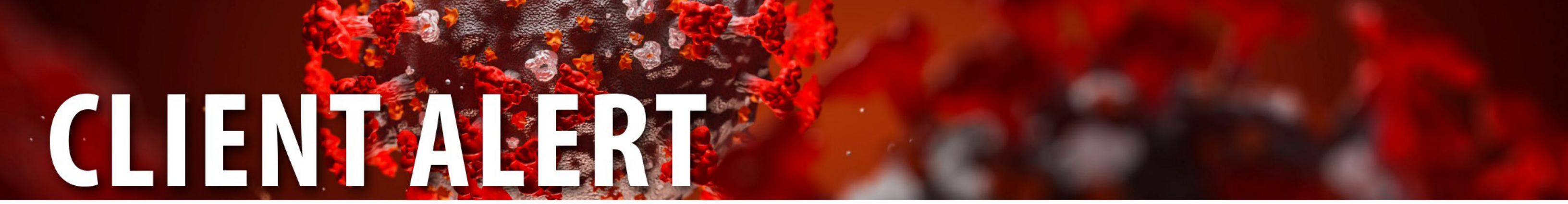

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CONGRESS PASSES THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT ("CARES ACT")

By Charles R. Spies, Katherine N. Reynolds, Angelina Irvine, J. Troy Terakedis, Peter J. Kulick, Daniel D. Ujczo

President Trump signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") on March 27, 2020, marking the largest economic recovery package in U.S. history. The $2.2 Trillion rescue legislation provides $150 billion for hospitals and other health care providers, direct payments and expanded unemployment compensation provisions to U.S. workers and families, and approximately $850 billion dollars in loans and grants to major industries and small businesses.

The following provides a summary of some of the key stimulus pieces of the legislation contained in the nearly 900-page Act to assist all companies seeking financial relief from the myriad challenges arising from the COVID-19 pandemic. Dickinson Wright attorneys are available to provide on-the-ground counsel in Washington, D.C., U.S. state capitols, and Canada's provinces to navigate the network of federal/state/provincial recovery programs and prepare for business resumption.

Highlights:

- $500 billion to Treasury Department designated for business loans for businesses impacted by COVID-19
    - $367 billion specifically designed for small-businesses; however, any business whose "primary purpose" is lobbying or engaging in political activity are not eligible for these loans
    - $46 billion for airline industry ($25 billion for passenger airlines, $4 billion for cargo, $17 billion for companies deemed important for national security)
    - For Business Loans—established a separate Inspector General within the Treasury Department that oversees how funds are being disbursed; adds to five-member Congressional panel to review actions of the Treasury Department; not available to businesses owned by the President, VP, Members of Congress, or Executive Brach heads from receiving Treasury loans and investments.
- $150 billion for state and local governments to address spending shortages related to COVID-19 pandemic.
    - Provides $150 billion to states, territories, local and tribal governments to use for expenditures incurred due to the public health emergency with respect to COVID-19 in the face of revenue declines, allocated by population proportions.
    - Distribution is based on population. No state shall receive a payment for fiscal year 2020 that is less than $1.25 billion.
    - 45% of a state's funds are set aside for local governments, with populations that exceed 500,000, with certified requests to the U.S. secretary of Treasury.
    - $3 billion set aside for District of Columbia, Puerto Rico, Virgin Islands, Guam, Northern Mariana Islands and American Samoa.
    - $8 billion for tribal governments.
    - Funds can be used for costs that: 1) are necessary expenditures incurred due to COVID-19; 2) were not accounted for in the budget most recently approved as of the date of enactment; 3) were incurred during the period that begins March 1, 2020, and ends Dec. 30, 2020.

Small Business Loans under the Paycheck Protection Program:

- Government guarantee of loans for Payment Protection Program under Section 7(a) of the Small Business Act increased to 100 percent through December 31, 2020.
    - After December 31, 2020, government loan guarantees will return to 75 percent for loans over $150,000 and 85 percent for loans equal to or less than $150,000
- Expands the organizations eligible for small business loans under the Payment Protection Program. Eligible borrowers may not employ more than 500 employees (unless provided otherwise by the SBA for an industry) and includes not only small businesses, but also:
    - 501(c)(3) exempt organizations
    - 501(c)(19) veteran's organization
    - Tribal businesses described in Section 31(b)(2)(C) of the Small Business Act
    - Businesses with more than one physical location where each location has fewer than or equal to 500 employees may also qualify as eligible borrowers if the business concern is assigned a North American Industry Classification System Code beginning with 72 at the time the loan is disbursed
- Current SBA affiliation rules apply to eligible non-profit organizations.
- Waives affiliation rules for hospital and restaurant industry businesses, franchises approved on the Franchise Directory, and businesses receiving financing through the Small Business Investment Company program.
- Allows the SBA to guarantee loans under the Payment Protection Program for the period beginning on February 15 through June 30, 2020.
- Maximum loan amount is increased from $5,000,000 to $10,000,000 through December 31, 2020.
    - The maximum loan amount is capped at the lesser of $10,000,000 or a figure determined by applying a formula based on "payroll costs"
    - Generally, the payroll cost formula is based on the average monthly payments by a borrower for "payroll costs" incurred during the 1-year period prior to loan disbursement multiplied by 2.5
- Proceeds of the loan may be used for:
    - "Payroll costs," which includes
        - Employee salaries, wages, commissions, or similar compensation
        - Payment of cash tip or equivalent
        - Paid vacation, parental, family, sick or medical leave
        - Separation payments
        - Payments required for the provision of group health benefits
        - Retirement benefits, or
        - State or local taxes assessed on compensation of employees
    - Insurance premiums
    - Mortgage, rent, and utility payments
- Provides delegated authority to lenders participating in the Payment Protection Program to make borrower eligibility and creditworthiness determinations, rather than the SBA.
- Repayment ability is not taken into lending decision. Rather, lenders must determine whether the business was operational on February 15, 2020, and had employees for whom it paid wages and payroll taxes, or had paid independent contractors.
- Borrowers cannot receive assistance under the Paycheck Protection Program (PPP) loan and an economic injury disaster loan (EIDL) for the same purpose.
    - Borrowers with EIDL loans unrelated to COVID-19 can still apply for a PPP loan, and have an option to refinance the EIDL loan into the PPP loan
- Fees and other requirements waived include:
    - Borrower and lender fees are waived

