

The CARES Act: a summary on the expanded SBA Loan Program and certain changes to personal and business income taxes

March 26, 2020 | **CLIENT ALERTS**

In response to the impact that COVID-19 has had on the American economy and its workers, Congress this week passed the CARES Act, an economic stimulus with an estimated price tag of \$2.2 trillion dollars. The CARES Act is expansive, touching many aspects of the American economy, but there are a few areas in particular that may offer some needed help.

SBA Economic Injury Disaster Loans

Prior to the outbreak of the COVID-19 pandemic, the Small Business Administration (SBA) had in place an emergency loan program that is automatically triggered, allowing those who qualify the opportunity to participate in the program. Once triggered, a SBA Economic Injury Disaster Loan can be given to any qualifying business in an amount up to \$2 million with an interest rate of 3.75% for up to thirty (30) years. The SBA will evaluate a business' finances and will determine the amount of the loan up to \$2 million, as well as the term of the loan.

In order to qualify to apply for the loan, a business must:

- Have a physical location in a county in which a disaster has been declared;
- Have suffered a demonstrable negative impact to working capital (in this case, due to COVID-19); and
- Meet SBA size standards relating to the industry the business is in (generally under 500 employees with exceptions for hospitality businesses and franchises under NAICS code 72 "accommodation and food services" with multiple locations, whereby the 500-person limitation is tested on a per location business).

The application for the loan can be done entirely online, and that is the SBA-recommended way to apply. Applications can be sent to the SBA from the day the disaster was declared in the business' county. There is typically a sixty (60) day period starting with the date of the disaster declaration in which a qualifying business can apply for the loan, but given the ongoing nature of the pandemic, businesses will have until December 31, 2020, to apply.

If the application is accepted, the loan amount can be refused by the applicant if they no longer need the money. The loan can also be prepaid at any time. Currently, there is a six (6) month deferment on payments from the time of disbursement, meaning that if a business receives the money from their loan on April 1, 2020, they will not have to make a payment on the loan until October 1, 2020, but that amount of time may be extended to a year subject to forthcoming guidance.

However, while the SBA Economic Injury Disaster Loan program is automatically triggered, Congress can modify

aspects of the program to better suit the current disaster the country is dealing with. That has in fact happened with the CARES Act. The CARES Act has extended the SBA program to create a separate loan program which is known as a 7(a) loan.

There are three major developments stemming from the CARES Act for 7(a) loans:

- Increased pool from which the SBA can loan from;
- Increased amount that can be loaned; and
- Loan forgiveness potential.

The first development is that Congress has allocated \$349 billion to the 7(a) loan program through the CARES Act, an amount vastly higher than a typical trigger of an SBA program would warrant. This increased pool of money will allow for more businesses to receive funds from the program, and this amount could increase via further Congressional action as the pandemic continues to unfold.

The second development is the increased amount that can be loaned to an individual business. While the typical maximum amount loaned is \$2 million, the CARES Act brings that amount up to \$10 million. A business can receive the lesser of multiplying its average total monthly payments by the applicant for payroll by 2.5; or \$10,000,000. Payroll costs include all benefits typically paid to employees, including any amounts of sick or medical leave. This \$10 million limit is still subject to the discretion of the SBA, and it stands to reason very few applicants will be eligible for this full amount, but the potential remains.

The final development is the potential for loan amounts to be forgiven if used in a particular manner. In particular, certain limited amounts used for payroll, mortgage, rent, or utility payments can be forgiven, subject to a reduction for any employees laid off, or the reduction of an employee's wages (although up to a 25% reduction in wages is allowed). Specifically, payroll costs for the eight week period starting when the business receives the loan will be forgiven subject to the reductions mentioned above. The maximum salary that can be forgiven is an eight-week pro rata share of an employee making \$100,000. If a business lays off any employees or reduces any employee salaries between February 15, 2020, and thirty (30) days after the passage of the CARES Act, such business may re-hire the same number of employees laid off, or increase employee salaries to their pre-February 15 levels and still qualify for full forgiveness. Lastly, any loans forgiven pursuant to the CARES Act will not be treated as cancellation of indebtedness income under Section 61(a)(12) of the Code. It should be noted that while any additional loan assistance received under Section 7(b)(2) of the SBA between January 31, 2020, and the date on which such loan is refinanced under the 7(a) loan program is included for purposes of the maximum loan under the 7(a) loan program, the CARES Act does not restrict the ability for businesses to "double-dip" and receive assistance under Section 7(b)(2) of the SBA (which is expanded under the CARES Act as well) as well as under the expanded Section 7(a) of the SBA, as long as loans from those programs are used for differing purposes.

