FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Signed by President on 3/18/2020. The Act will help the United States combat and defeat COVID-19 by giving all American businesses with fewer than 500 employees funds to provide employees with paid leave, either for the employee's own health needs or to care for family members. The legislation will enable employers to keep their workers on their payrolls, while at the same time ensuring that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus.

Paid Leave

The Act provides that employees of eligible employers can receive two weeks (up to 80 hours) of paid sick leave at 100% of the employee's pay where the employee is unable to work because the employee is quarantined, and/or experiencing COVID-19 symptoms, and seeking a medical diagnosis. An employee who is unable to work because of a need to care for an individual subject to quarantine, to care for a child whose school is closed or child care provider is unavailable for reasons related to COVID-19, and/or the employee is experiencing substantially similar conditions as specified by the U.S. Department of Health and Human Services can receive two weeks (up to 80 hours) of paid sick leave at 2/3 the employee's pay. An employee who is unable to work due to a need to care for a child whose school is closed, or child care provider is unavailable for reasons related to COVID-19, may in some instances receive up to an additional ten weeks of expanded paid family and medical leave at 2/3 the employee's pay.

Paid Sick Leave Credit

For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to $511 per day and $5,110 in the aggregate, for a total of 10 days.

For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for two-thirds of the employee's regular rate of pay, up to $200 per day and $2,000 in the aggregate, for up to 10 days. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

Child Care Leave Credit

In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit. This credit is equal to two-thirds of the employee's regular pay, capped at $200 per day or $10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the child care leave credit. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

Small Business Exemption

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

CORONA VIRUS AID, RELIEF & ECONOMIC SECURITY ACT

On March 27, 2020, President Trump signed into law the Corona Virus Aid, Relief, and Economic Security Act ("CARES Act"), which includes tax provisions intended to provide an economic stimulus to both businesses and individuals. The stated policy of the new legislation is to increase cash flow and liquidity and to reduce the cost of capital.

I. Relief Provisions Available to Businesses

Employee Retention Credit This new provision allows eligible employers a refundable payroll tax credit for 50 percent of qualified wages paid to employees from March 13, 2020 through December 31, 2020. The credit is provided for the first $10,000 of compensation, including health benefits paid to an eligible employee.

An employer with more than 100 full-time employees in 2019 is an "eligible employer" if its operations were fully or partially suspended as a result of a Corona Virus-related shut-down order. In this instance, qualified wages are those paid when employee services are not provided, limited to 30 days per employee.

An employer with 100 or fewer full-time employees in 2019 is an eligible employer if its gross receipts declined more than 50 percent as compared to the same quarter in the previous year. In this instance, all employee wages are credit-eligible, and credit is available regardless of whether or not the business was closed.

Employers receiving a covered loan under paragraph (36) of sec. 7(a) of the Small Business Act (discussed below) will not be eligible for this credit. Additionally, the credit does not apply to government employers.

Payroll Tax Deferment To provide cash flow relief, a portion of employer payroll taxes are deferred. For employers, all of the payroll tax attributable to Social Security payments (OASDI), or 6.2-percent of wages, is deferred. For self-employed individuals, one-half of the 12.4-percent portion is eligible for deferral.

The deferred payments would be paid in two installments: half due on December 31, 2021, and half due on December 31, 2022. Social Security trust funds are unaffected. The deferral is not permitted for those businesses who received a small business loan under this Act and subsequently had the debt forgiven.

Small Business Loans The Act creates the Paycheck Protection Program ("PPP"), which expands the Small Business Administration 7(a) loan guaranty program, by providing 100 percent federally guaranteed loans that are partially forgivable to qualified small businesses who maintain their payroll.

The maximum amount of the loan (subject to a $10 million cap) is the sum of (1) 2.5 times the average month payroll prior to the Corona Virus pandemic; and (2) the amount of any other debt approved for refinancing. Importantly, a portion of the loan in an amount equal to up to eight weeks of payroll and other qualifying cost can be forgiven so that the recipient never has to pay that money back.

The amount of loan forgiveness includes the employer's: (1) Payroll costs; (2) Interest on certain mortgage obligations; (3) certain payments of rent obligations; and certain utility payments.

The amount of loan forgiveness will be reduced based on any reduction in the number of employees during the covered 8-week period (subject to an exemption for rehires by June 30, 2020) as well as for any reduction of wages of more than 25 percent of employees who are making $100,000 or less. Detailed documentation is required in connection for request of forgiveness. Eligible entities are:

- "Small business concerns" as currently defined under the Small Business Act;
- Any business concern, nonprofit organization (excluding nonprofits receiving Medicaid funds), or veteran's organization if it employs less than 500 employees;
- For businesses in the accommodation and food services industry (NAICS 72), the 500-employee rule is applied on a per physical location basis; and
- Individuals who operate a sole proprietorship or as an independent contractor and eligible self-employed individuals.

Small businesses and other eligible entities may apply for a loan under the PPP if they were harmed during the Corona Virus emergency between February 15, 2020 and June 30, 2020. Such business must have been in operation on February 15, 2020. Additionally, if a small business avails itself of the PPP, it may not also claim the Employee Retention Credit (described above).

The Act also made several changes to the Economic Injury Disaster Loan ("EIDL") Program under sec. 7(b) of the Small Business Act. EIDL Loans are available to small businesses in a declared disaster area (all 50 states, Puerto Rico, Guam and the North Mariana Islands) to cover economic injury resulting from the disaster (e.g., loss of revenue). EIDL Loans are available up to $2 million, carry an annual interest rate of 3.75 percent and have a maximum term of 30 years.

Loans up to $200,000 do not require a personally guaranty, and above $200,000 must be guaranteed by any owner having a 20 percent or greater interest in the applicant.

