act excludes from income certain student loan debt repaid by an individual's employer. It applies to repayments made after date of enactment and before 2021.

CARES Act Tax Relief for Businesses

Employee Retention Credit: The CARES Act provides eligible employers a credit against applicable employment taxes for each calendar quarter equal to 50% of the qualified wages with respect to each employee of the employer for the calendar quarter. The employee retention credit applies to wages paid after March 12, 2020, and before January 1, 2021. For purposes of determining the credit, the amount of qualified wages with respect to any employee which may be taken into account for all calendar quarters is limited to \$10,000. An "eligible employer" is any employer that was carrying on a trade or business during calendar year 2020, and whose operation is fully or partially suspended during the calendar quarter due to orders by a government authority due to COVID-19, or for which the calendar quarter is within a period of "significant decline in gross receipts." A period of significant decline in gross receipts means a period beginning with the first calendar quarter beginning after December 31, 2019, for which gross receipts (as defined in Code Sec. 448(c)) for the calendar quarter are less than 50% of gross receipts for the same calendar quarter in the prior year, and ending with the first calendar quarter in which gross receipts are greater than 80% of the gross receipts for the same calendar quarter in the prior year.

Extension of Time to Pay Employment Taxes: Under the CARES Act, a business can delay payment of applicable employment taxes for the period beginning on March 27, 2020, and ending before January 1, 2021 (i.e., the payroll tax deferral period). Generally, under this provision, an employer will be treated as having timely made all deposits of applicable employment taxes that would otherwise be required during the payroll tax deferral period if all such deposits are made not later than the "applicable date," which is defined as (1) December 31, 2021, with respect to 50% of the amounts due, and (2) December 31, 2022, with respect to the remaining amounts. In addition, for self-employed taxpayers, the payment for 50% of the self-employment taxes for the payroll tax deferral period is not due before the applicable date. For purposes of applying the penalty for underpayment of estimated income taxes to any tax year which includes any part of the payroll tax deferral period, 50% of the self-employment taxes for the payroll tax deferral period will not be treated as taxes to which that penalty applies.

Net Operating Losses (NOLs) Can Be Carried Back to Eliminate Prior Year Income: If your business has incurred NOLs that you have not gotten the benefit of deducting, the CARES Act may help as it modifies the limitation on deducting NOLs, as well as the rules relating to NOL carrybacks. In general, for any NOL arising in a tax year beginning after December 31, 2017, and before January 1, 2021, such loss is an NOL carryback to each of the five tax years preceding the tax year of such loss and the provisions limiting the carrybacks of farming losses do not apply. For tax years beginning after December 31, 2020, the provision allows the deduction of the sum of the aggregate amount of NOLs arising in tax years beginning before January 1, 2018, carried to such tax year plus the lesser of (1) the aggregate amount of NOLs arising in tax years beginning after December 31, 2017, carried to such year, or (2) 80% of the excess (if any) of taxable income computed without regard to certain deductions over the aggregate amount of NOLs arising in tax years beginning before January 1, 2018, carried to such year.

Elimination of the Deduction Limitation on Excess Farm and Business Losses: Under the CARES Act, in the case of a taxpayer other than a corporation, for any tax year beginning after December 31, 2017, and before January 1, 2026, the deduction limitation on excess farm losses of certain taxpayers, does not apply. Further, excess business losses, previously disallowed for tax years beginning after December 31, 2017, and before January 1, 2026, are now allowed for tax years beginning after 2017 and before January 1, 2021.

Increase in Deductible Business Interest Expense: For tax years beginning in 2019 or 2020, 50% of the taxpayer's adjusted taxable income, rather than 30%, is used to determine the business interest expense limitation. A special rule is provided for partnerships.

Accelerates Ability of Corporations to Recover Prior Year Minimum Tax Liability Credits: The CARES Act modifies the rules for the minimum tax credit for alternative minimum tax (AMT) incurred by a corporation in a prior tax year. Under the provision, the limitation does not apply to a corporation's 2020 and 2021 tax years and the AMT refundable credit amount is 100%, rather than 50%, of the amount determined for tax years beginning in 2019.

Qualified Improvement Property Qualifies as 15-Year and Bonus Depreciation Property: Congress finally fixed the notorious "retail glitch" in the Tax Cuts and Jobs Act of 2017 (TCJA). Due to a drafting error in that piece of legislation, the 15-year recovery periods that were available for qualified leasehold improvements, qualified restaurant property, and qualified retail improvement property (i.e., qualified improvement property) placed in service before 2018, no longer existed for such property placed in service after 2017. Instead, the depreciation period was 39 years. The CARES Act fixes this mistake so that such property now has a 15-year depreciation life and meets the criteria for taking a bonus depreciation deduction. Because the provision is effective as if it were included in TCJA, we should consider reviewing prior returns to see if filing amended returns will result in your business being owed a refund.

