The Coronavirus Aid, Relief and Economic Security Act Summary
The "CARES" Act

The Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"), signed by President Trump, Friday March 27, 2020, provides economic relief to individuals, small businesses, corporations and industries in light of the recent novel coronavirus outbreak. Several highlights of the CARES Act are outlined below.

Business Loans - The CARES Act provides various support measures to businesses (in addition to small business concerns), most notably by providing opportunities for enhanced governmental guarantees and forgiveness of certain loans made under the Small Business Act ("SBA").

Paycheck Protection Program - The CARES Act creates a new loan category under the SBA: the Paycheck Protection Program, an extension of the existing SBA 7(a) loan program.
Paycheck Protection Program Terms:

- Loans are guaranteed by the United States government through December 31, 2020, up to the CARES Act's threshold allocation.
- SBA Small Business Loan Program approved lenders are automatically approved to make and approve Paycheck Protection Loans.
- Covered loan period: February 15, 2020 – June 30, 2020.
- Maximum loan amount: the lesser of (i) 2.5 times the average monthly payroll expense of the business, or (ii) $10,000,000.
- Use of proceeds: payroll support, including employee salaries, paid sick or medical leave and insurance premiums, and mortgage, rent and utility payments.
- Term of loan not to exceed 10 years from the date on which the borrower applies for loan forgiveness.
- Interest rate: not to exceed 4%.
- Eligible Applicants: Generally includes for-profit businesses, 501(c)(3) organizations, 501(c)(19) veteran's organizations and tribal business with fewer than 500 employees, sole proprietors, independent contractors and eligible self-employed individuals.
- An eligible recipient must make a good faith certification that:
    - Due to uncertainty facing the applicant, the loan is necessary to support its ongoing operations;
    - Proceeds of the loan will be used to retain workers and maintain payroll or make mortgage payments, lease payments and utility payments;
    - There is not pending a duplicate Paycheck Protection Program application for the same purpose and amount; and
    - From February 15, 2020 through December 31, 2020, it has not received amounts under the Paycheck Protection Program for the same purpose and duplicative of amounts applied for or received.
- The eligibility requirements which apply to most SBA 7(a) loans do not apply to Paycheck Protection Program loans (e.g., application fees waived, personal guarantees waived, etc.).

Loan forgiveness. The CARES Act also provides for forgiveness to up to 100% of loans issued under the Paycheck Protection Act. The terms of loan forgiveness include:

- Loan forgiveness is excluded from gross income.
- The amount of forgiven indebtedness is equal to the amount of payroll costs, interest payments on mortgages, and rent and utility payments of the eligible recipient during the period from February 15, 2020 through June 30, 2020 (the "Permitted Payments"), provided that such forgiveness does not exceed the principal amount of the loan.
- The amount of loan forgiveness is reduced by reductions in either the number of employees or the salary and wages of the borrower's employees.
    - To measure a reduction in the amount of loan forgiveness based on a reduction in the number of employees, the borrower can choose one of two options:
        - Option 1: Divide the average number of full-time employees per month employed from February 15, 2020 through June 30, 2020, by the average number of full-time employees per month employed from February 15, 2019 through June 30, 2019, and multiply the resulting quotient by the Permitted Payments. The product is the reduction in loan forgiveness.
        - Option 2: Divide the average number of full-time employees per month employed from February 15, 2020 through June 30, 2020, by the average number of full-time employees per month employed from January 1, 2020 through February 29, 2020, and multiply the resulting quotient by the Permitted Payments. The product is the reduction in loan forgiveness.
        - For eligible recipients that are seasonal employers, divide the average number of full-time employees per month employed from February 15, 2020 through June 30, 2020, by the average number of full-time employees per month employed from February 15, 2019 through June 30, 2019, and multiply the resulting quotient by the Permitted Payments. The product is the reduction in forgiven indebtedness.
        - Notwithstanding reductions in loan forgiveness for reducing the number of employees, the borrower can reduce such reductions in loan forgiveness by eliminating the reduction in the number of full-time employees, no later than June 30, 2020.
    - To measure a reduction based on the borrower's salary and wages, the CARES Act first determines the employees to be measured, which includes any employee of the borrower who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in excess of $100,000 (each, a "Measured Employee"). The Permitted Payments are reduced by the amount of any reduction in total salary or wages of any Measured Employee during the period from February 15, 2020 through June 30, 2020 that is in excess of 25% of the total salary and wages or the Measured Employee during the most recent full quarter during which the Measured Employee was employed before February 15, 2020.
        - Notwithstanding reductions in loan forgiveness for reducing the salary and wages of the borrower's employees, the borrower can reduce such reductions in loan forgiveness by eliminating the reduction in the salary or wages of 1 or more employees, no later than June 30, 2020.
- Applications for Loan Forgiveness. Eligible recipients seeking loan forgiveness must submit an application to the lender servicing the covered loan, which includes the following:

