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90 Years and Still Counting

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Dear Valued Clients and Allied Professionals,

After years of gridlock in Congress, our political leaders are now working together to pass legislation and free up funding to help American companies, not only continue operating, but be able to move forward financially secure. The Senate vote was an amazing 96 – 0 approval of the latest Coronavirus Aid, Relief, and Economic Security (CARES) Act which the House passed and President signed on March 27, 2020.

This MPB Alert will be in two categories – Small Business & Individual Impact. There are many other provisions related to emergency funding of health care providers and programs and economic stabilization funding for the airline industry and businesses crucial to national security; but this Alert will concentrate on issues that we feel are vital for your business and helpful to you personally during these uncertain times.

Small Business Impact

- *Small Business Loan to Grant Provisions* – There is a brand new temporary lending program that most Companies will want to utilize. Due to its importance, attached is a detailed outline of this new opportunity for Companies with under 500 employees. Avail yourself of this opportunity! If you have between 500 and 1,000 employees, the Treasury Secretary is to establish a program to provide loans available at no higher than 2%, with no payments due in the first 6 months.

- *Delay in Payment of Payroll Taxes* – The CARES Act allows the deferral of the 6.2% employer's portion of the social security (2nd, 3rd & 4th quarter of 2020) for both employers and self-employed individuals. Repayment will be over a 2 year period, with 50% due by the end of 2021 and the remainder paid by December 31, 2022.

- *Employee Retention Credit* – Eligible employers will be allowed to claim a refundable credit to offset employment taxes equal to 50% of qualified wages. Employers of 100 employees or less are eligible if 1) operations were suspended by orders issued in response to COVID-19 or 2) business has experienced a significant decline, defined as a more than 50% decrease in gross receipts from the prior year. The credit is limited to the first $10,000 paid to each employee and ends in the quarter during 2020 when the gross receipts have recovered by 80%. Employers with over 100 employees must be under a government mandated closure to qualify for the credit. This credit is not available for Employers receiving the SBA Paycheck Protection Program Loans.

- *Temporary Expansion of Unemployment Benefits* (including self-employed workers, independent contractors, and employees of state and local governments and nonprofits) – Unemployment benefits will be enhanced by a $600/week across-the-board payment increase through the end of July, and for those needing it (not yet defined) will provide an additional 13 weeks of benefits beyond what states typically allow.

- *5 Year Carryback of Net Operating Loss* (NOL) incurred in 2018, 2019 and 2020 – This enables 100% income offset with 5 year carryback opportunity to years prior to the tax rate cuts under the Tax Cuts and Job Act of 2017 (TCJA).

- *Many other provisions* – if any of these situations apply to you, please reach out to your MPB Advisor for additional guidance since prior rules have been either relaxed or rescinded temporarily.
    - Non-corporate business losses exceeding $500,000 in 2018 or $510,000 in 2019
    - Business interest expense previously limited
    - Improved your facilities and were previously not allowed accelerated depreciation due to a drafting error in TCJA
    - Payment of employee's student loans is now a tax-free benefit in 2020.
    - Relief on Defined Benefit Retirement Plan funding

Individual Impact

- *Recovery Checks* are coming within weeks – Moderate and low income individuals will receive $1,200 each, plus an additional $500 for each dependent child. For joint filers this payment will be phased out ratably beginning at $150,000 of adjusted gross income (AGI) with no recovery payment once AGI exceeds $198,000. (Single - $75,000 - $99,000, Head of Household - $112,500 - $146,500). The IRS will base payment limitations on the 2019 tax return and disburse recovery checks to bank account indicated on that return. In the case of an individual that has not yet filed a return for 2019, the 2018 tax return will be used. Social Security Benefit Statements will be used for recipients not required to file a 2018 tax return. There will be a true-up when your 2020 tax return is filed next year, however, if your 2020 income exceeds your prior income, no portion of this advance refund will need to be repaid.

- *10% early distribution penalty* on retirement withdrawals for coronavirus-related distributions up to $100,000 has been waived during 2020. New provisions allow tax liabilities on these distributions to be paid over a three year period and also allow individuals to return these distributions to the retirement account over a three year period not being subject to annual contribution limits. The bill also provides flexibility for loans from certain retirement plans.

