

CARES Act –

Important information you should know about Coronavirus Aid, Relief, and Economic Security Act

Page

The Act's Applications to Individuals 1

Direct Payments to Taxpayers
Unemployment Insurance
2020 Retirement Account Withdrawals
Required Minimum Distribution Threshold
Student Loan Interest Deferral
Charitable Donations

The Act's Applications to Businesses 3

Paycheck Protection Program
Loan Forgiveness Program
Emergency Economic Injury Disaster Loans
Subsidy for Certain Loan Payments

Coronavirus Aid, Relief, and Economic Security Act – CARES Act

On March 27, 2020 the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act" or "Act" for purposes herein) was signed into law. The purpose of the Act is to provide economic stimulus to individuals, businesses and hospitals in response to the economic distress caused by the coronavirus (COVID-19) pandemic.

The following summary provides an overview of certain sections of the Act which I deem of greatest interest to my clients. This summary is not an all inclusive description of the ACT (the Act is 800+ pages). Also note that in the days and weeks to come, the Small Business Administration ("SBA") and Treasury Department are expected to provide commentary, rules and regulations which will, hopefully, lend further clarity to the Act.

The Act's Applications to Individuals

- Direct Payments to Taxpayers. Eligible individuals will receive payment (called a "rebate") from the IRS based on their Tax Filing Status for 2018 or 2019, whichever was the most recent returned filed). Subject to "Phaseout" rules, the rebate will be paid as follows:

Filing Status	Amount of Rebate	Phaseout (when Adjusted Gross Income Exceeds)
Single	\$1,200	\$75,000
Head of Household	\$1,200	\$112,000
Joint	\$2,400	\$150,000
Child under age 17	\$500	

If an individual is not required to file a tax return, he/she will still be eligible to receive the rebate but additional steps will, likely, need to be taken with the Social Security Administration office. Payments will be directed to the individual's address on file with the IRS or via electronic payment if the individual authorized that manner of payment or deposit on his/her tax return. Nonresident aliens and individuals who can be claimed as a dependent by another taxpayer are not eligible for the rebate.

- Unemployment Insurance.
 - Individuals who *are otherwise eligible* for unemployment benefits under state or federal law will receive \$600 per week in addition to their regular unemployment compensation under state law. This additional benefit will apply through July 2020. If individuals remain unemployed after their state employment benefits are exhausted, the federal government will fund up to 13 weeks of additional unemployment

"On the other side of a storm is the strength that comes from having navigated through it. Raise your sail and begin."

- Gregory S. Williams



The Act's Applications to Individuals (continued)

Benefits, at \$600 per week, thereby increasing to 39 weeks the 26-week maximum which is common under most states' unemployment laws. For Illinois online claims applications see:
<https://www2.illinois.gov/ides/individuals/UnemploymentInsurance/Pages/default.aspx>

- Individuals who *are otherwise ineligible* for unemployment benefits such as individuals who are self-employed (for example, consultants or independent contractors), who are seeking part-time employment, or who lack sufficient work history, will receive unemployment assistance under the Act's "Pandemic Unemployment Assistance" program. The Pandemic Unemployment Assistance program covers any individual who: (1) is not otherwise eligible for, or has exhausted all rights to, unemployment benefits; and (2) is unemployed, partially unemployed, or unable to work because of any of the following COVID-19-related circumstances:
 - (i) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
 - (ii) a member of the individual's household has been diagnosed with COVID-19;
 - (iii) the individual is providing care for a family member or household member who has been diagnosed with COVID-19;
 - (iv) the individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility that has been closed as a direct result of COVID-19 and such school or facility care is required for the individual to work;
 - (v) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19;
 - (vi) the individual is unable to reach the place of employment because a health care provider has advised the individual to self-quarantine due to COVID-19 concerns;
 - (vii) the individual was scheduled to begin employment and does not have a job or is unable to reach the job as a direct result of COVID-19;
 - (viii) the individual has become the breadwinner or major support for a household because the head of household has died as a direct result of COVID-19;
 - (ix) the individual has been forced to quit a job as a direct result of COVID-19; or,
 - (x) the individual's place of employment is closed as a direct result of COVID-19.

Excluded from the Pandemic Unemployment Assistance program are any individuals who are able to telework with pay or currently receiving paid sick leave or other paid leave benefits. Unlike many states' unemployment laws, the Pandemic Unemployment Assistance program does not require a covered individual to be actively seeking work to receive unemployment benefits under the program. Benefits under the Pandemic Unemployment Assistance program are available for the duration of the covered individual's period of unemployment, partial unemployment, or inability to work, beginning retroactively on January 27, 2020 and ending on December 31, 2020, up to a maximum of 39 weeks. This represents a 13-week increase of the 26-week maximum allowed under many states' unemployment laws. The weekly amount of benefits available under the Pandemic Unemployment Assistance program will equal 100% of the covered individual's regular weekly compensation, and not less than \$600 per week. The Pandemic Unemployment Assistance program does not require any waiting period before eligibility for benefits, unlike many states' unemployment laws that do not provide benefits for the first week of unemployment.

