COUTO DEFRANCO, P.A.
CERTIFIED PUBLIC ACCOUNTANTS & ADVISORS

Dear Clients & Friends of the Firm,

We hope that you are all healthy and staying safe during this horrible pandemic. We are here to help you even as we are practicing social distancing.

Some of you have reached out with questions to us on how to best handle the economic consequences that COVID-19 is having on your business. We have been digesting the three stimulus bills passed by Congress and want to bring them to your attention. We will start with a program that expands upon Small Business Administration (SBA) 7(a) loans and they may be partially or fully forgiven without tax consequences, followed by a few other business provisions.

Small Business Interruption SBA 7(a) Loans That Can Be Forgiven (Paycheck Protection Program)

Eligible Applicants

Any business with 500 or fewer employees. The company must have been in business on February 15, 2020 and had paid employees. The nonprofits, self-employed and independent contractors are also eligible for these loans. These loans do not require personal guarantees or other form of security.

Maximum Loan Amount

You can borrow up to 2.5 times your average payroll costs during the most recent one year period up to a $10 million limit. Payroll costs include employee salaries and wages up to $100,000 per employee per year, payroll taxes, group health insurance, severance payments, health insurance, and retirement plan contributions.

Application Process

All businesses will need to apply through banks and credit unions. Approximately 1,800 lenders are approved to issue 7(a) loans. Please visit the SBA web site for the list of approved lenders.

Time Period

The new loans apply to costs incurred retroactive to February 15 through June 30.

Repayment of the 7(a) Loan

Businesses might be able to defer repayment of principal and interest for up to a year. The particular deferment period will be up to the bank, but cannot be shorter than 6 months. The remaining balance will have a maximum maturity of 10 years with interest at 4% or less. There are no prepayment penalties.

Interest Rate

The maximum interest rate for the Paycheck Protection Program is 4 percent.

The Amount of the Forgiven Debt

The maximum amount of loan forgiveness will equal the sum of the employer's payroll costs, interest on prior debt, rent and utilities.

The Loan Forgiveness Process

The loan proceeds need to be spent on eligible expenses and an application will have to be submitted to the bank with supporting documentation proving eligibility and a specified certification by an owner.

Treatment of the Forgiven Debt for tax purposes?

The forgiven debt will be excluded from income and therefore, it will not be taxable for Federal purposes.

Employee Retention Credit for Employers

Eligible employers can qualify for a refundable credit against, generally, the employer's 6.2% portion of the Social Security (OASDI) payroll tax (or against the Railroad Retirement tax) for 50% of certain wages (below) paid to employees during the COVID-19 crisis. The credit is available to employers carrying on business during 2020, including non-profits (but not government entities), whose operations for a calendar quarter have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings.

The credit is also available to employers who have experienced a more than 50% reduction in quarterly receipts, measured on a year-over-year basis relative to the corresponding 2019 quarter, with the eligible quarters continuing until the quarter after there is a quarter in which receipts are greater than 80% of the receipts for the corresponding 2019 quarter.

For employers with more than 100 employees in 2019, the eligible wages are wages of employees who aren't providing services because of the business suspension or reduction in gross receipts described above.

For employers with 100 or fewer full-time employees in 2019, all employee wages are eligible, even if employees haven't been prevented from providing services. The credit is provided for wages and compensation, including health benefits, and is provided for the first $10,000 in eligible wages and compensation paid by the employer to an employee. Thus, the credit is a maximum $5,000 per employee.

Wages don't include (1) wages taken into account for purposes of the payroll credits provided by the earlier Families First Coronavirus Response Act for required paid sick leave or required paid family leave, (2) wages taken into account for the employer income tax credit for paid family and medical leave (under Code Sec. 45S) or (3) wages in a period in which an employer is allowed for an employee a work opportunity credit (under Code Sec. 51). An employer can elect to not have the credit apply on a quarter-by-quarter basis.

The IRS has authority to advance payments to eligible employers and to waive penalties for employers who do not deposit applicable payroll taxes in reasonable anticipation of receiving the credit. The credit is not available to employers receiving Small Business Interruption Loans. The credit is provided for wages paid after March 12, 2020 through December 31, 2020.

Delayed Payment of Employer Payroll Taxes

Taxpayers (including self-employees) will be able to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Taxes that can be deferred include the 6.2% employer portion of the Social Security (OASDI) payroll tax and the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer 6.2% Social Security (OASDI) rate). The relief isn't available if the taxpayer has had debt forgiveness under the CARES Act for certain loans under the Small Business Act as modified by the CARES Act (see below). For self-employeds, the deferral applies to 50% of the Self-Employment Contributions Act tax liability (including any related estimated tax liability).

Net Operating Loss Liberalizations

The 2017 Tax Cuts and Jobs Act (the 2017 Tax Law) limited NOLs arising after 2017 to 80% of taxable income and eliminated the ability to carry NOLs back to prior tax years. For NOLs arising in tax years beginning before 2021, the CARES Act allows taxpayers to carryback 100% of NOLs to the prior five tax years, effectively delaying for carrybacks the 80% taxable income limitation and carryback prohibition until 2021.

