Fortunato & Pirrello, LLC
CERTIFIED PUBLIC ACCOUNTANTS

March 27, 2020

TO OUR FRIENDS AND CLIENTS

We hope this summary of government financial and tax relief finds you and your family safe and well. The affect the coronavirus has had on our lives and finances was unimaginable just a month ago. Until the time comes when the coronavirus is behind us, we are here to help you understand the coronavirus relief programs that may apply to you and/or your business. To help you review this letter we have highlighted some key provisions for individual taxpayers and business owners.

UPDATE ON INDIVIDUAL AND BUSINESS RELIEF AS A RESULT OF THE CORONAVIRUS (COVID-19)

On March 27, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which is aimed at providing financial relief for the economic downturn caused by the Coronavirus pandemic. This newsletter will cover some of the more pertinent issues to small businesses and individuals. We have highlighted some key points that we do want to bring to your attention. You will find that there have been extensions for filing tax returns and paying tax among other due dates, relaxing of retirement plan and IRA rules and many relief programs for businesses. Although this program listing is voluminous and at times confusing, it is by no means all inclusive. Many states and NYC have additional programs that we will bring to your attention if we believe they may apply to your business. We will continue to update you as the days pass. In the meantime, stay safe and well as we continue to battle and beat the coronavirus. During this unpredictable and challenging time, it's more important than ever to stay connected.

Whether you have tax or financial planning questions or need advice on ways to navigate business challenges, we're here for you. If you have any questions or concerns, please contact our office at 973.744.4022 or by email (gm@fandpcpa.com).

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EXTENSION OF TAX FILINGS

The IRS extended the April 15, 2020 federal income tax filing and payment deadline to July 15, 2020. Our office is continuing to process tax returns as soon as possible.

First quarter estimated tax payments usually due April 15, 2020 are now extended to July 15, 2020. (However, second quarter estimated payments are still currently due at the normal due date of June 15, 2020).

The deadline for making contributions to IRAs, HSAs and MSAs is extended to July 15, 2020.

States are also providing tax relief for individuals and businesses. Below is a summary of certain states that apply to our clients:

STATES

NEW JERSEY – A proposed bill (not yet enacted) would automatically extend time to pay and file gross income tax or corporation business tax returns consistent with the federal government. As of now, no decision has been made on the filing and payment date change. However, we believe that NJ will follow the federal tax return filing extensions and that the bill introduced will be enacted shortly.

NEW YORK STATE will follow the IRS in waiving penalties and interest for late tax returns and payments filed by July 15. The state will also waive penalties and interest on sales tax collections that were due on March 20, 2020. The sales tax deadline will stand, but penalties and interest will not be charged.

NEW YORK CITY – Will waive penalties for late filing, late payment, and underpayment penalties for business and excise taxes originally due between 3/16/20 and 4/25/20. Can also request waiver of penalties on late filed extensions or returns. Interest is not waived – from the original due date.

ARIZONA - The Arizona Department of Revenue (ADOR) has announced it has moved the deadline for filing to July 15th.

CALIFORNIA - has pushed its tax filing and payment deadline to July 15, and will waive interest, late filing and late payment penalties.

CONNECTICUT Department of Revenue Services extends filing and payment deadlines for personal income tax returns to July 15, 2020.

MASSACHUSETTS - is waiving penalties for automatic 6 months and will follow federal relief.

MICHIGAN - Effective immediately, state of Michigan and city of Detroit income tax returns and payments due on April 15 are now due before midnight on July 15. Other state of Michigan cities with income taxes due on April 15 will now be due on July 15, while cities with income taxes due on April 30 will now be due on July 31.

COLORADO - Has extended the income tax payment deadline for all Colorado taxpayers by 90 days until July 15, 2020. Interest from the due date of the payment until July 15, 2020 is waived. All income tax returns that were required to be filed by April 15, 2020 are granted an automatic six-month extension and are due on or before October 15, 2020.

GEORGIA Tax Filing Deadline Extended to 7/15 and will conform with federal tax filing extensions.

Most states, not mentioned, are following the federal tax return extension protocol. If you have any specific questions about other states, please email or call us.

INDIVIDUAL TAX AND FINANCIAL RELIEF

Cash Payments

All U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for a full $1,200 “rebate,” $2,400 married. In addition, they are eligible for an additional $500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits. Estates and trusts are not eligible for this rebate. The rebates are being treated as advance refunds of a 2020 tax credit and taxpayers will reduce the amount of the credit available on their 2020 tax return by the amount of the advance refund payment they receive. For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as the IRS will use a taxpayer’s 2019 tax return if filed, or in the alternative their 2018 return. The rebate amount is reduced by $5 for each $100 that a taxpayer’s income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding $99,000, $146,500 for head of household filers with one child, and $198,000 for joint filers with no children.

