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**Brooklyn Chamber of Commerce**

**CARES Act  
Tax Relief and  
Loan Developments**

Friday April 10, 2020

# Agenda

- **COVID-19 Tax Updates** — Chris Migliaccio, Sandy Weinberg
- **SBA Loans** — Bruce Blasnik, Bryan Decker



# COVID-19 Tax Updates

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# COVID-19 Tax Updates

- CARES Act - Current Relief for Tax Filings and Payments
- CARES Act - Economic Stimulus through Tax Refunds
- CARES Act - Other Provisions for Individuals in 2020
- State and Local Tax Issues
- NYC Financial Relief for Businesses
- What to Do Now

## CARES Act - Current Relief for Tax Filings and Payments

- All persons with a U.S. federal income tax return AND payment due between April 1, 2020 and July 15, 2020 have received an extension to July 15th. This includes first and second quarter estimated payments.
  - There is no cap on the amount of payments that can be postponed.
  - In addition, there is no requirement to file an extension and taxpayers do not have to be sick or quarantined to qualify for the relief.

## CARES Act - Current Relief for Tax Filings and Payments

- Payment of Social Security taxes due through January 1, 2021 is delayed for employers and self-employed individuals; taxes for this period will be due in equal installments on December 31, 2021 and December 31, 2022.
  - No requirement to prove business impacted by COVID-19.
  - Deferral ends if SBA PPP loan is **forgiven**.
- Employers whose business is closed (fully or partially) because of COVID-19 or who experience a significant decline (50%) in gross receipts are allowed a payroll tax credit of 50% of qualified wages.
  - Credit applies to Social Security taxes, but is **refundable** to the extent it exceeds Social Security taxes.
  - The maximum amount of qualified wages is \$10,000 per employee over the year (a total of a \$5,000 credit).
  - The credit can be claimed on Form 941 for the relevant quarter in which the business is affected. **However, employers can also request an advance refund on Form 7200. This form can be filed multiple times throughout the quarter.**
  - For businesses with more than 100 employees, the credit is only allowed for employees not providing services. For businesses with 100 or fewer employees, the credit applies to all employees.
  - **Credit not allowed if employer receives SBA PPP loan.**

## CARES Act - Economic Stimulus through Tax Refunds

- Net operating losses (NOLs) incurred in 2018, 2019, and 2020 can be carried back five years and fully offset taxable income.
  - The Tax Cuts and Jobs Act (TCJA) passed in 2017 limited NOL usage to 80% of taxable income and prevented carrybacks.
  - The Act also provides elections to avoid the NOL applying to Section 965 amounts, thus increasing the likelihood of the carryback leading to a refund.
- The excess business loss limitation would be suspended for 2018, 2019, and 2020 and may now be used in full to reduce a taxpayer's current or prior year (2018 only) income tax liability.
  - Previously, the TCJA changed the amount of business losses a noncorporate taxpayer may deduct, limiting that amount to \$250,000 (\$500,000 in the case of a joint return). Losses above those amounts had to be carried forward.
  - For 2021 and beyond, wage income is not included in excess business loss calculation.
- Any unused corporate AMT credits remaining are fully refundable (either on a 2019 tax return or a 2018 amended return).
- A fix to the bonus depreciation rules, retroactive to the beginning of 2018, allows a 100% write-off for qualified improvement property (correcting an error in the TCJA).
- The Section 163(j) business interest expense deduction limitation is 50% of adjusted taxable income for 2019 and 2020, up from 30% as outlined by the TCJA. Taxpayers may also elect to use 2019 adjusted taxable income to calculate the 2020 limitation.

## State and Local Taxes

- State tax implications of CARES Act
  - NOLs
  - Section 163(j)
  
- If employees stay at home in another state, does that create nexus?
  - Are filing obligations triggered?
  - New Jersey

## State and Local Taxes – Deadline Extensions

- New York
  - Deadline extended to July 15 for personal income tax and corporation tax returns and payments, originally due on April 15, 2020.
  - First quarter estimates due July 15
    - Automatic extensions to file to October 15, if requested by July 15, 2020
- New York City
  - For business and excise taxes, penalties will be waived if taxes due from March 16, 2020 - April 25, 2020, interest will still be imposed from the original due date.