Paycheck Protection Program (PPP). Under the CARES Act PPP, the Small Business Administration (SBA) guarantees loans made through qualified lenders under the PPP. The loans are offered to small businesses with fewer than 500 employees, select types of businesses with fewer than 1,500

employees 501(c)(3) non-profits with fewer than 500 workers and some 501(c)(19) veteran organizations. In addition, self-employed, sole proprietors, freelance and gig economy workers are also eligible to apply. The business must be in operation before February 15, 2020 to qualify.

Loans under the PPP are given up to the maximum of \$10M, or 2.5 times the average monthly payroll cost, including wages for employees making under \$100,000, as well as expenses for sick leave, healthcare, and other benefits, during the 1-year period before the date on which the loan was made. Other provisions of the loan include a maximum interest rate of 4%, terms up to 10 years, no personal guarantee or collateral required, payment deferral up to 12 months, and part of the loan may be forgiven and not counted as income if spent during the first 8 weeks on operating expenses. Loans are forgiven when the proceeds are used for any of these costs:

- 1) Payroll costs, excluding prorated amounts for individuals with compensation greater than \$100,000;
- 2) Rent pursuant to a lease in force before February 15, 2020;
- 3) Electricity, gas, water, transportation, telephone, or internet access expenses for services which began before February 15, 2020; and
- 4) Group health insurance premiums and other healthcare costs.

In order for the amounts to be forgiven, you must maintain the same average number of employees for the first 8-week period beginning on the origination date of the loan as you did from February 15, 2019 – June 30, 2019 or from January 1, 2020 – February 15, 2020. If you don't meet this requirement or if you reduce the compensation for employees making under \$100,000 by more than 25% as compared to the most recent quarter, the amount forgiven is reduced. However, you won't be penalized for a reduction in employment or wages during the period February 15, 2020 – April 26, 2020 if you rehire employees that you previously laid off or restore any decreases in wages or salaries by June 30, 2020.

You can apply for a loan under the PPP at most local lenders.

Economic Injury Disaster Loans (EIDLs). On March 13, 2020, President Trump declared the COVID-19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia. As a result of this declaration, businesses in every state and territory are now eligible to apply for EIDLs. The EIDL Program is administered by the SBA with terms as follows:

- 1) Loans up to \$2.5M;
- 2) Loan terms of 30 years;
- 3) Interest rates are 3.75% for small businesses and 2.75% for non-profits; and
- 4) The first month's payments are deferred a full year from the date of the promissory note.

With the passage of the CARES Act, provisions under the EIDLs were expanded as follows:

- 1) EIDLs can be approved by the SBA based solely on an applicant's credit score (not repayment ability and a tax return is not required). In addition, a prior bankruptcy does not disqualify an applicant.
- 2) EIDLs smaller than \$200,000 can be approved without a personal guarantee. The EIDLs can be collateralized by a general security interest in business property rather than real estate.
- 3) Borrowers can receive \$10,000 in an emergency grant cash advance that can be forgiven if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments or repaying obligations that cannot be met due to revenue loss.
- 4) Expanded access to sole proprietors or independent contractors, as well as tribal businesses, cooperatives, and ESOPs with fewer than 500 employees and all non-profits including 501(c)(6)s.

The \$10,000 in emergency cash grants noted above are available even if an applicant doesn't qualify for additional funds and the CARES Act waived the requirement that an applicant be unable to obtain credit elsewhere. There are no loan fees, guarantee fees or prepayment fees. However, you have to have been in business by January 31, 2020 to qualify.

You can start the application process for these loans directly through the SBA at www.SBA.gov/disaster.

California

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California and, on March 12, 2020, he signed Executive Order N-25-20, ordering that the Franchise Tax Board use its administrative powers, where appropriate, to provide affected individuals and businesses with extensions of time for filing, payment, audits, billings, notices, assessments, and claims for refund as well as relief from subsequent penalties and interest.

The Franchise Tax Board has since postponed, until July 15, 2020, the filing and payment deadlines for individuals, trusts and business entities for 2019 tax returns, 2019 tax return payments, 2020 1st and 2nd quarter estimated payments, 2020 LLC taxes and fees, and 2020 non-wage withholding payments.

Conclusion

Don't hesitate to call us with questions or to discuss additional strategies. We'd be happy to assist you in any way that we can.

Very truly yours,

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