The Act also removed standard EIDL Program requirements that the borrower not be able to secure credit elsewhere or that the borrower has been in business for at least one year, as long as it was in operation on January 31, 2020.

II. Tax Provisions Applicable to Businesses

Expanded Use of Net Operating Losses Before enactment of the Tax Cuts and Jobs Act, businesses could carry back their net operating losses (NOLs) and use them to receive a refund for taxes paid in the preceding two years. Businesses could also carry forward NOLs to reduce future taxes by claiming the NOL as a deduction against income in future years. The TCJA eliminated the two-year carryback; under current law, businesses may only carry forward NOLs. Additionally, under the TCJA, businesses may only use an NOL carry forward to offset a maximum of 80 percent of computed taxable income.

This provision expands the use of NOLs by (1) temporarily suspending the 80 percent of taxable income limit for tax years beginning in 2018, 2019, and 2020; and (2) allowing NOLs arising in tax years beginning in 2018, 2019, and 2020 to be carried back up to five years.

This carryback capability is also provided to taxpayers other than corporations—such as, pass-throughs or sole proprietorships—that incur NOLs.

Increased Deduction for Business Interest Expense Under IRC sec. 163(j) of the TCJA, the amount of business interest expense that may be deducted by a taxpayer is limited to the sum of: (1) the taxpayer's business interest income for the year; (2) 30 percent of the taxpayer's adjusted taxable income ("ATI") for the year; and (3) the taxpayer's floor plan financing interest expense for the year.

The Act increases the ATI limitation from 30 percent to 50 percent for tax years beginning in 2019 and 2020. Additionally, recognizing that the Corona Virus likely will have an adverse effect on a business' 2020 ATI, taxpayers may to elect to use 2019 ATI for purposes of calculating their 163(j) business interest expense limitation for 2020.

Refund for Corporate AMT The TCJA repealed the alternative minimum tax ("AMT"), however, under current law, corporate AMT credits for prior AMT payments are allowed as refundable credits until 2021. The Act accelerates the ability of corporations to recover their AMT credits and makes the credits refundable in tax years 2018 and 2019.

Technical Amendment Regarding Qualified Improvement Property ("QIP") A technical error in the TCJA increased the period for deducting the cost of QIP from 15 years to 39 years. The Act corrects this glitch, reducing the recovery period to 15 years once more, and making the relevant costs eligible for bonus depreciation under IRC sec. 168(k). This provision is effective for property placed in service after December 31, 2017. Taxpayers that placed such property in service in 2018 should consider amending their 2018 income tax return to treat the property as eligible for bonus depreciation.

Excise Tax Exemption for Hand Sanitizer Distilled spirits are generally subject to a federal excise tax. For the 2020 taxable year, the Act exempts distilled spirits used in hand sanitizer that is produced and distributed in a manner that is consistent with FDA guidelines.

III. Tax Provisions Applicable to Individuals

Recovery Rebates Individual US taxpayers will receive "recovery rebates" of up to $1,200 for single filers ($2,400 for joint filers), increased by $500 for each qualifying child. For single filers, this payment begins phasing out by $5 for every $100 over $75,000 of income ($150,000 for joint filers, and $112,500 for heads of household). The payment would be completely eliminated for single filers with incomes of more than $99,000 ($198,000 for joint filers).

All US individuals are eligible for these payments except (1) nonresident aliens; (2) individuals who can be claimed as a dependent by another taxpayer; and (3) an estate or trust. Eligible individuals are required to provide a Social Security number for themselves, their spouse (if filing jointly), and any child for whom the additional $500 credit is claimed. Taxpayers with ITINs are not eligible for the credit.

The recovery rebates are structured as tax credits and will be automatically advanced to eligible individuals in 2020 as a direct deposit or a check by mail. The payment will be based on the taxpayer's 2019 return or, if the taxpayer did not file, their 2018 return. Individuals who did not file in either 2018 or 2019 may claim the credit on their 2020 income tax return but will not receive a payment in 2020.

If, when preparing their 2020 returns, the taxpayer finds that the advanced credit is greater than the actual credit, they will not be required to repay the excess credit. Further, if the taxpayer finds that the advanced credit is lower than the actual credit, taxpayers may claim the difference on their 2020 income tax return.

Retirement Withdrawals The 10 percent early withdrawal penalty is waived for retirement plan distributions of up to $100,000 made after January 1, 2020 for fairly broad Corona Virus-related purposes.

To the extent that the distribution is considered income, the income would be recognized over three years, and taxpayers may pay back the funds to the retirement account within three years without regard to that year's cap on contributions.

Additionally, for individuals affected by the Corona Virus, loan limits from retirement plans are increased from $50,000 to $100,000. For loans due in 2020, the repayment deadline is delayed.

Mandatory Retirement Distributions Generally, taxpayers of a certain age are required to withdraw minimum amounts annually from certain retirement plans on accounts, subject to a 50 percent penalty. The CARES Act waives the minimum distribution requirements for 2020.

Charitable Contributions Individuals are permitted up to $300 of above-the-line deductions for charitable contributions made in 2020, regardless of whether the individual itemizes their deductions. For individuals who do itemize, the 50 percent of adjusted gross income limitation is suspended for 2020.

Student Loan Repayment Benefits Employees who receive employer-sponsored educational assistance may exclude up to $5,250 of this payment from their income. Under current law this generally includes only tuition, fees, and related supplies. This provision temporarily expands the definition of "employer-sponsored education assistance" to include "qualified loan payments" made to a lender by an employer on an employee's behalf after the date of enactment and before January 1, 2021.

Qualified loan payments are those that are applied to student loans for which the employee would be eligible for the student loan interest deduction under IRC sec. 221(s)(1).