

This legislation, aka the “Phase 3” bill provides significant tax and non-tax stimulus to individuals and businesses. Below is a brief summary of key provisions.

Impact to Businesses

Tax Measures for Businesses:

- Changes to the rules governing net operating losses (NOLs), including a five-year carryback of certain 2018, 2019 and 2020 losses and, temporarily, the ability to fully offset income.
- Changes to the limitation on loss rules for partnerships and sole proprietors (some temporary).
- Acceleration of refundability of corporate alternative minimum tax (AMT) credits.
- The business interest limitation under IRC Section 163(j), currently set at 30% of adjusted taxable income based on EBITDA, would be set at 50% for 2019 and 2020.
- Limitations for charitable contributions deduction for businesses have been increased from 10% to 25% of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15% to 25%.
- Technical corrections to provisions in the 2017 tax law (“Tax Cuts and Jobs Act”) to treat qualified improvement property as 15-year property under MACRS, and eligible for bonus depreciation. These corrections are retroactive to the effective date of the Tax Cuts and Jobs Act.
- A temporary exception from excise taxes for alcohol used to produce hand sanitizer through December 31, 2020.
- A suspension of certain aviation excise taxes through the creation of an “excise tax holiday” through December 31, 2020.
- Establish of the **Employee Retention Credit**
 - Fully refundable tax credit is available, tied to the payment of employee wages, against the employer’s share of Social Security taxes.
 - All eligible employers would be permitted to claim a 50 percent credit of wages paid up to \$10,000 per employee.
 - 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.

- For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.
- For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

Business Loan Programs

- **Paycheck Protection Program**

The Program provides forgivable Small Business Administration loans to businesses with 500 or fewer employees (generally), including sole proprietors and other self-employed individuals. Total authorization level of \$349 billion for the 7(a) program through December 31, 2020.

The Act increases the maximum loan for a SBA Express loan from \$350,000 to \$1 million through December 31, 2020 and defines eligibility for loans as a small business, 501(c)(3) nonprofit, a 501(c)(19) veteran's organization, or Tribal business concern described in section 31(b)(2)(C) of the Small Business Act with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher. Businesses in the hospitality and restaurant industry and certain other businesses are excused from the employee limitation. Loan amounts are determined by a formula tied to the business's payroll costs. The maximum loan amount is \$10 million. Allowable loan uses include payroll, insurance premiums, mortgage, rent and utility payments.

- **Applicable Loan Period**
 - The covered loan period is defined as beginning on February 15, 2020 and ending on June 30, 2020. Establishes the maximum 7(a) loan amount to \$10 million through December 31, 2020 and provides a formula by which the loan amount is tied to payroll costs incurred by the business to determine the size of the loan.

- Allowable Use of Funds
 - Specifies allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent and utility payments.
- Loan Forgiveness
 - Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8-week period compared to the previous year or time period, proportionate to maintaining employees and wages.
 - The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
 - Portions of loans not forgiven are payable over a maximum of 10 years at a maximum of 4% interest.
- Authority to SBA Lenders
 - Provides delegated authority, which is the ability for lenders to make determinations on borrower eligibility and creditworthiness without going through all of SBA's channels, to all current 7(a) lenders who make these loans to small businesses and provides that same authority to lenders who join the program and make these loans. For eligibility purposes, requires lenders to, instead of determining repayment ability, which is not possible during this crisis, to determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor.
- Coordination with EIDL Loans
 - Provides a limitation on a borrower from receiving this assistance and an economic injury disaster loan through SBA for the same purpose. However, it allows a borrower who has an EIDL loan unrelated to COVID-19 to apply for a PPP loan, with an option to refinance that loan into the PPP loan. The emergency EIDL grant award of up to \$10,000 would be subtracted from the amount forgiven under the Paycheck Protection Program.

- **Emergency EIDL Grants**

The Act expands eligibility for access to Economic Injury Disaster Loans (EIDL) to include Tribal businesses, cooperatives, and ESOPs with fewer than 500 employees or any individual operating as a sole proprietor or an independent contractor during the covered period (January 31, 2020 to December 31, 2020). Private nonprofits are also eligible for both grants and EIDLs.

- **Waiver of Personal Guarantees & Other Eligibility Requirements**

- The Act requires that for any SBA EIDL loans made in response to COVID-19 before December 31, 2020, the SBA shall waive any personal guarantee on advances and loans below \$200,000, the requirement that an applicant needs to have been in business for the 1-year period before the disaster, and the credit elsewhere requirement.
- During the covered period, allows SBA to approve and offer EIDL loans based solely on an applicant's credit score, or use an alternative appropriate alternative method for determining applicant's ability to repay.

- **Emergency Grant Payment Distributions**

- Establishes an Emergency Grant to allow an eligible entity who has applied for an EIDL loan due to COVID-19 to request an advance on that loan, of not more than \$10,000, which the SBA must distribute within three days.
- Applicants shall not be required to repay advance payments, even if subsequently denied for an EIDL loan. In advance of disbursing the advance payment, the SBA must verify that the entity is an eligible applicant for an EIDL loan. This approval shall take the form of a certification under penalty of perjury by the applicant that they are eligible. Advance payment may be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses. Further, the Act requires that an advance payment be considered when determining loan forgiveness, if the applicant transfers into a loan made under SBA's Paycheck Protection Program.

Impact to Individuals

Cash and Retirement Plans

- Rebates of up to \$1,200 for single filers and \$2,400 for joint filers (with amounts increased by \$500 per child). These payments are subject to phase-outs beginning at \$75,000 / \$150,000 adjusted gross income (AGI) for single filers / joint filers. Individuals who have no income or those whose income comes from entirely non-taxable means-tested benefit programs are eligible to receive.
- A waiver of the early withdrawal penalty for certain coronavirus-related withdrawals from qualified retirement plans up to \$100,000. In addition, income attributable to those distributions would be subject to tax over three years and the taxpayer can recontribute those funds within the three period without regard to the annual contribution cap.
- A waiver of the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020.

Unemployment

- Establish a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.
- Provide an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
- Provide an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.

Charitable Deductions

- Allowance of up to \$300 of charitable deductions for non-itemizing taxpayers for tax years beginning in 2020 and relaxation of the limitations for those taxpayers who itemize.
- The 50% of adjusted gross income limitations on deductions for charitable contributions is suspended for 2020.

Student Loans

- Student loan repayment contribution by the employer for an employee is not taxable to the employee up to \$5,250 annual cap for contributions made prior to January 1, 2021.

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