

## Michels & Hanley CPAs, LLP COVID-19 Tax Stimulus

### 3.27.20 | Client Alert

There's been a flurry of activity surrounding the COVID-19 tax stimulus with changes in tax filing deadlines, paid sick leave, tax credits, stimulus payments, and all kinds of other stuff. We have attempted, to the best of our abilities during a challenging tax season, to synthesize all the changes into one spot. Some of this we ripped off from other authorities, and some is actually original thought. Some of this comes from the WSJ, NATP and the IRS, plus the [Committee on Finance's short-paper](#).

Also... please forgive us... the information is coming hard and fast... from several different sources. Let's not forget that we remain in the middle of tax season and taking time to get this stuff out is tough.

Right now we have -

1. Families First Coronavirus Response Act (FFCRA)... done. [Here's DOL summary](#).
2. Coronavirus Aid, Relief and Economic Security Act (CARES Act)... currently passed Senate only.
3. IRS Notice 2020-18 delaying tax filing and payment dates.
4. SBA Disaster Loans to include COVID-19 per state declaration (*different than covered loan provision under the CARES Act*).

On March 25, 2020, the US Senate passed the Coronavirus Aid, Relief, and Economic Security Act in the Senate (the "CARES Act"), that should it become law, would increase the maximum Small Business Administration's 7(a) loan amount to \$10 million and would expand allowable uses of 7(a) loans to include payroll support (including paid sick or medical leave), employee salaries, mortgage payments, insurance premiums and any other debt obligations.

## Coronavirus Stimulus Bill

The short title is "Coronavirus Aid, Relief, and Economic Security Act" or the "CARES Act." The person or committee that come up with these names is amazing. TARP, SECURE, and now CARES. As of March 25, 2020, the bill had passed the Senate and was being sent back to the House. Therefore, some of these details might be modified, but the general gist is this-

- \$367 billion loan program for small businesses with interest free options and incentives not to layoff workers.
- \$500 billion lending fund for industries (such as airlines), cities and states. Airlines specifically received an additional \$29 billion in grants and another \$29 billion in loan guarantees.
- Health care providers would secure \$130 billion which includes grants to help fight the coronavirus and make up for dollars they have lost by delaying elective surgeries and other procedures to focus on the outbreak

- \$150 billion for states and local governments.
- Increases unemployment insurance maximum benefits to \$600 per week for the next four months. It also expands benefits to free-lancers, gig workers and other similar one-person operators. A side note, there was a \$600 “boost” in unemployment benefits that was voted down since in some cases people would earn more not working.

## **For Individuals**

### **Stimulus Payments**

According to [WSJ's article titled Coronavirus Stimulus Payments](#) which summed it up quite well-

The plan provides \$1,200 for each adult and \$500 for each child under 17. A married couple with two children would get \$3,400. The payments go to almost any adult with a Social Security number, as long as they aren't dependents of someone else. Those adults get the payments for the children in their household.

Payments start phasing out for those with income above \$75,000 in adjusted gross income for individuals, \$112,500 for heads of household (often single parents) and \$150,000 for married couples. The payments start shrinking above those levels.

For those with no children, the benefit disappears at \$99,000 for individuals and \$198,000 for married couples.

The government will use 2019 tax returns to set the payment amounts and 2018 tax returns if 2019 isn't available. According to some economists payments will be in May (versus April 6 which is touted by the White House). What is unknown is if you qualify under 2018 but not 2019, do you still receive the payment? Or vice-versa? Or, if you qualify under 2018's income amounts, receive the payments, file 2019's tax returns which do not qualify because of income phaseouts, do you have to return the payments?

You can read [Section 2201 from the Committee on Finance](#)

### **Charitable donations**

A \$300 deduction for charitable contributions for all individuals, even for those who don't itemize.

### **Retirement plan distributions**

Through December 31, 2020, eligible taxpayers can take up to \$100,000 in Coronavirus distributions out of their retirement plan without incurring the 10% penalty or repay it within three years. Eligible taxpayers include those who have been diagnosed with or taking care of a dependent with the COVID-19 virus or are experiencing financial hardship from being quarantined, laid off, etc. Further, the income resulting from the distribution can be spread out over three years, and repayments, if chosen, can be delayed.