# State and Local Taxes – Deadline Extensions

- MA, MD, PA, RI, MA, VT, **NJ** – Filing/Estimate Payment Deadline extended to July 15
- Connecticut – Deadline extended to July 15 for personal income tax only
  - Business taxes have different deadline extensions

# Trusts and Estates

- **Income Tax Returns for Estates and Trusts (Form 1041)** - filing deadlines and payments and estimates extended to July 15
- **Gift tax returns (Forms 709)** and payments are now due July 15
- For above taxes, automatic 6 month extension to file is only until October 15
- **Estate tax**
  - Returns due between April 1, 2020 and July 15, 2020 (based on 9 month anniversary of decedent's death) extended to July 15, 2020.
  - Automatic 6 month extension of time to file (Form 4768) may be requested
  - With reasonable cause, an extension of time to pay may also be requested
- **State Estate and Trust Income Tax Returns** – Generally following federal tax extensions

## CARES Act - Other Provisions for Individuals in 2020

- For individuals affected directly by COVID-19, the 10% early withdrawal penalty is eliminated for IRA and workplace-based retirement plan distributions up to \$100,000 in 2020.
  - Tax on the distribution is due over the next 3 years.
  - The withdrawn funds can be recontributed over the next 3 years without regard to yearly caps.
  - There is also an increase to the amount that may be taken as a loan from an IRA and workplace-based retirement plan up to \$100,000 (previously \$50,000) and a delay in repaying loans from such plans.
- The Act temporarily suspends the required minimum distribution rules for 2020.
- No limitation on cash charitable contribution deductions for individuals in 2020. For corporations, the 10% limit is increased to 25% for 2020.
  - These changes do not apply to donations to donor advised funds.
  - Individuals who do not itemize can deduct up to \$300 of charitable deductions, in addition to their standard deduction.
- Individuals are eligible to receive rebate checks of \$1,200 (\$2,400 for joint filers). Each dependent claimed would increase the amount by \$500.
  - Eligibility is based on 2018 adjusted gross income unless 2019 return is filed
  - The amount begins to phase down at \$75,000 of income (\$150,000 for joint filers, \$112,500 for heads of households), down to zero at \$99,000 of income (\$198,000 for joint filers) for those with no dependents.
- Employer payments of employee student loans will not be included in income for 2020.

## NYC Financial Relief for Businesses Impacted by COVID-19

- NYC announced 2 forms of relief for small NYC businesses
- **NYC Small Business Continuity Loan Fund**
  - Businesses meeting the below criteria may receive zero-interest loans up to \$75,000.
  - Eligibility:
    - Business must be located within the New York City five boroughs;
    - Demonstrate that the COVID-19 outbreak caused at least a 25% decrease in revenue;
    - Must have fewer than 100 employees;
    - No outstanding tax liens or legal judgments;
    - Demonstrate ability to repay the loan.
  - Applicants must demonstrate a revenue decrease by providing documentation such as: point-of-sales reports, bank statements, quarterly sales tax filings, 2019 tax returns, or CPA-certified profit & loss statements.

## NYC Financial Relief for Businesses Impacted by COVID-19

### ■ NYC Employee Retention Grant Program

- Offered for small businesses with fewer than 5 employees (in total): A grant to cover 40% of payroll costs for 2 months to help retain employees.
- Eligible businesses may receive a grant for up to \$27,000.
- Eligibility for the NYC Employee Retention Grant Program:
  - Be located within the New York City five boroughs;
  - Show COVID-19 outbreak caused at least a 25% revenue decrease;
  - Be in operation for at least 6 months;
  - No outstanding tax liens or legal judgments.
- **Supporting documentation:**
  - Financial documents
  - Your most recent 2 months of payroll

## What to Do Now

- Consider if you have:
  - Unused or limited NOLs from 2018 or predict one in 2019
  - An excess business loss limitation from 2018
  - Large 2019 overpayments that would be credited to 2020 estimated tax obligations
  - Qualified improvement property placed in service in 2018 or 2019
  - Unused business AMT credits
  - 2019 business interest expense limitation



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# SBA Loans

**Updated April 8, 2020**

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# What the CARES Act does for Small Businesses

The CARES Act significantly enhances and expands eligibility for two already existing SBA loan programs:

- The 7(a) Business Loan Program (now referred to as the Paycheck Protection Program Loan under the ACT) – The *PPP Loan*
- The Economic Injury Disaster Loan Program – *EIDL*

The language in the Act is often poorly drafted, ambiguous and in many cases conflicts with existing SBA regulations, which has caused a lot of confusion and misinformation.

The programs are intended to get money in the hands of small businesses, expeditiously, in order to curtail layoffs and keep people on payroll.