The Act also temporarily liberalizes the treatment of NOL carryforwards. For tax years beginning before 2021, taxpayers can take an NOL deduction equal to 100% of taxable income (rather than the present 80% limit). For tax years beginning after 2021, taxpayers will be eligible for: (1) a 100% deduction of NOLs arising in tax years before 2018, and (2) a deduction limited to 80% of taxable income for NOLs arising in tax years after 2017.

The provision also includes special rules for REITS, life insurance companies, and the Code Sec. 965 transition tax. There are also technical corrections to the 2017 Tax Law effective dates for NOL changes.

Deferral of Noncorporate Taxpayer Loss Limits

The CARES Act retroactively turns off the excess active business loss limitation rule of the TCJA in Code Sec. 461(l) by deferring its effective date to tax years beginning after December 31, 2020 (rather than December 31, 2017). (Under the rule, active net business losses in excess of $250,000 ($500,000 for joint filers) are disallowed by the 2017 Tax Law and were treated as NOL carryforwards in the following tax year.)

The CARES Act clarifies, in a technical amendment that is retroactive, that an excess loss is treated as part of any net operating loss for the year, but isn't automatically carried forward to the next year. Another technical amendment clarifies that excess business losses do not include any deduction under Code Sec. 172 (NOL deduction) or Code Sec. 199A (qualified business income deduction).
Still another technical amendment clarifies that business deductions and income don't include any deductions, gross income or gain attributable to performing services as an employee. And because capital losses of non-corporations cannot offset ordinary income under the NOL rules, capital loss deductions are not taken into account in computing the Code Sec. 461(l) loss and the amount of capital gain taken into account cannot exceed the lesser of capital gain net income from a trade or business or capital gain net income.

Acceleration of Corporate AMT Liability Credit

The 2017 Tax Law repealed the corporate alternative minimum tax (AMT) and allowed corporations to claim outstanding AMT credits subject to certain limits for tax years before 2021, at which time any remaining AMT credit could be claimed as fully-refundable. The CARES Act allows corporations to claim 100% of AMT credits in 2019 as fully-refundable and further provides an election to accelerate the refund to 2018.

Relaxation of Business Interest Deduction Limit

The 2017 Tax Law generally limited the amount of business interest allowed as a deduction to 30% of adjusted taxable income (ATI). The CARES Act generally allows businesses, unless they elect otherwise, to increase the interest limitation to 50% of ATI for 2019 and 2020, and to elect to use 2019 ATI in calculating their 2020 limitation. For partnerships, the 30% of ATI limit remains in place for 2019 but is 50% for 2020. However, unless a partner elects otherwise, 50% of any business interest allocated to a partner in 2019 is deductible in 2020 and not subject to the 50% (formerly 30%) ATI limitation. The remaining 50% of excess business interest from 2019 allocated to the partner is subject to the ATI limitations. Partnerships, like other businesses, may elect to use 2019 partnership ATI in calculating their 2020 limitation.

Technical Correction to Restore Faster Write-offs for Interior Building Improvements

The CARES Act makes a technical correction to the 2017 Tax Law that retroactively treats (1) a wide variety of interior, non-load-bearing building improvements (qualified improvement property (QIP)) as eligible for bonus deprecation (and hence a 100% write-off) or for treatment as 15-year MACRS property or (2) if required to be treated as alternative depreciation system property, as eligible for a write-off over 20 years. The correction of the error in the 2017 Tax Law restores the eligibility of QIP for bonus depreciation, and in giving QIP 15-year MACRS status, restores 15-year MACRS write-offs for many leasehold, restaurant and retail improvements.

Accelerated Payment of Credits for Required Paid Sick Leave and Family Leave

The CARES Act authorizes IRS broadly to allow employers an accelerated benefit of the paid sick leave and paid family leave credits allowed by the Families First Coronavirus Response Act by, for example, not requiring deposits of payroll taxes in the amount of credits earned.

Pension Funding Delay

The CARES Act gives single employer pension plan companies more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier will be due with interest. Also, a plan can treat its status for benefit restrictions as of December 31, 2019 as applying throughout 2020.

Certain SBA Loan Debt Forgiveness Isn't Taxable

Amounts of Small Business Administration Section 7(a)(36) guaranteed loans that are forgiven under the CARES Act aren't taxable as discharge of indebtedness income if the forgiven amounts are used for one of several permitted purposes. The loans have to be made during the period beginning on February 15, 2020 and ending on June 30, 2020.

Suspension of Certain Alcohol Excise Taxes

The CARES Act suspends alcohol taxes on spirits withdrawn during 2020 from a bonded premises for use in or contained in hand sanitizer produced and distributed in a manner consistent with FDA guidance related to the outbreak of virus SARSCoV- 2 or COVID-19.

Suspension of Certain Aviation Taxes

The CARES Act suspends excise taxes on air transportation of persons and of property and on the excise tax imposed on kerosene used in commercial aviation. The suspension runs from March 28, 2020 to December 31, 2020.

Please feel free to reach out to us if you have any questions.

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