# **For Businesses**

## **Covered Loans**

***SBA 7(a) Relief Loans under the Cares Act versus 7(b) SBA economic injury disaster loan (EIDL) loan program.** It is important to note that this portion of the CARES Act is not the same as the 7(b) SBA economic injury disaster loan (EIDL) loan program that is already available on the SBA website, nor may it be used for the same purpose. Interested borrowers should evaluate both programs and choose accordingly.*

### **Who qualifies?**

An ‘impacted borrower’ means an eligible recipient that is in operation on February 15, 2020; and has an application for a covered loan that is approved or pending approval on or after the date of enactment of the Cares Act. An impacted borrower is presumed to have been adversely impacted by COVID-19. Eligible recipients are defined in the Families First Coronavirus Act. This includes small businesses (fewer than 500 employees) impacted by the pandemic and economic downturn to help make payroll and cover other expenses. Small businesses may take out loans up to \$10 million and cover employees making up to \$100,000 per year; loans can be taken for this purpose if the business does not lay off its employees (forgiveness is scaled down as layoffs rise). In order to be eligible for a loan, a firm must maintain an average monthly number of employees during the covered period that is no less than the number it had before the crisis began.

### **What is a ‘covered loan?’**

A loan made under the Care Act during the covered period: February 15, 2020 and ending on June 30, 2020. It includes liabilities of the borrower that are loans guaranteed by the SBA, as well as covered mortgage loans incurred before February 15, 2020.

### **Loan forgiveness**

‘Expected forgiveness amount’ means the amount of principal used to cover payroll, payments of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation); covered rent obligation; and covered utility payments.

Eligible payroll cost means salary, wage, commission, or similar compensation; payment of cash tips, retirement, vacation, sick leave, payment of State or local tax assessed on the compensation of employees; healthcare and retirement benefits. Sole proprietor or independent contractor compensation means wages, commission, income, net earnings from self-employment, or similar compensation and not more than \$100,000 in 1 year, as prorated for the covered period.

Forgiveness of indebtedness on a covered loan shall be considered canceled indebtedness. Loan forgiveness cannot exceed the principle amount financed. The loan forgiveness will be reduced (but not increased) by multiplying the loan forgiveness amount by the ratio of reduced number of employees during the covered period divided by the average number of employees during February

15, 2019 and ending on June 30, 2019, or during January 1, 2020 and ending on February 29, 2020. The reduction to loan forgiveness does not apply if employees are rehired by June 30, 2020. Documentation will be required to be provided to the lender to obtain loan forgiveness. The forgiveness of debt amounts will not be included in taxable income. Loan recipients must maintain existing employment levels “to the extent practicable” during the loan term and cannot reduce their employment levels by more than 10%.

## **Detailed information on 7(a) Loan Program (pending vote in House 3/26/20)**

### **Eligibility**

- Covered period of March 1 through December 31, 2020.
- Eligible Recipient is a small employer with 500 EE’s or less. Guidance forthcoming on whether this is per physical location or company-wide (think restaurants and hotel chains).
- Guidance and regulations to be issued within 30 days of enactment of the Act.
- The lender under section 7(a) in evaluating the eligibility of a borrower for a loan shall only consider whether the borrower was in operation before March 1, 2020 and had EE’s and paid salaries and payroll taxes.
- Applicant must have physical presence in a declared disaster area. NY, NJ and CT are approved disaster areas.
- SBA is to waive all applicable fees.
- No prepayment penalty on a loan made before 1-1-21.
- Max loan is lesser of: A) the average monthly payments for payroll, mortgage, rent, and other debt for the one year period before the loan is made X 4, or B) \$10M
- Loan can be used for payroll support for sick pay and medical leave, employee salaries, to pay – mortgage payments, rent, utilities, any debt obligations incurred before the cover period.
- Cannot double up – if a borrower receives assistance for COVID 19 purposes of paying payroll and providing payroll support it cannot borrow under 7(a) for the same purpose.
- Deferred loan payments up to 1 year are available. Interest continues to accrue.
- Express loans up to \$1M for up to a 7 year term, and are approved or denied in 36 hours.