- Credit elsewhere test is waived
- Collateral and personal guarantee requirements are waived
- No borrower pre-payment fees
- Maximum interest rate of 4 percent
- Loan forgiveness:
  - Borrower is eligible for loan forgiveness in the amount used for payroll costs, interest payments on a pre-existing mortgage, rent payments on a pre-existing lease, and utility payments during the 8-week period after the loan's origination
    - Eligible payroll costs do not include compensation above $100,000
  - Amounts forgiven cannot exceed principal amount of the loan
  - Amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year, and further reduced by a reduction in pay to any employee below 25 percent of their prior year compensation
  - Employers who re-hire any employees laid off due to COVID-19 will be not be penalized
  - Amount of loan forgiven is excluded from gross income for federal income tax purposes

Emergency EIDL Grants

- Eligibility expanded to include:
  - With fewer than 500 employees:
    - Tribal businesses
    - Co-Ops
    - ESOPs
  - Sole proprietors
  - Independent contractors
  - Private non-profits
- For EIDL loans related to COVID-19 before December 31, 2020:
  - Personal guarantees waived on advances and loans below $200,000
  - 1-year in business requirement waived
  - Credit elsewhere requirement waived
- Approval can be based solely on applicant's credit score or other method for determining ability to repay.
- **Emergency Grant** – Eligible entity can request advance on a loan up to $10,000 to be distributed within 3 days.
  - Advance payment can be used for:
    - Providing paid sick leave to employees
    - Maintaining payroll
    - Meeting increased costs to obtain materials
    - Making rent or mortgage payments
    - Repaying obligations that cannot be met due to revenue losses

Unemployment Insurance Provisions

- Temporary **Pandemic Unemployment Assistance** program through December 31, 2020, for those not traditionally eligible for unemployment, including:
  - Self-employed
  - Independent contractors
  - Workers with limited work history
- Provides payment to states to reimburse the following entities for **half of the costs of unemployment benefits incurred through December 31, 2020**:
  - Non-profits
  - Government agencies
  - Indian tribes
- Additional **$600 per week** for each unemployment recipient for **up to 4 months.**
- Funding to pay cost of 1st week of unemployment benefits for states that choose to pay recipients immediately instead of waiting one week before the individual is eligible.
- Additional 1**3 weeks** of unemployment benefits through December 31, 2020.
  - Financing for **Short-Time Compensation Payments**
  - For states that already have programs, funding to pay **100 percent** of the costs incurred in "short-time compensation" programs through December 31, 2020, where employers reduce employee hours instead of laying off employees and the employees with reduced hours receive a pro-rated unemployment benefit
  - For states that begin programs now, funding to pay **50 percent** of the costs
    - **$100M** in grants to states that enact short-time compensation programs

