Update on CARES Act

As many of you know the CARES Act was signed in to law on March 27th, 2020 and this law has many different opportunities for both businesses and individuals. Here are some of the highlights of the new tax act.

Personal

Stimulus Checks

In general, individuals will be entitled to receive a $1,200 amount, while joint filers will receive $2,400. In addition, taxpayers will receive $500 for each qualifying child, using the provisions that apply to the Child Tax Credit... so basically, under 17 or under. High-income taxpayers will have those rebate amounts reduced and/or eliminated as income exceeds:

- $150k - Joint filers
- $112.5k - HOH
- $75k - Everyone else

For every $100 over the applicable threshold, you lose $5 of the rebate, until you get nothing. Notably, by virtue of the way the Recovery Rebate is phased out, two taxpayers who have the same filing status will have different phaseout ranges if they have a different number of qualifying children.

When might the checks come? "The CARES Act requires that these payments be made as soon as possible, but early indications from the Treasury Department are that "as soon as possible" ***may not be until sometime in May***."

Student Loans

- Federal student loan payments are suspended for six months through September 30, 2020.
    - Some FFEL (Federal Family Education Loans) are not held by the Dept of ED and will not qualify for this suspension. If your federal loan payments have not stopped in the next month - contact me.
    - The government stopped issuing FFEL loans in 2010, so anyone who graduated or went to school before that time likely has this kind of student loan unless they've consolidated since then.
- **Unfortunately, this bill does absolutely nothing for borrowers with private student loans.**
    - This suspension takes effect automatically without any effort on the part of a borrower (likely implemented over the coming days).
    - The six months of suspended payments count towards loan forgiveness programs, including Public Service Loan Forgiveness (PSLF) and Income Driven Repayment Forgiveness (PAYE, REPAYE, IBR).
    - No interest will accrue for six months until September 30, 2020, extending the Trump student loan interest freeze, which started March 13, 2020

Accessing Emergency Cash

There is something called the "Coronavirus-Related Distribution". This is a new exception to the 10% early distribution penalty from retirement accounts (usually 10% if you access prior to 59.5) available to certain individuals impacted by the current crisis. Some details:

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    - The distribution can be from an IRA or a retirement plan (401k/SEP/SIMPLE)
    - It can be up to $100k
    - It must be taken in 2020
    - By default, the income is spread over...3 years, unless you proactively elect to include it all in 2020 (note: if times are tough and income has significantly declined, this might actually be a better move)
    - To be eligible you must be diagnosed w/ COVID-19, OR have a spouse or dependent similarly diagnosed......OR experience adverse financial consequences as a result of being quarantined, furloughed, laid off, reduced hours, unable to work b/c of childcare issues, and a handful of other similar reasons. Bottom line... I think the IRS is going to be very lenient on this one...
    - It's also important to note that beginning on the day after receipt of a "Coronavirus-Related Distribution", an individual has up to 3 years to repay the amount as qualified rollover contributions (in 1 or multiple payments).
    - Amended return(s) can be filed to claim refunds!

There is also a provision to further expand 401k plan loans.

- The max amount of a plan loan is doubled from 50k to 100k
- The loan may be for up to the present value of the participant's account
- Loan payments due from enactment until 12/31/20 can be delayed for up to 1 year

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Business

Unemployment Benefits

For those that are 1099, there is relief "Pandemic Unemployment Assistance" – Self-employed individuals (who are generally ineligible for unemployment compensation benefits), and other individuals who are ineligible for ‘regular’ unemployment, extended unemployment or pandemic unemployment insurance, or run out of such insurance, will be eligible for up to 39 weeks of benefits via this provision.

Uncle Sam Will Cover Unemployment for the First Week of Unemployment – In general, individuals are ineligible to receive unemployment benefits the first week that they are unemployed. It essentially amounts to an elimination period that’s meant to encourage people to try and get another job quickly so as to avoid the week without income. And in recognition of this fact, the CARES Act offers to pay states to provide unemployment compensation benefits immediately, without the ‘normal’ one-week waiting period.

