Professional Education Services, LP

Summary of the FFCRA, CARES Act, and the PPPFA

(Business and Tax Issues)

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SUMMARY OF THE FFCRA, CARES ACT, AND THE PPPFA (BUSINESS AND TAX ISSUES)

This Summary contains important business and tax Issues from the FFCRA and CARES Act. For more details, see our 4 hour course #7850.

FFCRA

- Expands emergency family and medical leave. Two weeks of paid sick leave at full pay to quarantine or seek a diagnosis, or paid at two-thirds pay to care for a quarantined family member or to care for a child whose school has closed or child care provider is unavailable due to the coronavirus. An additional 10 weeks at no less than two-thirds pay is available to employees covered by the above circumstances as a result of the coronavirus.

- Tax credits for paid sick and family and medical leave. Provides a refundable tax credit equal to 100 percent of qualified sick leave wages paid by an employer. The credit is a payroll tax credit applied against the employer portion of social security taxes. Qualified wages are capped at $511/day for employees self-isolating and $200/day for those caring for a family member or child.

- Tax credit for sick leave for certain self-employed individuals with the same limits as above.

- Tax credit for required paid family leave. 100 percent of qualified wages. Limited to $200/day per employee and a $10,000 overall maximum per employee. A similar credit is available for the self-employed.

- The tax credits are only available for the period beginning within 15 days from the date of enactment (as determined by the IRS) and ending on December 31, 2020. The IRS is granted broad authority to issue regulations and guidance.

CARES ACT

Paycheck Protection Program (PPP)

- The program is open until June 30, 2020, however you are encouraged to apply as quickly as possible because there is a funding cap and lenders need time to process the loan.

- All existing SBA-certified lenders will be given delegated authority to process PPP loans.

- All federally insured depository institutions, federally insured credit unions, and farm credit institutions are eligible to participate in this program.

- The Paycheck Protection Loan Program, with a price tag of $349 billion, covers the period February 15, 2020 through June 30, 2020 and greatly expands SBA loan eligibility.

The loan program will allow businesses suffering due to the coronavirus outbreak to borrow money for a variety of qualified costs related to employee compensation and benefits, including (i) payroll costs, (ii) continuation of health care benefits, (iii) employee compensation (of those making less than $100K), (iv) mortgage interest obligation, (v) rent, (vi) utilities and (vii) interest on debt incurred before the covered period.

- The legislation greatly expands the number of businesses that are eligible for SBA loans and raises the maximum amount for such a loan by 2.5 x the average total monthly payroll costs, or up to $10 million. The interest rate may not exceed 4%.
- Companies that employ more than 500 employees are not eligible.
- Waives the credit available elsewhere and person guaranty requirements.
- Provides additional relief for businesses in the accommodation and food services industries, certain franchise business and small businesses that receive financing through the Small Business Investment Company Act.
- For eligibility purposes, requires lenders to, instead of determining repayment ability, which is not possible during the crisis, to determine whether a business was operation on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor.

Loan Forgiveness

- Establishes that the borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date on (i) rent, (ii) payroll costs for employees making less than $100K, (iii) interest on a mortgage, and (iv) utility payments. The amount forgiven may not exceed the principal of the loan.
- Incentivizes companies to retain employees by reducing the amount forgiven proportionally by any reduction in employees retained compared to the prior year.
- To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- Loan payments will be deferred for 6 months.

Emergency Economic Injury Disaster Loans (“EIDLs”)

- For the period between January 31, 2020 and December 31, 2020 (the “covered period”) EIDL eligibility is expanded to individuals operating sole proprietorships, independent contractors, cooperatives, non-profits and ESOPs with not more than 500 employees.
- Furthermore, EIDLs may be approved by the Small Business Administration solely on the bases of an applicant’s credit score or by use of alternative methods to gauge the applicant’s ability to repay. Additionally, applicants may request an advance of up

to $10,000 within three days after the Administrator receives the application, subject to verification that the entity is eligible under this program. The advance may be used for any allowable purposes under §7(b)(2) of the Small Business Act and is not subject to repayment, even if the loan request is ultimately denied.

- Establishes that an emergency involving Federal primary responsibility determined to exist by the President under Section 501(b) of the Stafford Disaster Relief and Emergency Assistance Act qualifies as a new trigger for EIDLs.