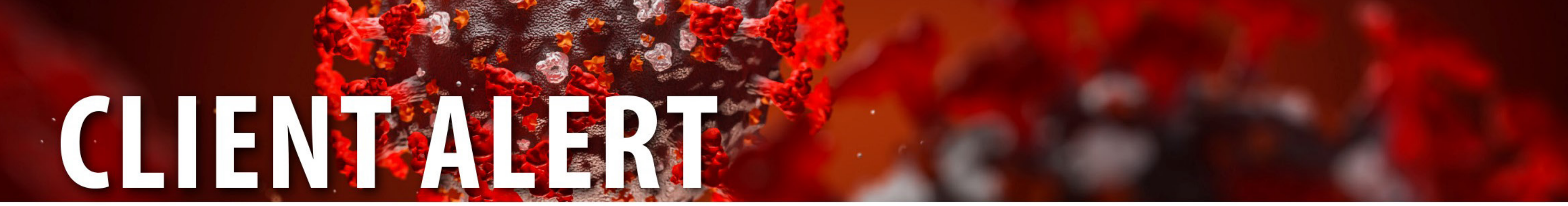
2020 Recovery Rebates for Individuals

- U.S. residents with adjusted gross income up to $75,000 ($150,000 married) are eligible for the full recovery rebate payment of $1,200 ($2,400 taxpayers filing as married).
  - Taxpayers may receive an additional payment of $500 per child
  - Rebate amount is phased-out for taxpayers with adjusted gross income exceeding $75,000 (or $150,000 filing as married); the rebate program is reduced by $5 for each $100 that a taxpayer's income exceeds the phase-out threshold
  - Rebate amount is completely phased-out for: (1) single filers with adjusted gross income exceeding $99,000; (2) $146,500 for head of household filers with one child; and (3) $198,000 for joint filers with no children; a higher phase-out dollar figure applies to families with more than one child
  - Money is expected to go out by April 6

Retirement Funds

Ten percent early withdrawal penalty for retirement account distributions up to $100,000 is waived for COVID-19 related distributions on or after January 1, 2020.

- The distributions will be subject to tax over 3 years
- Taxpayer can re-contribute within 3 years without regard to that year's contribution cap
- COVID-19 related distributions:
  - The distributee is diagnosed with COVID-19
  - His or her spouse or dependent is diagnosed with COVID-19
  - He or she experiences adverse financial consequences as a result of being:
    - furloughed,
    - quarantined,
    - laid off,
    - reduced work hours,
    - unable to work due to child care issues related to COVID-19, or
    - his or her own business closure or hours reduction due to COVID-19.



Employer Payments of Student Loans

Employers can provide employees with a student loan repayment benefit tax-free. The employer can contribute up to $5,250 annually toward an employee's student loans with the payment being excluded from the employee's income. This applies to any student loan payments made by an employer, on an employee's behalf, after date of enactment until January 1, 2021.

Employee Retention Credit

- The CARES Act offers a tax credit equal to 50 percent of "qualified wages" paid or incurred to each employee from March 13 to December 31, 2020. The credit is further limited to $10,000 of qualified wages.
- To be eligible for the employee retention credit, the employer must be engaged in a trade or business during the 2020 calendar year and either:
  (1) had its operations fully or partially suspended by an order of a governmental authority; or
  (2) had its gross receipts decline by more than 50 percent as compared to the same quarter in the prior year
- "Qualified wages" are determined based on the number of full-time employees.
  - For employers with more than 100 full-time employees, qualified wages only include amounts paid to employees that are not providing services due to a shutdown order of a governmental authority
  - For employers with 100 or fewer full-time employees, all employee wages qualify for the employee retention credit, regardless of whether the employer is open for business or subject to a shutdown order of a governmental authority

Deferral of Employer Payroll Taxes

The CARES Act permits employers to defer payment of the 6.2 percent excise tax on wages paid by an employer. The tax can be paid over a 2 year period; with half required to be paid by December 31, 2021, and the other half by December 31, 2022.

The deferral of payroll taxes is not available to a person that has a Paycheck Protection Program loan forgiven under the CARES Act.

FFCRA

Paid Leave for Rehired Employees

- An employee who was laid off on March 1, 2020 or later can have access to EFMLEA benefits if rehired.

Advance Refunding of Credits

- Employers can receive an advance tax credit instead of being reimbursed on the back end.

Business Tax Provisions

- The Tax Cuts and Jobs Act of 2017 ("2017 Tax Act") limited the ability to use net operating losses ("NOL"). The CARES Act temporarily eliminates the limitations on the use of NOLs. Under the CARES Act a taxpayer is permitted to carryback NOLs which arise in a tax year beginning in 2018, 2019, or 2020, for five years. The Act further allows a taxpayer to fully offset taxable income with NOLs for tax year beginning before January 1, 2021.
- The 2017 Tax Act limited the amount of business interest which a taxpayer may deduct. Prior to enactment of the 2017 Tax Act, business interest was fully deductible for federal income tax law purposes. The 2017 Tax Act generally limited the deduction for business interest to 30 percent of the taxpayer's "adjusted taxable income." The CARES Act temporarily increases the limitation on the deductibility of business interest to 50 percent of the taxpayer's adjusted taxable income for tax years beginning in 2019 or 2020.

Trade/Tariffs

A number of industry associations urged the U.S. Congress to delay the proposed June 1, 2020, implementation of the United States-Mexico-Canada Agreement (USMCA), as well as offer a three (3) to six (6) month delay on tariff payments arising from Section 301 (China) and Section 232 (steel and aluminum). These measures did not make it into the final bill and the White House has expressly rejected the idea of tariff payment delays.

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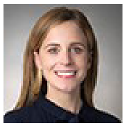

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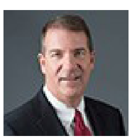

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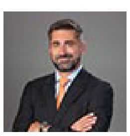

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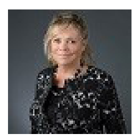

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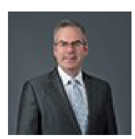

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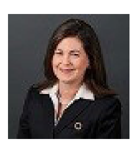

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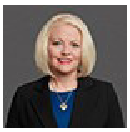

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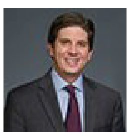

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