ANALYSIS OF
THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT (“CARES ACT”)
PART 1 OF 2

On Friday March 27, 2020, the President signed the CARES Act Bill into Law. The Law contains economic stimulus, employee protection and loan provisions for both businesses and individuals. This analysis is limited to the stimulus being offered to small businesses (less than 500 employees). However, I will be preparing an analysis of the stimulus targeting individual taxpayers in my subsequent newsletter (Part 2 of 2). This newsletter is for informational purposes only, and is not meant to convey tax advice. Accordingly, do not act upon this information without seeking competent legal or tax help from a licensed attorney, CPA, or tax advisor.

A. Paycheck Protection Program Loans under the SBA 7A Program:

Loan Amount:	2.5 x monthly payroll costs (including gross payroll, healthcare costs, state and local taxes assessed on payroll, and retirement plan contributions), based on 12 month rolling numbers. The maximum amount available is $10 Million. Maximum covered salary - $100,000 per employee. Self employed net earnings also qualify (subject to the $100,000 ceiling). Qualified employees must be based in the U.S.
Interest Rate:	Not to exceed 4.00%
Fees:	None
Collateral:	None
Personal Guarantee:	None
Loan Expiration:	June 30, 2020
Loan Term:	10 Year full payout loan
Loan Payments	Complete deferment for 6 months, and may be deferred up to 12 months
Loan Forgiveness:	Debtor receives a credit against the loan proceeds equal to the payroll costs, mortgage payments, interest on debts incurred before 2/15/20, rent and utilities paid over an 8 week period beginning after the origination date, through June 30, 2020. Any amounts forgiven will not be deemed taxable income to the borrower.
Certifications:	Borrower must certify that: 1. as a result of the COVID-19 economic conditions, the Company must borrow funds to support ongoing operations, and 2. The funds will be used to retain workers and maintain payroll, and pay interest on debt payments, pay rent and utilities.

To qualify for the loan, the Company had to have been in business (operational) on February 15, 2020, and had paid employees as of that date. If your total payroll expenses decrease by more than 25%, then your loan forgiveness will be reduced by the same percentage. The loan also encourages employers to re-hire any employees who had been previously laid off.

- Application Checklist for the Paycheck Protection Loan:
  - Completed Application
  - Articles of Incorporation/Organization of each borrowing entity
  - By Laws/Operating Agreement of each borrowing entity
  - All owners Driver's Licenses
  - Payroll Expense verification documents to include:
  - IRS Form 940 and 941
  - Payroll Summary Report with corresponding bank statement
  - If a Payroll Summary Report is not available, Employee Pay Stubs as of February 15, 2020 (or corresponding period) with corresponding bank statement, and,
  - Breakdown of payroll benefits (vacation, allowance for dismissal, group healthcare benefits, retirement benefits, etc.
  - 1099s (if Independent Contractor)
  - Certification that all employees live within the United States. If any do not, provide a detailed list with corresponding salaries of all employees outside the United States
  - Trailing twelve-month profit and loss statement (as of the date of application) for all applicants
  - Most recent Mortgage Statement or Rent Statement (Lease)
  - Most recent Utility Bills -Electric, Gas, Telephone, Internet, Water

EXAMPLE #1:
Assumptions:

1. Company has 10 employees earning $50,000 per year each
2. The owner earns $250,000 per year (and is therefore limited to $100,000).
3. Payroll costs, health insurance and retirement contributions are $10,000 per year per employee.
4. The owner's payroll costs, health insurance and retirement contribution is $30,000.

Based on the above assumptions, the Company can borrow up to $145,833:
[($50,000 x 10) + ($10,000 x 10) + $100,000] = $700,000 / 12 = $58,333 monthly payroll costs
Multiplied by 2.5 = $145,833.

If the loan is used to pay the above costs over an 8 week period (approximately $107,700) plus an additional $38,133 on rent, utilities and pre-existing debt, then the entire loan will be forgiven.

B. SBA Loan Subsidy Payments:

If the Company had prior loans with the SBA under the § 7(a) Program or § 7(m) program, (made prior to March 27, 2020) the Administrator shall pay the principal, interest and fees owed on the loans (whether on deferment or not) for a 6 month period. Additionally, any SBA loans made under the § 7(a) Program or § 7(m) program made between the dates March 27, 2020 and September 27, 2020, the Administrator shall also pay the principal, interest and fees owed on the loans for a 6 month period. The payment shall be made within 30 days from when the first payment is due.

NOTE:
This Loan Subsidy does NOT apply to the Paycheck Protection Loans or EIDL Loans (discussed below). Lastly, the Loans must have been in Good Standing as of March 27, 2020.