- 2020 Retirement Account Withdrawals. For the year 2020, the Act waives the 10% additional tax for premature distributions from a retirement plan. The distribution amount is capped at \$100,000. The amounts distributed may be repaid, at any time, over three years and may be paid in such amounts as the plan participant chooses. To the extent that amounts are not repaid, the income inclusion with respect to any coronavirus distribution can be included ratably over three taxable years beginning with the taxable year in which the distribution was received (*The tax treatment and repayment terms needs further explanation*). There are eligibility requirements, but the requirements include, in part, persons who experience adverse

The Act's Applications to Individuals (continued)

financial consequences as a result of being quarantined, furloughed, laid-off, or suffer reduced working hours, or unable to work due to lack of childcare. Eligibility is not intended for the person who continues to work but suffers a salary reduction as a result of business contraction (*again there seems to be a disconnect between in the last two sentences which will need to be clarified*).

- Required Minimum Distribution Threshold. The Act temporarily waives the minimum distribution requirements for: (i) most defined contribution plans (e.g., 401(k) plan), (ii) Section 457(b) deferred compensation plans that are maintained by an eligible employer, and (iii) IRAs. This applies for all required minimum distributions that otherwise would have been required to be made in 2020.
- Student Loan Interest Deferral. Federal student loan borrowers will not be required to make a payment through September 30, 2020. During this time, no interest will accumulate on those federal loans (payment suspension applies only to loans held by the Department of Education, not private loans). Loan borrowers should call their lender to verify eligibility.
- Charitable Donations. The 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, irrespective of a taxpayer electing the Standard Itemized Deduction.

The Act's Applications to Businesses

- Paycheck Protection Program (*it is ESSENTIAL to review the "Loan Forgiveness Program" addressed below in conjunction with this summary of the PPP*). The Paycheck Protection Loan Program ("PPP") greatly expands SBA loan eligibility. The PPP covers the period February 15, 2020 through June 30, 2020. 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 obligations, (v) rent, (vi) utilities and (vii) interest on debt incurred before the covered period. For eligibility purposes, the Act requires lenders to determine whether a business was operational on February 15, 2020, had fewer than 500 employees and had employees for whom it paid salaries and payroll taxes, or paid one or more independent contractors (sole proprietors and eligible self-employed individuals will also need to submit documentation to substantiate eligibility). The loan applicant must also certify that the borrowed funds will be used to retain workers, maintain payroll or make mortgage or rent payments. The applicant must also certify that the uncertainty of current economic conditions makes the loan request necessary.

The maximum loan amount (capped at \$10MM with zero fees) is the lesser of:

- (A) 2.5 times average total monthly payroll costs incurred in the one-year period before the loan is made (or for seasonal employers the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019); PLUS the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program; OR
- (B) On request, for businesses that were not in existence during the period from February 15, 2019 to June 30, 2019 – 2.5 times the average total monthly payroll payments from January 1, 2020 to February 29, 2020; PLUS the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program; OR
- (C) \$10 million.

The Act's Applications to Businesses (continued)

There are very few borrower requirements to obtain a loan under the new program. Those requirements include a good-faith certification that:

- the loan is needed to continue operations during the COVID-19 emergency;
- funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
- the applicant does not have any other application pending under this program for the same purpose; and
- from February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under this program.

Businesses may, in addition to uses already allowed under the SBA's Business Loan Program, use the loans for:

- Payroll costs:

Includes: compensation to employees (such as salary, wage, commissions, cash, etc.; paid leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes) and compensation to sole proprietors or independent contractors (including commission-based compensation), subject to the cap of \$100,000 per the following exclusion;

Excludes: individual employee compensation above \$100,000 per year, prorated for the covered period; certain federal taxes; compensation to employees whose principal place of residence is outside of the US; and sick and family leave wages for which credit is allowed under the Families First Act;

- Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Salaries, commissions, or similar compensations;
- Payments of interest on mortgage obligations;
- Rent/lease agreement payments;
- Utilities; and
- Interest on any other debt obligations incurred before the covered period.

When applying for the SBA loan under the PPP, the SBA will waive the following customary requirements: the "credit available elsewhere," personal guaranty, and other collateral requirements. In addition, the debt service payments will be deferred for up to 1 year, the interest rate will be less than 4%, and repayment, if required, can be paid over a period of ten years.

You can apply for the Paycheck Protection Program (PPP) at any lending institution that is approved to participate in the program through the existing U.S. Small Business Administration (SBA) 7(a) lending program and additional lenders approved by the Department of Treasury.