- *2020 Required Minimum Distributions (RMD)* from certain defined contribution plans and individual retirement accounts will not be required.

- Provides a $300 above-the-line deduction for 2020 cash contributions to public charities

The IRS has unveiled its "People First Initiative" which is temporarily suspending all collection efforts. This program allows suspending payments due between 4/1/2020 and 7/15/2020 on existing installment agreements (although interest will continue to accrue), suspends certain liens and levies, and provides additional time for responding to audit requests or providing requested information in existing Offer in Compromise cases.

The IRS also issued Notice 2020-18 providing tax payment and filing relief allowing any taxpayer who owes federal income tax historically due 4/15/2020, to delay remittance of that tax payment until 7/15/2020, the new filing deadline for 2019 individual income tax returns, without incurring any penalties or interest. This also includes the 1st estimated tax payment due on 4/15/2020. Most states have conformed to these federal provisions, and most importantly PA has extended the filing and payment deadline and has even extended the 2nd estimate previously due 6/15/2020 to also being due on 7/15/2020.

Also as an attachment to this letter is a summary of the Paid Sick Leave and the Enhanced FMLA Leave that was added via the Families First Coronavirus Response Act that was enacted last week.

As soon as we send this alert, we realize that additional legislation will be forthcoming along with voluminous regulations defining how these provisions are to be applied. We will continue to update our website as new legislation is enacted.

Please feel free to call us with your concerns. We may not know all the answers to your questions immediately, due to the rapidly evolving legislative environment, but we will use our extensive research tools and resources to provide you with guidance. Together we can come through these uncertain times, not only caring for employees, but continuing to provide our services and products that are so vital to our country's economy.

Sincerely,

McGill, Power, Bell & Associates, LLP

SBA Paycheck Protection Program Loan Provisions

One of the key provisions of the CARES Act is a new "Paycheck Protection Program" which provides $349 billion of emergency financing for small businesses (including self-employed businesses). A small business is any business with 500 or fewer employees. There is no revenue test.

These loans will require no collateral, liens, nor personal guarantees. The only underwriting requirements are that the borrower was in operation on February 15, 2020, and had employees or paid independent contractors at that time.

The Small Business Administration is administering and guaranteeing these loans, but you will apply for them through your bank or credit union. There will be no fee to obtain the loan.

A major benefit of these loans is that they will often qualify for full or partial forgiveness, and the resulting debt cancellation income will be excluded from federal taxable income.

Maximum Loan Amount

The maximum loan amount is 2.5 times your average monthly payroll costs (generally determined over the past twelve months). The loans are capped at $10,000,000 per eligible borrower.

Payroll costs include salaries, wages and commissions including paid leave and owners' compensation; severance payments; group health insurance benefits; state and local taxes paid on employee compensation; retirement plan contributions; and payments of compensation to independent contractors who provide labor in the nature of an employee.

The amount of compensation of each employee or independent contractor is limited to $100,000 per year/$8,333.33 per month. Thus, compensation of any employee or contractor in excess of $8,333.33 per month is excluded from qualifying payroll costs.

Permitted Uses of the Loans and Loan Forgiveness

The loan proceeds can be used to pay your ongoing payroll costs as listed above. Additionally, they can be used to pay interest (but not principal) on debt, rent and utilities.

Borrowers will be eligible for loan forgiveness equal to the amount spent for covered expenses during the eight-week period beginning on the origination date of the loan. Covered expenses are payroll costs, interest payments on any secured debt incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.

To encourage retaining and rehiring workers, the amount forgiven will be reduced proportionally by any reduction in the number of employees compared to the prior year, and by the reduction in pay of certain non-highly compensated employees in excess of 25% of the employees' prior-year compensation. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that rehire previously laid-off workers will still qualify and not be penalized for having a reduced payroll during the loan period.

Loan Terms

Any loan amounts not forgiven will have a maximum maturity of ten years and bear interest at a rate not to exceed 4%. Any principal and interest due on the loans will be deferred for a period of six months to one year.

What to Do Now

We are recommending you have a conversation with your bank or credit union as soon as possible. They likely have not yet received all of the Program's details from the SBA, but they will soon be deluged with loan applications.