C. Emergency Economic Injury Disaster Loans ("EIDL"):

Under the EIDL Program, companies can apply for up to $2 Million in loans. The loans will be approved based solely on the applicant's credit score or by use of an alternate method to gauge the applicant's ability to pay. Any loans over $200,000 will require a personal guarantee. Applicants may request an advance up to $10,000 within three days after the Administrator receives the application, subject to verification that the entity is eligible under the Program. This $10,000 advance will be deemed a grant, and will be subtracted from the loan proceeds. Loan proceeds can be used to pay a company's operating expenses and fixed debts, including payroll, accounts payable and other bills that the company incurs. The interest rate is set at 3.75% per annum. Loan pay back can be as long as 30 years, and are decided on the individual debtor's ability to repay the debt.

Since the Governors of both New York and New Jersey have declared Disasters due to the Coronavirus, and the Federal government has also declared a Disaster, the loans should be eligible.

D. Employee Retention Credit:

Employers who qualify will receive a refundable payroll tax credit equal to 50% of each employee's wages (including qualified healthcare costs) for each calendar quarter up to maximum credit of $5,000 per employee per quarter ($10,000 per employee per quarter in qualified wages), which is taken on the quarterly Employment Tax Return form 941.

Eligibility for the Credit is based on the following criteria:

1. The operation of the business was fully or partially suspended due to governmental order, or
2. The revenue from the quarter ending March 31, 2020 is at least 50% less than the same quarter of the previous year.

Qualified wages do NOT include sick leave or family leave, and qualified wages may not exceed the amount an employee was paid for work during the 30 days immediately preceding eligibility. Qualified Healthcare only includes amounts excluded from gross income of employees under § 106(a); therefore, they do NOT include self-employed health insurance.

Eligibility ends the quarter after its quarterly revenues exceed 80% of the revenues for the same calendar quarter of the previous year.

Lastly, if a company participates in the Paycheck Protection Program Loan, then they are barred from utilizing the Employee Retention Credit.

Example #2:

Assumptions:

1. Company has 10 employees earning $5,000 each per Quarter
2. The owner earns $25,000 per Month
3. Health insurance contributions are $1,000 per employee per quarter (including owner)

Qualified wages for the quarter equals $60,000 (10 x $5,000) + $10,000 (owner's salary capped)

Qualified health insurance equals $10,000 (10 x $1,000). The owner has already maxed out his credit with the wages.

Therefore, the total credit per quarter is $35,000 ($60,000 + $10,000) x 50%

E. Defer Payment of Employer Payroll Taxes:

The CARES Act will allow employers to defer the payment of the employers share of FICA taxes (the 6.2% employer portion) beginning March 27th (date of Enactment) through December 31, 2020. Under the Act, 50% of the employer's share of the taxes will be due on December 31, 2021 (up to a 1 ¾ year deferral), and the other 50% will be due December 31, 2022 (up to a 2 ¾ year deferral).

F. Temporary Repeal of the Excess Business Loss Limitation for Pass-through Entities:

The 2017 Tax Cuts and Jobs Act limited excess business losses to $250,000 for individuals, estates and trusts, and $500,000 for married couples filing a joint return. The CARES Act, temporarily repeals the limitation. This repeal may create net operating losses (NOL's) that can be utilized for tax refunds – see "Modifications to Net Operating Losses" next.

G. Modifications to Net Operating Losses:

The 2017 Tax Cuts and Jobs Act eliminated the carry-back of NOLs, and limited the loss to 80% of taxable income. The CARES Act allows NOL's from 2018, 2019 and 2020 to be carried back FIVE YEARS, and it eliminates the 80% limitation. If you had NOLs in 2018, it may make sense to amend the tax return and carry-back the NOL to 2013 to recover taxes paid from previous years.

H. Modification to Business Interest Deduction Limitation under §163(j):

The 2017 Tax Cuts and Jobs Act introduced a 30% interest deduction limitation for tax shelters and business entities with revenues in excess of $25 million annually. This limitation has now been increased to 50% from 30%; thereby allowing a larger interest expense deduction.

I. Modification of the Alternative Minimum Tax Credit for "C" Corps.:

The 2017 Tax Cuts and Jobs Act repealed the Alternative Minimum Tax (AMT) for corporations; but limited the AMT credits to be refunded over several years. The CARES Act modified the refunding period by accelerating the AMT credit refunds for 2019.

J. Technical Correction of Error Related to Class Life of Qualified Improvement Property:

The 2017 Tax Cuts and Jobs Act erroneously alluded to 15 year Qualified Improvement Property, but defined it as 39 year property. The CARES Act, corrects this error, and re-defines the property life as 15 year, which allows the property to elect Bonus Depreciation. This will allow restaurants and certain real estate entities to write-off Qualified Improvement Property in one year, thereby reducing taxable income, and even creating NOLs, that can be used to generate tax refunds. This will also allow entities to amend prior year returns to take advantage of the shorter life and Bonus Depreciation if so elected.