- Loan Forgiveness Program. The indebtedness of a loan which is given pursuant to the PPP will be forgiven (and excluded from gross income) in an amount equal to the following costs incurred during the covered period (February 15, 2020 through June 30, 2020):
 - Payroll costs;
 - Interest payments on mortgages;
 - Rent; and
 - Utility payments.

Amounts forgiven may not exceed the principal of the loan and forgiveness amounts will be reduced for any employee cuts or reductions in wages.

The Act's Applications to Businesses (continued)

- Emergency Economic Injury Disaster Loans ("EIDLs"). The SBA's existing Disaster Loan Program is expanded by the that section of the Act which is referred to as the Emergency Economic Injury Disaster Loans Program ("EIDLs"). The covered period for the EIDLs are January 31, 2020 through December 31, 2020. In addition to current eligible entities, the following may receive SBA disaster loans under the EIDLs:
 - A business with 500 or fewer employees;
 - Sole proprietorships, with or without employees, and independent contractors;
 - Cooperatives with 500 or fewer employees;
 - ESOPs with 500 or fewer employees; and
 - Tribal small business concerns.

The Act makes the following additional changes to the SBA Disaster Loan program during the covered period for loans made in response to COVID-19:

- Waives rules related to personal guarantees on advances and loans of \$200,000 or less for all applicants;
- Waives the "1 year in business prior to the disaster" requirement (except the business must have been in operation on January 31, 2020);
- Waives the requirement that an applicant be unable to find credit elsewhere; and
- Allows lenders to approve applicants based solely on credit scores (no tax return submission required) or "alternative appropriate methods to determine an applicant's ability to repay."

Entities applying for EIDLs may, during the covered period, request an emergency advance from the Administrator of up to \$10,000, which does not have to be repaid, even if the loan application is later denied. The Administrator is charged with verifying an applicant's eligibility by accepting a "self-certification." **Advances are to be awarded within three days of an application.** Advances may be used for purposes already authorized under the SBA Disaster Loan Program, including:

- Providing sick leave to employees unable to work due to direct effect of COVID-19;
- Maintaining payroll during business disruptions during slow-downs;
- Meeting increased supply chain costs;
- Making rent or mortgage payments; and
- Repaying debts that cannot be paid due to lost revenue.

If an entity that receives an emergency advance transfers into, or is approved for, a loan under the EIDLs, the advance amount will be reduced from any payroll cost forgiveness amounts.

The SBA will offer EIDLs up to \$2MM with interest rates not to exceed 3.75 percent for companies and up to 2.75 percent for nonprofits, as well as principal and interest deferment for up to four years.

The Act allows the borrower to apply for both the PPP and EIDLs; however, the borrower is not able to use the borrowed funds for the same purpose – in other words no "double-dipping."

I strongly suggest that business owners who desire to take advantage of the PPP and/or EIDLs programs do so promptly.

The Act's Applications to Businesses (continued)

- Subsidy for Certain Loan Payments. For existing SBA Section 7(a) loans, the Act provides that the SBA Administrator shall pay the principal, interest, and fees owed for loans in regular servicing status for any such loans, whether on deferment or not, that were made before the enactment of the Act for the following 6-month period, and for any such loans that were made between the date of enactment of the Act and six months from such date. This does not apply to PPP or EIDLs loans which have separate subsidy and repayment requirements.

Scott Sandroff is the Managing Member of Scott A. Sandroff, LLC

Scott provides legal services to individuals and businesses in the following areas of law:

- ❖ Business
- ❖ Estate planning
- ❖ Real estate
- ❖ Tax

About the firm

With more than 30 years of experience servicing the legal needs of individuals and businesses, Scott Sandroff has built a reputation for maintaining the highest standards of professional service and ethical practice. His extensive knowledge of business and real estate law, estate planning, and taxation has enabled him to successfully handle a wide range of legal matters from the routine to the complex. We are confident that you too will be completely satisfied with Scott's services.

If you have any questions, please contact Scott at:

Scott A. Sandroff, LLC
111 S. Pfingsten Road
Suite 114
Deerfield, Illinois 60015
T 847.513.6101
F 847.513.6102
Email: ssandroff@ssandroff.com

Visit our website:

www.scottasandroff.com

This INSIGHT newsletter has been provided by Scott A. Sandroff, LLC to provide information on legal points of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.

If you know of anyone who would like to receive our INSIGHT newsletter, please forward such person's name and email address to ssandroff@ssandroff.com. If you would like to be removed as a recipient of our INSIGHT newsletter, please direct such request to ssandroff@ssandroff.com. Thank you for taking the time to read this newsletter. We hope you found its content informative and would welcome the opportunity to assist you with your future business, estate planning, real estate and tax needs.