

OBSERVATIONS

CARES Act: Business Tax Provisions 1

March 27, 2020

Dear Clients:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, aka the Stimulus Bill, was passed by the Senate March 25 and awaits House and Presidential action. It is a \$2 trillion relief package intended to stimulate the economy that has been severely impacted by the pandemic. The Act is complex and contains a wide variety of relief. This is the first of ongoing blogs about these provisions. We will update as we learn more of the details.

The two provisions that will most directly affect small businesses are the Payment Protection Program and the payroll tax deferral.

SEC. 1102. 7(a) LOAN PROGRAM (PAYCHECK PROTECTION PROGRAM)

This is essentially a targeted loan program intended to cover payroll and other costs with the goal of ultimately forgiving the loan. In short, it is a government subsidy for certain operating costs.

Businesses eligible: Small businesses and 501(c)(3) nonprofit organizations. In general, these are organizations with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher. In the case of an applicant that is seasonal employer, as determined by the Administrator, the average total monthly payments for payroll shall be for the period beginning March 1, 2019 and ending June 30, 2019.

Expenses Covered (may not be a complete list):

- (A) employee salaries and payroll support, including paid sick, medical, or family leave, and costs related to the continuation of group health care benefits during those periods of leave;
- (B) mortgage payments;
- (C) rent (including rent under a lease agreement);
- (D) utilities; and
- (E) any other debt obligations that were incurred before the covered period.

Note that owners of businesses, and self-employed individuals will be included in the expenses covered.

Limitations:

- The employees covered must be located in the United States.
- Employee compensation for an individual cannot exceed \$100,000 per year, pro-rated (apparently \$1,923 per week or \$8,333 per month).

Period covered: February 15 to June 30, for a maximum of eight (8) weeks.

Loans would be made by approved financial institutions/ a lender under section 7(a) of the Small Business Act (15 U.S.C. 636(a)). In other words, these will be bank loans, not loans directly from the government. At a point in the future, the loan will be paid by the government and forgiven to the borrower. Borrowers will need to establish that the loan proceeds were used for eligible expenses.

PAYROLL TAX DEFERRAL

Under the Act, for most employers, the employer's portion of employee's payroll social security tax (6.2%) due on employee wages paid during the 'payroll deferral period' can be deferred. The term "payroll tax deferral period" means the period beginning on the date of the enactment of the Act and ending before January 1, 2021.

The taxes will be required to be paid:

- 50% on or before Dec. 31, 2021;
- 50% on or before Dec. 31, 2022.

For self-employment taxes, 50% will not be due until those same dates.

Payroll taxes paid utilizing a loan under the Paycheck Protection Program are not eligible for the deferral.

We look forward to working with our clients in conjunction with financial institutions to assist with the issues and loan application process as additional information becomes available. We wish all of you the very best in a difficult time.

MALONEY & KENNEDY, PLLC