Regular’ Unemployment Compensation is increased by $600 per Week – Section 2104 of the CARES Act provides states with the ability to increase their unemployment benefits by up to $600 per week with Federally-funded dollars, for up to four months. Unemployment Compensation is Extended by 13 Weeks– In the event that people are nearing – and ultimately reach – the maximum amount of weeks of unemployment compensation provided under state law, Section 2107 of the CARES Act will allow them to receive such benefits for an additional quarter.

Paycheck Protection Program And Forgivable Loans

Another significant potential benefit included in the CARES Act for ‘small’ business owners is the Paycheck Protection Program, a (partially) forgivable loan program offered through the Small Business Administration (SBA). Such loans must be applied for by June 30, 2020, and can have a maximum maturity of 10 years. They may be provided via existing approved SBA lenders, as well as lenders who are otherwise certified by the SBA to offer such loans. Furthermore, such loans will be 100% guaranteed by the SBA. Reach out to your lending connection most will be able to help here.

Qualifying For The Paycheck Protection Program - SBA 7(a) Loans

Businesses, including sole proprietorships, that have fewer than 500 employees (including affiliated businesses) are eligble. Borrowers are also required to make a good-faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19.

Under the Paycheck Protection Program, lenders will generally be able to issue SBA 7(a) small business loans up to a maximum of the lesser of $10 million, or 2.5 times the average monthly payroll costs over the previous year (excluding annual compensation of amounts over $100,000 per person). And the proceeds of such loans may be used to pay a variety of costs, including:

- Payroll costs
- Group health insurance premiums and other healthcare costs
- Salaries and/or commissions
- Rent Mortgage interest (excluding amounts pre-paid)
- Utilities
- Other business interest incurred prior to February 15, 2020

Benefits Of Loans Issued Under The Paycheck Protection Program The single largest potential benefit of a loan issued under the Paycheck Protection Program is the possibility of having all or a portion of the loan forgiven. The amount eligible to be forgiven is the amount spent, during the first 8 weeks after the loan is made, on:

- Payroll costs, excluding prorated amounts for individuals with compensation greater than $100,000;
- Rent pursuant to a lease in force before February 15, 2020;

- Electricity, gas, water, transportation, telephone, or internet access expenses for services which began before February 15, 2020
- Group health insurance premiums and other healthcare costs.

If this sounds too good to be true, it won't surprise you to learn that there is a catch. In order for the above amounts to be forgiven, the business must maintain the same number of employees (equivalents) from February 15, 2020 through June 30, 2020 as it did during either the same period in 2019 or from January 1, 2020 until February 15, 2020. To the extent this requirement is not met, the amount eligible for forgiveness will be reduced.

Any debt forgiven pursuant to this provision is not included in taxable income for the year. Second, the maximum interest rate that can be charged for a loan made under this program is 4%. Small businesses tend to be risky borrowers, so the ability to borrow up to $10 million at no more than 4%, and over a term of up to 10 years, is a pretty significant 'win' for many small businesses in and of itself!

Finally, payments for loans made under the Paycheck Protection Program will be deferred for a period of no less than six months and no longer than one year. Additional guidance will be provided to lenders within 30 days of enactment to further elaborate on the 6-to-12-month deferment period.

The bottom line: if you haven't laid off staff (which I know most have) this could be an option to help retain them. Again, this is all going to be dependent on the situation in your office and the amount of reserves available. Yes, the loans are helpful and are likely tax-free (although laying-off even one employee in March, April, May, and June can reduce a business' eligibility for aforementioned debt forgiveness), but staying solvent and open-ready today is critical.

"Employee Retention Credit For Employers Subject To Closure Due to COVID-19"

As an incentive to encourage businesses who have been hit hard by the economic effects of the COVID-19 crisis from making further layoffs, Section 2301 of the CARES Act introduces a new payroll tax credit (provided they are not receiving a covered loan under section 7(a)(36) of the Small Business Act - aka what we covered above).

