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CARES ACT MAJOR PROVISIONS:

The most significant provision affecting small businesses is the new “Paycheck Protection Loans”, due to the possible tax-free forgiveness of a significant portion of the loan, essentially resulting in a tax-free grant.

The US Small Business Administration (SBA) reportedly plans to have a process in place by end of next week, where the loans can be made and disbursed in the same day, according to *The Wall Street Journal*. Previously, the SBA said it takes around 5 to 10 business days.

According to Senator Ted Cruz on Fox News Friday, this loan program will be executed mainly by SBA approved lenders rather than the SBA itself which not only makes sense, but is certain to quicken the funding process.

We will be leveraging our relationship with Chase Bank to assist clients should you decide to pursue this option. If you currently have a strong relationship with a different SBA approved lender, we encourage you to reach out to them. In any case we are available to support you in the application process.

According to Chase as of Friday, “The next step is for the Small Business Administration (SBA) to issue guidance to banks such as Chase on how and when to provide much needed loans to our small business clients under the Act. We will update this information as we learn more.”

Interaction between Economic Injury Disaster Loan (EIDL) and a Paycheck Protection Program Loan (PPP) loans.

We are seeing conflicting information on this and are working to resolve it:

US Chamber of Commerce:

A business can get both an EIDL and a Paycheck Protection Program loan as long as they don't pay for the same expenses.

Krost CPA:

Please note that businesses cannot get both Economic Injury Disaster Loan (EIDL) and a Paycheck Protection Program Loan (PPP) loans at the same time. You can apply for the EIDL loan now and the PPP loan when it becomes available. If you qualify and accept the EIDL loan, and you subsequently qualify for the PPP loan, you can re-finance the EIDL loan with the PPP loan, OR you can apply for both loans and decide which one you take if you qualify for both. Loans are limited to one per Taxpayer Identification Number.

Kramer Levin Law Firm:

The PPP loan applicant must certify that is not “double dipping” by applying for or receiving another PPP loan, Section 7(a) loan or EIDL.

Here are links to two reliable sources for an overview of all significant CARES Act provisions:

https://www.nysra.org/uploads/1/2/1/3/121352550/phase_three_cares_act_summary_3.23.20.docx%5B2%5D.pdf

https://www.nysenate.gov/sites/default/files/article/attachment/the_small_business_owners_guide_to_the_cares_act.pdf

<https://esd.ny.gov/small-business-administration-sba-covid-19-loans>

Here's a more in-depth look at:

- [Paycheck Protection Loans](#)
- [Loan Forgiveness of Paycheck Protection Loans](#)
- [Emergency Government Disaster Loan and Grant](#)
- [Subsidy for Certain Loan Payments](#)
- [Employee Retention Credit](#)
- [Delay of Payment of Employer Payroll Tax and Self-Employment Tax](#)

NOTE: NEITHER THE EMPLOYEE RETENTION CREDIT OR THE PAYROLL TAX DELAY ARE AVAILABLE TO A BUSINESS THAT RECEIVES FORGIVENESS OF DEBT PURSUANT TO A PAYROLL PROTECTION LOAN.

Excerpts from Forbes.com Tax Aspects of CARES Act 03/25 9:41 PM

<https://www.forbes.com/sites/anthonymitti/2020/03/25/congress-reaches-agreement-on-a-coronavirus-relief-package-tax-aspects-of-the-cares-act/amp/>

PAYCHECK PROTECTION LOANS:

In a move designed to keep small businesses afloat, the CARES Act provides that businesses with fewer than 500 employees — including sole proprietors and nonprofits— will have access to nearly \$350 billion in loans under Section 7 of the Small Business Act during the “covered period,” which runs from February 15, 2020 through June 30, 2020. The loans, which are referred to as “paycheck protection loans” and are fully guaranteed by the federal government through December 31, 2020 (returning to an 85% guarantee for loans greater than \$150,000 after that date), are generally limited to the LESSER OF the sum of

- Average monthly “payroll costs” for the 1-year period ending on the date the loan was made (an alternative calculation is available for seasonal employers) multiplied by 2.5, and

- Any disaster loan (discussed below) taken out after January 31, 2020 that has been refinanced into a paycheck protection loan, and

\$10 million.

Payroll costs, in turn, are the sum of the following:

- Wages, commissions, salary, or similar compensation to an employee or independent contractor,
- Payment of a cash tip or equivalent,
- Payment for vacation, parental, family, medical or sick leave,
- Allowance for dismissal or separation,
- Payment for group health care benefits, including premiums,
- Payment of any retirement benefits, and
- Payment of state or local tax assessed on the compensation of employees

Payroll costs do not include, however:

- The compensation of any individual employee in excess of an annual salary of \$100,000,
- Payroll taxes
- Any compensation of an employee whose principal place of residence is outside the U.S., or
- Any qualified sick leave or family medical leave for which a credit is allowed under the new Coronavirus Relief Act passed last week.

The loans will have a maximum maturity of 10 years and an interest rate not to exceed 4%. Proceeds may be used to cover payroll, mortgage payments, rent, utilities, and any other debt service requirements. The standard fees imposed under Section 7 of the Small Business Act are waived, and no personal guarantee is required by the business owner.

An additional provision in the CARES Act provides for possible deferment of repayment of the loans for a period of at least six months, but not to exceed a year.