# PPP Loans

- Loan amount equal to 2.5x average monthly 2019 payroll costs, up to a maximum loan of \$10 million.
- Must be used for payroll costs (at least 75%), rent, utilities and interest on loans outstanding prior to February 15, 2020.
- Up to the full amount is eligible for forgiveness.
- Expanded eligibility includes:
  - 501(c)(3) and 501(c)(19) not-for-profit organizations
  - Any business with 500 or fewer employees whose primary residence is in the U.S.
  - In addition to any small business concern under the SBA regulations
- Streamlined underwriting, no PG, no collateral
- 2 year term, with 1% interest and 6 month deferral of payments

# EID Loans

- Loan amount up to \$2 million.
- May be used for ordinary & necessary expenses.
- Up to \$10,000 forgivable advance within 3 days of application (not happening).
- Basic eligibility includes:
  - Any size NFP exempt under 501(c), (d) and (e)
  - Any small business concern under the SBA regulations
- Expanded eligibility includes any business with 500 or fewer employees.
- Streamlined underwriting, no PG under \$200k
- 3.75% interest (2.75% for NFPs), terms up to 30 years, 6 month deferral of payments

# Affiliation

- Companies under common control will be aggregated for purposes of determining the number of employees and revenue
- Control can be achieved by:
  - Majority voting control
  - Managerial control
  - Economic and contractual control
  - Significant influence, but less than majority control
- Close family member holdings are aggregated
- *Foreign affiliates are counted as affiliates*

## Special Rules for Hotels and Restaurants

- Covers businesses with NAICS codes beginning with **72**
  - Hotels, restaurants, caterers, etc.
- Affiliation rules are waived.
- Any business concern with a NAICS code beginning with 72 that employs not more than 500 employees per physical location is eligible to receive a PPL.

I use a lot of independent contractors.  
Do they count as employees?

Do federal employer taxes (FICA/FUTA) count as payroll costs?

Do I have to deduct employee withholding taxes from my payroll costs?

I'm a sole proprietor with a single-member LLC  
and I have two employees.  
Can I apply?

Our business is a partnership and we have three partners and three employees.  
How do we calculate our payroll costs?

I use a PEO for payroll and benefits. Can my business still apply for a PPP?

I had to lay-off all but two of my employees.  
Those that are laid off are collecting  
unemployment.  
Can I still qualify for a PPP loan?

# How Do I Calculate Payroll Costs?

Gross wages for 2019	1,000,000
Cash tips or equivalent	-
Vacation, family, medical leave	-
Separaton allowances	-
Group health benefits (ER share)	80,000
Retirement benefits (ER share)	30,000
State and local taxes (SUI)	10,000
SE income of owner(s)	150,000
Subtotal	1,270,000
Amounts in excess of \$100,000	(70,000)
Total 2019 Payroll Costs	1,200,000
Average Monthly Payroll Costs	100,000
x 2.5 - PPP Loan Amount	250,000

# How Much Will be Forgiven?

## Amounts for 8- Weeks Post Loan Period

Gross wages	160,000	
Cash tips or equivalent	-	
Vacation, family, medical leave	-	
Separaton allowances	-	
Group health benefits (ER share)	12,000	
Retirement benefits (ER share)	4,500	
State and local taxes (SUI)	800	
SE income of owner(s)	25,000	
Subtotal	202,300	
Amounts in excess of \$100,000	(11,667)	
<b>Total Payroll Costs</b>	<b>190,633</b>	<b>92.9%</b>
Rent	10,000	
Utilities	2,500	
Term loan interest	2,000	
<b>Eligible for forgiveness</b>	<b>\$205,133</b>	<b>100.0%</b>

	Average FTE's for 8-week period	14
	Less # Employees' pay reduced > 25%	0
A	Eligible FTEs	<b>14</b>

B	Average FTE's from 2/15/19 to 6/30/19	<b>15</b>
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C=A/B	Forgivenes Percentage	<b>93.3%</b>
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D	Amount eligible for forgiveness	<b>205,133</b>
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C x D	Amount forgiven	<b>\$191,457</b>
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Once we receive the loan, how long do we have to spend the money?

Can I use the loan proceeds for other than payroll, rent, utilities and certain loan interest?

Can I apply for both the EIDL and PPPL?

I own several commercial and residential rental properties.

Do I qualify for a PPP loan?

We are the U.S. distributor for a large foreign manufacturing company.

Can we still apply for a PPP loan?

Last year we sold 40% of our business to a  
private equity firm.

Are we eligible for a PPP loan?

I own a nursing home.  
Is the nursing home eligible for a PPP loan?

My bank told me they're not accepting PPP loan applications.  
What do I do?

# Will the Paycheck Protection Program run out of money?