Rebates and Other Individual Provisions

- **Tax Credits**
    - Eligible individual taxpayers can benefit from a tax credit of $1,200 for single filers and $2,400 for those filing jointly. Additionally, eligible individual tax payers can receive a $500 tax credit per qualifying child. However, the aforementioned tax credits will be "phased-out" by 5% of every dollar the taxpayer's adjusted gross income exceeds: (i) $150,000 for joint-filers, (ii) $112,500 for heads of household, and (iii) $75,000 for all other types of filers.
    - This means, for example, the tax credit will phase out entirely at $198,000 for joint-filers with no children.
- **Tax Treatment of Coronavirus-Related Distributions**
    - Individuals who elect to receive a "coronavirus-related distribution" will not be subject to the Internal Revenue Code's traditional 10% tax penalty for early withdrawals from eligible retirement accounts, for all distributions up to an aggregate amount of $100,000.
    - Coronavirus-related distributions made from both traditional eligible employer sponsored retirement plans and individual retirement accounts ("IRAs") may be excluded from gross income.
- **Effects on Minimum Distribution Threshold**
    - The CARES Act *temporarily waives the minimum distribution requirements* for all "eligible deferred compensation plans." This includes: (i) certain contribution plans (e.g. an employer purchased annuity contract), (ii) deferred compensation plans that are maintained by an eligible employer, or (iii) IRAs. This applies for all distributions made on or after January 1, 2020.
    - However, if this section applies to any pension plan or contract amendments such pension plan or contract amendments will not fail to be treated as being operated in accordance with the terms of the plan to the extent solely because the plan operates in accordance with this section, so long as the amendment or contract in question has been in effect from its effective date until December 31, 2020.
    - Any plan or contract amendments to which Section 2203 of the CARES Act

(the section on temporary waiver of required minimum distribution rules) applies will not fail to meet the requirements of either the Internal Revenue Code or the Employee Retirement Income Security Act as a result of making such an amendment. However, this provision only applies to those amendments which are in effect during the period beginning on the effective date of the amendment until December 31, 2020.

- **Tax Treatment of Charitable Donation**
  - The CARES Act allows taxpayers to take an above-the-line tax deduction for charitable contributions of up to $300 for the tax year beginning in 2020.
  - Additionally, except for certain exclusions specified below, the percentage and excess carryover restrictions on charitable and other “qualified contributions” (e.g. a contribution to a corporation, trust, a state, or an organization of war veterans, etc.) are disregarded.

Business Provisions

- **Employee Retention Credit for Employer Subject to Closure Due to COVID-19**
  - Eligible employers will receive a credit against applicable employment taxes for each calendar quarter in an amount equal to 50% of the qualified wages with respect to each employee. The amount of qualified wages taken into account for each eligible employer, however, will not exceed $10,000 per calendar quarter and the credit will not exceed the applicable employment taxes owed for such calendar quarter.
  - An eligible employer is defined as any employer: (i) which was carrying on a trade or business during calendar year 2020, and (ii) the operation of their trade or business was fully or partially suspended due to governmental order as a result of COVID-19.
- **Delay of Payment of Employer Payroll Taxes**
  - The CARES Act will allow for most employers to defer paying their share of the social security tax from the time the CARES Act is signed into law through December 31, 2020. Half of this deferred amount would be due on December 31, 2021 and the other half by December 31, 2022.
- **Modifications for Net Operating Losses (“NOL”)**
  - There will be a temporary repeal of taxable income limitation including (i) in the case of a taxable year beginning before January 1, 2021, the aggregate of the NOL carryovers to such year, plus the NOL carrybacks to such year, and (ii) in the case of a taxable year beginning after December 31, 2020, the sum of the aggregate amount of NOLs arising in taxable years beginning before January 1, 2018 and the lesser of the aggregate amount of net operating losses arising in taxable years beginning after December 31, 2017 or 80% of the excess of taxable income.

- With special rules applicable to REITs, there will be special rules for losses arising in 2018, 2019 and 2020 including such loss being a NOL carryback to each of the 5 taxable years preceding the taxable year of such loss.

- **Modification of Limitation on Losses for Taxpayers Other Than Corporations**
    - For any taxpayer other than a corporation:
        a. For any taxable year beginning after December 31, 2020 and before January 1, 2026, any excess business loss of the taxpayer for the taxable year will not be allowed.
        b. For a taxable year beginning after December 31, 2017 and before January 1, 2026, subsection (j) (relating to a limitation on excess farm losses of certain taxpayers) would not apply; and
    - In regard to treatment of Capital Gains and Losses:
        a. Deductions for losses from sales or exchanges of capital assets will not be taken into account.
        b. The amount of gains from sales or exchanges of capital assets taken into account will not exceed the lesser of (1) the capital gain net income determined by taking into account only gains and losses attributable to a trade or business, or (2) the capital gain net income.
    - The amendments made in the aforementioned section shall apply to taxable years beginning after December 31, 2017.
- **Modification of Credit for Prior Year Minimum Tax Liability of Corporations**
    - The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021.
    - The provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.
- **Modification of Limitation on Business Interest**
    - The provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30% limitation to 50% of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.
- **Qualified Improvement Property**
    - The provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of