### **Forgiveness**

- For loans guaranteed under 7(a) made during the covered period.
- An eligible recipient shall be eligible for forgiveness of indebtedness in the amount equal to the cost of maintaining payroll continuity during the covered period.
- Payroll costs does not include EE compensation in excess of \$33,333 during the covered period, qualified sick leave and family leave wages for which a credit is allowed under the FFCR Act.
- Limit of forgiveness – (not taxable)
- The forgiven amount shall not exceed the sum of A) the total payroll costs incurred during the covered period, plus B) debt payments made during the covered period on debts incurred before the covered period.

### **Reduction in loan forgiveness**

- Loan forgiveness is reduced by the percentage equal to the difference obtained by subtracting the quotient obtained by dividing the avg number of FTE per month employed during the covered period by the avg number of FTE's per month employed during 3-1-19 to 6-30-19, or (for seasonal employers) the avg number of FTE EE's per month employed during 3-1-19 to 6-30-19, From 1.
- The loan forgiveness is also reduced by the amount of any reduction in excess of 25% of compensation as measured against the last full quarter in which the EE was paid during the covered period for any EE who was paid an amount less than \$33,333 during 1-1-19 through 6-3-19, or not more than \$100,000 on an annualized basis during 2019.

### **Application process**

- Submit application to lender that includes:
- Documentation that verifies the number FTE on payroll and pay rates for the periods identified under the reduction for loan forgiveness above. Such as:
- Payroll tax filings to the IRS, state payroll and SUTA filings
- Financial statements verifying payment on debt obligations incurred before the covered period.
- And, any other documents the SBA may ask for

## **Other Rebates and Provisions**

These are selected excerpts from the [Committee on Finance's short paper on the CARES Act](#).

### **Section 2202. Special Rules for Use of Retirement Funds**

Consistent with previous disaster-related relief, the provision waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may re contribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions.

### **Section 2203. Temporary Waiver of RMDs**

The provision waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020.

### **Section 2204. Allowance for Partial Above the Line Deduction for Charitable Contributions**

The provision encourages Americans to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to \$300 of cash contributions, whether they itemize their deductions or not.

## Section 2206. Exclusion for Certain Employer Payments of Student Loans

The provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income.

## Section 2301. Employee Retention Credit for Employers Subject to Closure Due to COVID-19

The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

## Section 2302. Delay of Payment of Employer Payroll Taxes

The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.

## Section 2303. Modifications for Net Operating Losses

The provision relaxes the limitations on a company's use of losses. Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

These are the biggies that we feel most people care about. You can read the [full text here](#). **Caution:** These provisions have not been approved by the House yet (as of 7:06AM, March 27, 2020).

# Tax Credits for Small Businesses

There are two credits for small businesses that are available now-

- Paid Sick Leave Credit
- Child Care Leave Credit

According to the Department of Labor and their summary of the [Families First Coronavirus Response Act](#) (FFCRA)

The act requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.<sup>[1]</sup> The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

Generally, the Act provides that covered employers must provide to **all employees**:<sup>[2]</sup>

- *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**:<sup>[3]</sup>

- *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.

## Covered Employers

The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees.<sup>[4]</sup> Most employees of the federal government are covered by Title II of the Family and Medical Leave Act, which was not amended by this Act, and are therefore not covered by the expanded family and medical leave provisions of the FFCRA. However, federal employees covered by Title II of the Family and Medical Leave Act are covered by the paid sick leave provision.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

## Qualifying Reasons for Leave

Under the FFCRA, an employee qualifies for paid sick time if the employee is unable to work (**or unable to telework**) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

The [IRS](#) shockingly has some good examples. Here is a snippet from [their website](#)—

If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.

Equivalent child care leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

The credit will offset payroll taxes and more guidance is being released.

## Tax Returns and Payments Extended

Under [IRS Notice 2020-18](#), tax returns that were due April 15, 2020 are automatically extended to July 15, 2020. In addition, taxpayers can also defer federal income tax payments due on April 15, 2020, to July 15, 2020, without penalties and interest, regardless of the amount owed. This supersedes IRS Notice 2020-17.