You should also work on assembling the documentation which will be required for the initial loan application and subsequent loan forgiveness application, including:

- Monthly payroll reports for the last 12 months showing all costs including paid time off, vacation and sick pay, and owners' compensation
- Copies of 2019 federal payroll tax returns (940, 941 or 944)
- Documentation supporting the payment of state and local taxes on employee compensation for the past twelve months
- Documentation supporting the employer's portion of employee group health insurance premiums for the past twelve months
- Documentation supporting the employer's retirement plan funding for the past twelve months, including employer matches, safe harbor and discretionary contributions (employees' elective deferrals to 401(k) won't count for these purposes)
- 1099's paid to independent contractors
- Copies of outstanding notes and mortgages, with debt schedules
- Copies of leases
- Copies of monthly utility bills

You Are Not Alone – MPB Can Help

Your commercial lender is ready to assist you in this loan application process, but do not hesitate to call your MPB Advisor if you need assistance gathering necessary documentation or to talk through the next steps for your business as we travel together through these uncertain times.

Families First Coronavirus Response Act – Effective Date of 4/1/20

The Paid Sick Leave Act (Part E of the Families First Coronavirus Response Act) requires Small Employers (under 500 employees) to provide the following leave benefit, if one of six triggering events occur:

- 80 hours of paid sick leave to full-time employees
- 2 weeks of paid sick leave to part-time employees, based on the average hours that the part-time employee works

This paid leave requirement would be triggered if an employee is unable to work (or telework) for any of the following 6 reasons:

1. To self-isolate or quarantine due to a federal, state, or local quarantine or isolation order related to COVID-19
2. To quarantine due to COVID-19 concerns on the advice of a health care provider
3. To obtain a medical diagnosis or care if the employee has COVID-19 symptoms
4. To care for someone (not limited to family) experiencing one of the first two situations listed
5. To care for the employee's son or daughter if the school or place of care has been closed, or the child care provider is unavailable, due to COVID-19 (the Secretary of Labor could exempt businesses with fewer than 50 employees from this requirement if it would jeopardize the viability of a business as a going concern)
6. The employee is experiencing another substantially similar condition to those above if specified by the Secretary of Health and Human Services in consultation with the Secretaries of Labor and the Treasury

Self-Care Paid Leave (1-3 above) is paid at the employee’s regular rate of pay (not less than minimum wage) and is capped at $511 per day and $5,110 in the aggregate and Family Care Paid Leave (4-6 above) is 2/3rds of their normal pay rate, but is capped at $200 per day and $2,000 in the aggregate.

The Secretary of Labor could exclude health care providers and emergency responders from these requirements.

The FMLA (Family Medical Leave Act) Expansion Act adds a new category of leave through 12/31/20 called the Public Health Emergency Leave which will cover employees who are unable to work (including telework) due to a need to care for a child under 18 years if school or child care is unavailable due to a public health emergency (limited to one declared by a federal, state, or local authority related to COVID-19). Small employers with under 50 employees are subject to these new provisions, even though they were exempted from FMLA previously. This leave would be for employees that have been employed for at least 30 days and at a rate of no less than two thirds of their regular pay rate. There will be some exceptions for small employers with fewer than 25 employees and for health care providers and emergency responders.

In order to partially offset the financial burden to Companies that provide paid sick leave to employees, payroll and income tax credits have been provided under Division G of the Families First Coronavirus Response Act. Wages paid under this Act will be exempt from the employer portion of the social security tax and there will be a refundable credit against the employer's share of social security tax in the amount of wages paid to employees for paid leave with the following limits:

- For the Paid Sick Leave Act, up to \$200 per day for Family Care Leave wages and up to \$511 per day for Self-Care Leave wages. A total of 10 days per employee paid in any quarter during 2020.
- For the FMLA Expansion Act, up to \$200 per individual per day, up to a cumulative \$10,000 for all calendar quarters.

Similarly, self-employed individuals will be able to claim the refundable credit in the amount of daily average self-employment income that would be required to be paid as leave wages if the individual worked for an employer subject to the above caps.

Keep in mind that this credit is refundable. The amount of the full credit will need to be added to gross income.