The CARES Act has also delegated SBA authority to lend under the 7(a) loan program to all SBA-approved lenders. This decentralization is intended to decrease potential lag time between applying for a loan and the borrower receiving loan funds. Additional guidance on the process for SBA-approved lenders is forthcoming.

As stated above, this is an ongoing situation, and it is likely that additional measures will be considered as the economic landscape becomes clearer, especially for those businesses shut down because of the pandemic.

PERSONAL AND BUSINESS LEVEL INCOME TAX

The CARES Act provides a number of options for relief for individual and business taxpayers that they will be able to utilize on their 2020 tax returns.

Immediate Payment to Individuals

Individuals will receive a rebate from the government up to \$1,200 per individual and an additional \$500 per child. Individuals that make more than \$75,000, or \$150,000 per married couple, will gradually be phased out of the full \$1,200 rebate. The rebate will generally be phased out for individuals that make more than \$100,000 or married couples making over \$200,000. The phase out will be calculated based on income provided for on your 2018 tax return, or 2019 if it has been filed.

Delay of tax return filing deadlines

The individual tax return deadline, including any payment required with that filing, has been delayed from April 15, 2020, until July 15, 2020. No interest or penalties will be applied to any amount owed that normally would have been required to be paid on April 15, 2020. Any taxpayer that requires an extension beyond the July 15, 2020, deadline may apply for an automatic extension until October 15, 2020. Extensions must be filed by July 15, 2020. Any payment due with the extension will also be delayed until July 15, 2020. In addition, NYS (among other states) has delayed its income tax filing deadline to follow the federal deadline.

Waiver of early withdrawal penalties on distributions from retirement accounts

If a taxpayer or their spouse is diagnosed with COVID-19, or they can demonstrate adverse financial consequences due to the COVID-19 pandemic, they may withdraw monies from a qualified retirement account without the application of the traditional 10% early withdrawal penalty despite such withdrawal typically being subject to the penalty. The maximum that can be withdrawn under this relaxed rule is \$100,000. The last element of this waiver is extremely broad, and additional guidance from the Department of the Treasury is expected to help clarify what a negative financial impact shall mean. If the amounts withdrawn are recontributed to the qualified retirement account within three years, the taxpayer may avoid all income tax consequences for the initial withdrawal in its entirety. Additional guidance from the IRS is expected on this subject.

Increase in charitable contribution deduction

The limit on charitable donations for an individual has been increased to 100% of a taxpayer's adjusted gross income for the 2020 tax year, a temporary increase from a maximum of 60%.

Carryback of net operating losses

The Tax Cuts and Jobs Act of 2017 eliminated the potential for businesses with a Net Operating Loss to "carryback" that loss to up to two (2) tax years prior to the loss. A carryback essentially acted as a tax rebate for businesses that were profitable in prior years, but have suffered a loss in the current tax year. The ability to carryforward such loss is still permitted under the Tax Cuts and Jobs Act. However, the CARES Act is allowing for a one-time carryback of any losses suffered in the 2018, 2019 or 2020 tax years to up to five (5) years in the past. That means a business may carryback any Net Operating Losses suffered in their 2020 tax year to any one tax year between 2015 and 2019. As 2015 through 2019 were in a macro sense quite profitable for American businesses, this one-time allowance may create a considerable benefit for a taxpayer significantly impacted by the current COVID-19 pandemic.

Payroll taxes

Under the CARES Act, the payment of the 6.2% payroll tax paid by employers and self-employed individuals will be

deferred until December 31, 2020.

Modification of business interest limitation

The CARES Act provides significant relief to taxpayers subject to the 30% business interest limitation under Section 163(j) of the Code. For the 2019 and 2020 taxable years, the 30% limitation is increased to 50% and taxpayers can use their 2019 taxable income (rather than 2020) for purposes of calculating the 2020 50% limitation.

Immediate deduction of qualified improvement property

As a technical correction to the 2017 TCJA, the CARES Act enables businesses to immediately write off the costs of qualified improvement property.

Please contact the Lippes Mathias attorney with whom you work with or any of the following attorneys.

Related Team



Brian J. Bocketti

Partner | Executive
Committee | Team
Co-Leader - Banking
& Financial
Transactions



Jennifer C. Persico

Partner | Executive
Committee | Team
Leader - Litigation



Brendan J. Rich

Partner | Team
Leader - Corporate
and Mergers &
Acquisitions



Amy Habib Rittling

Partner | Team
Leader -
Employment



Michael G. Rossetti

Partner | Office
Leader, Washington,
D.C. | Team Co-
Leader - Indian Law |
Team Co-Leader –
Government &
Corporate
Investigations