- Documentation verifying the number of full-time employees on payroll and their pay rates on the applicable testing dates, including payroll tax filings, and state income, payroll and unemployment insurance filings.
- Documentation verifying payment on covered mortgage obligations, lease obligations and utility payments.
- A certification by an authorized representative of the borrower. The certification must include a statement that the provided documentation is true and correct; setting forth the amount for which forgiveness is requested; certify that the amount to be forgiven was used to retain employees, to make interest payments on a covered mortgage obligation, to make payments on a covered rent obligation, and/or make covered utility payments.
- Regulations should be issued in the next month describing and clarifying the CARES Act's loan forgiveness provisions and the application process.

NOTE: An employer cannot seek loan forgiveness for the same payroll dollars in which the employer is also seeking a tax credit under the FFCRA.

<u>Economic Injury Disaster Loan Program</u> – The CARES Act expands the existing SBA Economic Injury Disaster Loan Program. The terms of the Economic Injury Disaster Loan Program include:

- Covered loan period: January 31, 2020 – December 31, 2020.
- Eligible applicants include businesses, sole proprietorships, cooperatives and ESOPS with fewer than 500 employees.
  - The CARES Act waives traditional Economic Injury Disaster Loan Program requirements (e.g., personal guarantees on advances and loans of $200,000 or less, applicant be in business for one year prior to the disaster, and forbidding Economic Injury Disaster Loans for borrowers able to find credit from other lenders).
- Applicants may be eligible for an advance of up to $10,000 which <u>need not</u> be repaid if the applicant is ultimately denied for an Economic Injury Disaster Loan, so long as the proceeds are used to:
  - Provide paid sick leave to employees unable to work as a result of COVID-19;
  - Maintain payroll during economic hardship;
  - Meet increased costs to obtain material unavailable from usual sources due to interrupted supply chains;
  - Make rent or mortgage payments; or
  - Repay obligations that cannot be met due to revenue losses.
- Lenders are permitted to approve applicants based exclusively on credit scores or other methods confirming a lender's confidence in a borrower's ability to repay the loan.

<u>Entrepreneurial Development</u> – The CARES Act allocates funds to educate employees about (i) funding made available during the pandemic, (ii) COVID-19 and threats posed thereby, (iii) potential effects of COVID-19 on supply chains, distribution networks and sales of products, and (iv) teleworking practices which help prevent the spread of COVID-19, among other things.

<u>Corporate Internal Revenue Code Adjustments</u> - The CARES Act provides several tax breaks to businesses of all sizes, including:

Net Operating Loss Deduction Carrybacks (IRC 172) – Any net operating loss (NOL) arising in tax years 2018-2020 may be carried back to each of the five taxable years preceding the loss year. Businesses with unused NOLs arising in 2018, 2019 or 2020 that paid taxes in at least one of the five preceding tax years will be permitted to file amended returns seeking a refund of taxes paid. Additionally, NOLs are now once again permitted to "zero out" taxable income—the 80% limitation is temporarily removed.