having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

Coronavirus Stabilization Act of 2020

- **Emergency Relief and Taxpayer Protections**
  - The Secretary of the Treasury may make up to $500 billion worth of loans and loan guarantees to eligible businesses, states, and municipalities. An "eligible business" means an air carrier or any other business that has not already "received adequate economic relief in the form of loans or loan guarantees under the Act."
  - $46 billion is reserved to "passenger air carriers", "air cargo carriers", and "businesses important to maintaining national security," in amounts up to $25 billion, $4 billion, and $17 billion, respectively.
  - $454 billion is reserved for Federal Reserve programs that support lending to eligible businesses, states, and municipalities. This establishes a credit facility through the Federal Reserve for businesses, states, and municipalities to get access to loans, loan guarantees, and other investments for distressed businesses.
  - Businesses that receive these loans are prohibited from paying dividends or repurchasing any outstanding equity interests while the loan or loan guarantee is outstanding, or for 12 months after. The Secretary of the Treasury can waive these restrictions, but he must testify before Congress regarding the waiver.
  - Businesses that receive these loans can only make loans or other advances to business that are created or organized in the United States.
- **Limitation on Certain Employee Compensation**
  - Financial assistance is dependent upon compensation limits.
  - Pay above $425,000 is frozen for two years.
  - No retirement or severance packages can exceed twice the maximum total compensation during 2019. Further, no officer or employee whose total compensation exceeded $3,000,000 in 2019 may receive in excess of $3,000,000 and 50% of the excess over $3,000,000 of the total compensation received in 2019.
  - Defines "total compensation" to include salary, bonuses, awards of stock, and other financial benefits.

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA)

The PPPFA was signed into law June 5, 2020. The five most significant changes to the PPP program created under the CARES Act are as follows:

PPPFA Changes Amount of Loan Needed for Payroll to 60%

- The biggest complaint around the PPP loan program was that it required businesses to spend 75% of the loan on payroll. For those businesses shut down due to COVID-19, this meant playing the role of unemployment office, paying their workers to stay home and do no work. The PPPFA reduces the amount of the loan needed to be spent on payroll from 75% to 60%, thus increasing the amount of funds available for other expenses from 25% to 40%.
- The law does not change the list of expenses eligible for forgiveness. It still includes rent, mortgage payments, utilities, and interest on loans.

PPPFA Extends Time to Spend the Loan to 24 Weeks

- The PPPFA extended the time period to spend the loans to 24 weeks. While businesses will still need to spend the money on payroll and amortized expenses, they now have until the end of 2020 to do so. Presumably, this will make receiving complete loan forgiveness more likely since the loan amount was based on one month of 2019 payroll multiplied by 2.5, which equals approximately 10 weeks. Businesses should now have the flexibility to spend the PPP funds when they like for the remainder of the year. The PPPFA also does not require businesses to wait for 24 weeks to apply for forgiveness, and can still do so after eight weeks if they prefer.

PPPFA Pushes Back a June 30 Deadline to Rehire Workers to December 31, 2020

- Under the new law, businesses now have until December 31, 2020 to rehire workers in order for their salaries to count towards forgiveness.

PPPFA Eases Rehire Requirements

- As the intent of PPP was to keep the same number of employees on the payroll as was used to calculate the loan, it required a business to rehire the same number of full-time employees or full-time equivalents by June 30, 2020. The only exception to this rule was if an employer could document in writing an attempt to rehire an employee who rejected this offer.
- The new law makes two significant changes to these requirements. First, it extends the rehire date to December 31, 2020, and second, it adds additional exceptions for a reduced head count. The law states a business can still receive forgiveness on payroll amounts if it:

  - Is unable to rehire an individual who was an employee of the eligible recipient on or before February 15, 2020;
  - Is able to demonstrate an inability to hire similarly qualified employees on or before December 31, 2020; or
  - Is able to demonstrate an inability to return to the same level of business activity as such business was operating at prior to February 15, 2020.

PPPFA Extends the Repayment Term from Two Years to Five Years

- The new law also eases repayment terms in the event loans or portions of them are not forgiven. A business now will have five years at 1% interest to repay the loan. Further, the first payment will be deferred for six months after the SBA makes a determination on forgiveness. Since under current regulations your bank has 60 days to make a forgiveness determination, and the SBA an additional 90 days, this means you could have up until May of 2021 to make the first payment on the loan.

- In addition, the PPPFA also allows borrowers to take advantage of the CARES Act provision allowing deferment of the employer's payroll taxes for social security. Previously, PPP did not permit deferment of these taxes on the forgivable portion of the loan.