LOAN FORGIVENESS OF PAYCHECK PROTECTION LOANS:

A separate section of the CARES Act calls for a portion of the aforementioned paycheck protection loans to be forgiven on a tax-free basis. The amount to be forgiven is the sum of the following payments made by the borrower during the 8-week period beginning on the date of the loan:

- Payroll costs (as defined above)
- Mortgage interest,
- Rent,
- Certain utility payments.

To seek forgiveness, a borrower must submit to the lender an application that includes documentation verifying the number of employees and pay rates, and cancelled checks showing mortgage, rent, or utility payments.

There is a provision, however, that reduces the amount that may be forgiven if the employer either:

- Reduces its workforce during the 8-week covered period when compared to other periods in either 2019 or 2020, or
- Reduces the salary or wages paid to an employee who had earned less than \$100,000 in annualized salary by more than 25% during the covered period.

This reduction can be avoided, however, if the employer rehires or increases the employee's pay within an allotted time period.

EMERGENCY GOVERNMENT DISASTER LOAN AND GRANT:

The CARES Act also expands access to Economic Injury Disaster Loans under Section 7(b)(2) of the Small Business Act to include not only businesses with fewer than 500 employees, but also sole proprietors and ESOPs. For any loan made under this program before December 31, 2020, no personal guarantee will be required on loans below \$200,000. The bill allows a disaster loan to be taken out between January 31, 2020 and the date on which a paycheck protection loan is available for reasons "other than paying payroll costs." Presumably, any loan taken out for payroll purposes will be confined to the paycheck protection loans described above.

In addition, the Act creates a new Emergency Grant to allow a business that has applied for a disaster loan to get an immediate advance of up to \$10,000. The advance can be used to maintain payroll, and is not required to be repaid, even if the borrower's request for a 7(b) loan is denied.

SUBSIDY FOR CERTAIN LOAN PAYMENTS:

The CARES Act also provides benefits to those with loans under Section 7(a) of the Small Business Act OTHER THAN the new paycheck protection loans, in the form of a government subsidy whereby the SBA will pay six months of principal, interest and fees on qualifying loans.

EMPLOYEE RETENTION CREDIT:

NOTE: if an employer takes out a payroll protection loan under Section 7(a) of the Small Business Act as detailed above in this article, no employee retention credit will be available.

New to the final version of the CARES Act is a one-year only credit against the employer's 6.2% share of Social Security payroll taxes for any business that is forced to suspend or close its operations due to COVID-19, but that continues to pay its employees during the shut-down. It works like so...

A business is eligible for the credit in one of two ways:

- The operation of the business was fully or partially suspended during any calendar quarter during 2020 due to orders from an appropriate government authority resulting from COVID-19, or
- The business remained open, but during any quarter in 2020, gross receipts for that quarter were less than 50% of what they were for the same quarter in 2019. The business will then be entitled to a credit for each quarter, until the business has a quarter where it's recovered sufficiently that its receipts exceed 80% of what they were for the same quarter in the previous year.

For each eligible quarter, the business will receive a credit against its 6.2% share of Social Security payroll taxes equal to 50% of the "qualified wages" paid to EACH employee for that quarter, ending on December 31, 2020.

The business's qualified wages depend on its size; if there were more than 100 employees during 2019, the qualified wages are limited ONLY to those wages that were paid by the employer during the quarter for the period of time the business was shut down.

If there were less than 100 employees for 2019, however, qualified wages include not only those paid to employees during a shut-down, but also wages paid for each quarter that the business has suffered a sharp decline in year-over-year receipts, as described in #2 above.

In both cases, qualified wages include any "qualified health plan expenses" allocable to the wages, such as amounts paid to maintain a group health plan. In either case, however, the amount of qualified wages for EACH employee for ALL quarters may not exceed \$10,000.

As you might expect, any wages taken into account in determining the new payroll tax credit for family medical leave or sick leave as part of the Coronavirus Relief Act may not be taken into account in determining qualified wages for the employee retention credit.

The credit is refundable if it exceeds the business's liability for payroll taxes, a likely outcome given the two new payroll tax credits mentioned immediately above that were created as part of the Coronavirus Relief Act late last week.

DELAY OF PAYMENT OF EMPLOYER PAYROLL TAX AND SELF-EMPLOYMENT TAX:

NOTE: This deferral is not available to any business that takes out a payroll protection loan forgiven as discussed earlier in this article.

In addition to the various new payroll tax credits created by the Coronavirus Relief Act and the CARES Act, the new law would again seek to alleviate the burden on employers struggling to make payroll by allowing the employer's share of the 6.2% Social Security tax that would otherwise be due from the date of enactment through December 31, 2020, to be paid on December 31, 2021 (50%) and December 31, 2022 (50%).

Similarly, a self-employed taxpayer can defer paying 50% of his or her self-employment tax that would be due from the date of enactment through the end of 2020 until the end of 2021 (25%) and 2022 (25%).

If you're scoring at home, this means an employer that incurs its 6.2% share of Social Security tax in 2020 may 1) defer payment of that tax until 2021 and 2020, but 2) receive an immediate credit against those yet-to-be paid payroll taxes via the sum of the emergency medical leave credit, sick leave credit, and new employee retention credit. While this will greatly increase the cash available to small businesses in the coming months, I am not nearly bright enough to understand how it will all come together in practice on 2020 income and payroll tax filings.