Payroll Taxes (IRC 3111(a); 1401(a)) – Employers and self-employed individuals may defer paying their portion of social security payroll taxes until 2021 and 2022 (with half of the amount due December 31, 2021, and the remaining half due December 31, 2022) *unless* the employer received an SBA loan forgiven under the CARES Act, in which case the employer may not defer social security payroll taxes.

Employee Retention Payroll Credit (IRC 3111) – Certain employers will be permitted a tax credit against applicable employment taxes of up to $5,000 per employee for wages and certain health benefits paid between March 12, 2020, and January 1, 2021. In most instances, the credit is available to employers if (i) the employer's operations were fully or partially suspended due to a COVID-19 related shut-down order, or (ii) the employer's gross receipts declined by more than 50% when compared to the corresponding quarter of the prior year. For employers with more than 100 full-time employees, only employees who are not currently providing services for the employer due to COVID-19 causes are eligible for the credit.

Interest Expense Deduction Limitation Increased (IRC 163(j)) –The CARES Act expands the deductibility of business interest expense by modifying the existing limitations under Section 163(j) of the Code. Prior to adoption of the CARES Act, Section 163(j) limited a taxpayer's business interest expense deductions to the sum of (i) 30% of the taxpayer's adjusted taxable income, (ii) its business interest income, and (iii) the taxpayer's interest charges for its floor plan financing. **The CARES Act increases the limitation of the taxpayer's adjusted taxable income from 30% to 50%.**

Modification of Refundable Minimum Tax Credit (IRC 53(e)) – The Tax Cuts and Jobs Act (TCJA) eliminated the alternative minimum tax (AMT) on corporations. Under prior law, AMT credits, a corporation generated prior to the TCJA and had available to use as a carry forward, were refundable up to a certain percentage between tax years 2018-2022 (generally 50%). The CARES Act allows the corporations to take the full amount of the refundable credit in 2018 and 2019.

Charitable Contributions (IRC 170) - The CARES Act increases the percentage of a corporation's charitable contribution deduction from 10% of a corporation's taxable income to 25% (additionally, any qualified charitable contribution by an individual is deductible to the extent it doesn't exceed the taxpayer's contribution base, removing the 50% of taxable income ceiling).

Individual Retirement Provisions – The CARES Act includes several individual retirement-related provisions, including:

IRA Contributions – The CARES Act extends the 2019 IRA contribution deadline to July 15, 2020 (the same date to which the IRS extended the federal income tax return deadline).

Premature Distributions – Subject to certain exceptions, the CARES Act waives the 10% additional tax for premature distributions related to COVID-19 up to $10,000.

Delayed Required Minimum Distributions – Pursuant to IRC 401(a), 403(a) and (b), IRAs and IRC 457, the CARES Act permits a one-year delay in required minimum distributions for defined contribution plans.

Expansion of Unemployment Coverage – The CARES Act expands unemployment eligibility and offers workers an additional $600 per week for four months in addition to amounts paid by state programs. It also allows furloughed workers to retain their "employee" status, allowing them to quickly resume work when applicable restrictions are lifted (which includes gig-economy workers and self-employed individuals).

- Individuals that have the ability to telework with pay and those who are receiving paid sick leave or other paid leave are expressly excluded from coverage.
- The additional unemployment compensation provided is not considered "income" for purposes of Medicaid and CHIP.

Student Loans - The CARES Act suspends involuntary collections on student loans and broadens the IRC definition of "employer provided educational assistance" to include up to $5,250 in student loan payments made by an employer between March 27, 2020 and December 31, 2020.

Direct Payments - Americans over the age of 18 will receive a one-time direct deposit or check of up to $1,200, with couples filing jointly receiving $2,400. These payments are phased out based on income levels, beginning with individuals earning $75,000 per year and ceasing entirely for those earning more than $99,000 annually ($150,000 and $198,000 for those filing joint returns). Families receive an additional $500 per child age 16 or under. Payments will be based on a taxpayer's 2019 federal income tax return, if already filed, or, alternatively, a taxpayer's 2018 federal income tax return.

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