The Notice postpones the deadline for first quarter 2020 estimated income tax payments originally due on April 15, 2020 to July 15, 2020. Second quarter 2020 estimated income tax payments are still due on June 15, 2020.

- 1<sup>st</sup> quarter 2020 estimated payment due date – July 15, 2020
- 2<sup>nd</sup> quarter 2020 estimated payment due date – June 15, 2020

IRA payments are also deferred. Because the due date for filing Federal income tax returns has been postponed to July 15<sup>th</sup>, the deadline for making contributions to your IRA for 2019 is also extended to July 15, 2020.

What about states? The [AICPA has been compiling a list](#) and it is available here. Here is a snippet for New York-

**New York** - The NYS Dept. of Tax and Finance is postponing until July 15 the filing and payment deadlines for all individuals for 2019 tax returns, 2019 tax return payments, 2020 1st and 2nd quarter estimate payments, 2020 LLC taxes and fees, and 2020 Non-wage withholding payments. Sales tax payments were returns were due 3/30/20; however, penalty and interest may be waived for quarterly and annual filers who were unable to pay on time due to COVID-19.

**Connecticut** - Connecticut said they would mirror IRA guidance as it is updated amid the pandemic. The Department of Revenue Services extended filing and payment deadlines for personal income tax returns to July 15, 2020. The extension also applies to Connecticut estimated income tax payments for the first and second quarters of 2020.

## **SBA Disaster Loan Assistance (Different from Covered Loans from CARES Act)**

The Small Business Administration has had [SBA disaster loans](#) in place for several years, but they were usually thought of in the context of hurricanes, fires, floods, etc. However, given the vagueness of the laws (which is good), the SBA economic injury disaster loans are available to small business owners affected by COVID-19.

More states are being added daily to the [list of eligible states](#). While your state might not be eligible today, it is quite possible all 50 states plus District of Columbia will be included. Use the buttons below to get the most recent information.

Small business owners in all U.S. states and territories are currently eligible to apply for a low-interest loan due to Coronavirus (COVID-19). You can [apply online using this link](#). **All counties within the State of New York; the contiguous Connecticut counties of: Fairfield and Litchfield; the contiguous Massachusetts county of: Berkshire; the contiguous New Jersey counties of: Bergen, Hudson, Passaic and Sussex; the contiguous Pennsylvania counties of: Bradford, Erie, McKean, Pike, Potter, Susquehanna, Tioga, Warren and Wayne; and the contiguous Vermont counties of: Addison, Bennington, Chittenden, Grand Isle and Rutland** are included in the disaster area.

Application Filing Deadline: December 21, 2020

## SBA Disaster Assistance in Response to the Coronavirus

- The U.S. Small Business Administration is offering designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19). Upon a request received from a state's or territory's Governor, SBA will issue under its own authority, as provided by the Coronavirus Preparedness and Response Supplemental Appropriations Act that was recently signed by the President, an Economic Injury Disaster Loan declaration
- Any such Economic Injury Disaster Loan assistance declaration issued by the SBA makes loans available to small businesses and private, non-profit organizations in designated areas of a state or territory to help alleviate economic injury caused by the Coronavirus (COVID-19).
- SBA's Office of Disaster Assistance will coordinate with the state's or territory's Governor to submit the request for Economic Injury Disaster Loan assistance.
- Once a declaration is made for designated areas within a state, the information on the application process for Economic Injury Disaster Loan assistance will be made available to all affected communities as well as updated on our website: [SBA.gov/disaster](https://www.sba.gov/disaster).
- SBA's Economic Injury Disaster Loans offer up to \$2 million in assistance and can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing.
- These loans may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact. The interest rate is 3.75% for small businesses. The interest rate for non-profits is 2.75%.
- SBA offers loans with long-term repayments in order to keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower's ability to repay.
- SBA's Economic Injury Disaster Loans are just one piece of the expanded focus of the federal government's coordinated response, and the SBA is strongly committed to providing the most effective and customer-focused response possible.
- For additional information, please contact the SBA disaster assistance customer service center. Call 1-800-659-2955 (TTY: 1-800-877-8339) or e-mail [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov).
- Visit [SBA.gov/disaster](https://www.sba.gov/disaster) for more information.