Qualifying For The Employee Retention Credit

- The 'trigger' for a company to begin to be eligible for the credit is that operations of the company have been fully or partially suspended during a quarter either as a result of a governmental authority or in which revenue in 2020 has less than 50% of the revenue from the same quarter in 2019.
- As such, a business which is not at least partially suspended because of government restriction, and which never sees its year-over-year quarterly revenues plummet below the 50% mark, will not be eligible for the credit.

For those businesses that do meet this (unfortunate) requirement, the business will continue to qualify for the credit until the earlier of:

The end of 2020; or Depending upon the method of qualification for the credit, there is either a quarter without a government-required suspension of operations, or gross revenue from the current quarter exceeds 80% gross revenue from the same calendar quarter in 2019, whichever is sooner. Notably, for businesses qualifying for the credit based on revenue, by virtue of the fact that at least one quarter's revenue in 2020 must be more than 50% less than the revenue for the same quarter in 2019, a company experiencing a sustained substantial (but not-substantial-enough) decrease in revenue throughout the year, may never qualify for the credit (as can be shown with company B in the example below).

Meanwhile, as evidenced in the example below, a company that experiences a more temporary, but dramatic decline in revenue, and which actually experiences a much better year overall, may, in fact, qualify for the credit in one or more quarters!

Finally, it's worth highlighting that the key metric used here is revenue, not profit.

Calculating The Employee Retention Credit

For business planning purposes, it is important not only to understand that you are eligible for a credit but also to know how much of a credit you are eligible for, as this will help inform business decisions.

In the simplest terms, the credit is equal to 50% of wages paid to each employee, up to a maximum of $10,000 of wages per employee. There are, however, as usual, some important caveats. Specifically, businesses with 100 or fewer employees count "wages" very differently from larger businesses. For small businesses (100 or fewer employees), all wages (up to the $10,000 maximum limit per employee) are eligible to count towards the credit. Wages include qualified health care expenses allocable to those wages.

Deferral Of Payment Of Payroll Taxes

Section 2302 of the CARES Act provides employers with another payroll-related tax break. With the exception of employers who have debt forgiven by the CARES Act for certain loans provided by the Small Business Administration, employers are eligible to defer payroll taxes from the date of enactment, through the end of the year, until the end of 2021 and 2022.

More specifically, 50% of the payroll taxes that would otherwise be due during this period may be deferred until December 31, 2021. The remaining 50% is due on December 31, 2022.

The good news for self-employed persons is that this relief applies to them too, at least with respect to the 'employer equivalent' portion of their self-employment taxes.

Accordingly, 50% of an individual's self-employment taxes, from the date of enactment through the end of 2020, may be deferred, with 50% of that amount (so 25% of 2020 self-employment taxes) due December 31, 2021, and the remaining deferred amount due on December 31, 2022.

Federal Family First Coronavirus Response Act (FFCRA)

The Act talks about the following benefits that must be paid.

Generally, the Act provides that covered employers must provide to all employees:

> Two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or

Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

A covered employer must provide to employees that it has employed for at least 30 days:

Up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

As a small business you MAY not be required to comply with the Act.

"Under the FFCRA, small businesses with fewer than 50 employees may qualify for an exemption from providing paid sick leave and/or expanded family and medical leave due to the closure of a child's school or place of care due to a public health emergency if doing so would jeopardize the viability of the business. The Department of Labor will further specify the criteria to meet the small business exemption in forthcoming regulations. However, the guidance states that small employers wishing to elect this exemption should document why their business meets the criteria to be set forth by the Department."

If you feel that you would like to explore the small business exemption for this Act we recommend you seek qualified legal council who has experience in U.S. Department of Labor Laws.

Thanks for reading and let us know if you have any questions.

Brammer & Yeend Professional Corporation