These payments are expected to be made electronically if possible. However, the Act states that “Not later than 15 days after the date on which the Secretary distributed any payment to an eligible taxpayer, notice shall be sent by mail to such taxpayer’s last known address. Such notice shall indicate the method by which such payment was made, the amount of such payment, and a phone number for the appropriate point of contact at the Internal Revenue Service to report any failure to receive such payment.”

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Individual Charity-Related Provisions

The CARES Act allows for an above-the-line deduction up to $300 for cash contributions to certain charities for those who do not itemize deductions. Also, the Act increases the limitations on deductions for "qualified Contributions" by individuals who itemize by suspending the 50% of AGI limitation, meaning up to 100% of AGI may be claimed as a charitable itemized income tax deduction. A "qualified contribution" is a contribution paid in cash during calendar year 2020 to an organization described in section 170(b)(1)(A) and the taxpayer has elected the application of this section with respect to such contribution. A "qualified contribution" does not include a contribution to an organization described in section 509(a)(3) or to a donor advised fund.

Student Loan Provisions

The Act suspends student loan payments (principal and interest) through September 30, 2020 without penalty to the borrower for federal student loans. No interest will accrue on these loans during this suspension period. In addition, employers may provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to $5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Unemployment Insurance Provisions

The Act creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to "covered individuals" who are not traditionally eligible for unemployment benefits, such as self-employed individuals, independent contractors, and those who have limited work history because they were unable to work as a direct result of the coronavirus public health emergency. "Covered individuals" include those who are not eligible for regular unemployment benefits and provide self-certification that the individual is otherwise able to work but for:

- being diagnosed with COVID-19
- a member of the individual's household has been diagnosed with COVID-19
- the individual is providing care for a family member diagnosed with COVID-19
- a child is unable to attend school because it is closed due to COVID-19
- the individual is unable to get to work because of quarantine order or is self-quarantined based on health care provided advice
- the individual quit his job as a direct result of COVID-19

- the individual's job is closed as a direct result of COVID-19, or is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation.

"Covered individuals" do not include individuals who have the ability to telework with pay (i.e., work from home) or who are receiving paid sick leave or other paid leave benefits. A person may receive benefits under the Pandemic Unemployment Assistance program for up to 39 weeks, which includes any week the person received regular pay or extended benefits under any federal or state program. The Act also provides an additional $600 per week to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months. There will also be an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after state unemployment benefits are no longer available.

NOTE ON INFORMATION TAX RETURNS

Notice 2020-18 relief excludes information returns. Therefore, an extension request should be made to extend information returns. Information returns that will require timely filing by the original due date or an extension include

- **Form 709**: United States Gift (and Generation-Skipping Transfer) Tax Return
- **Form 3520**: Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts.
- **Form 5471 and 8865** (Controlled Foreign Corporations and Certain Foreign Partnerships)
- **Form 4868**. Taxpayers who want to extend the time for filing their federal tax return past July 15, 2020 should file Form 4868 by April 15, 2020, the regular due date of the return. The IRS likely intended to extend the time for filing Form 4868 until July 15, but it is not clear that the Notice accomplishes this.
- **Report of Foreign Bank and Financial Accounts (FBAR)**. FBARs are due April 15, 2020, but a taxpayer who fails to timely file will automatically receive an extension to October 15, 2020. We recommend that taxpayers required to file FINCIN 114 (FBAR) should file an extension by April 15th as a safety precaution.

RETIREMENT PROVISIONS

IRA Contribution Deadline

The deadline for filing an individual's 2019 income tax return is extended to July 15, 2020. Because the due date for filing Federal income tax returns has been postponed to July 15th**,** the deadline for making contributions to your IRA for 2019 is also extended to July 15, 2020.

Withdrawals from Qualified Retirement Plans and IRAs, and Plan Loans

The CARES Act provides tax relief for retirement plan and IRA "coronavirus-related distributions" up to $100,000 taken by individuals on or after January 1, 2020 and before December 31, 2020. The CARES Act permits in-service distributions, provides an exception to the 10% early distribution penalty, exempts the distribution from the mandatory 20% withholding applicable to eligible rollover distributions, allows the individual to include income attributable to the distribution over a three-year period, and allows the for the recontribution of the distribution to a plan or IRA within three years.

The CARES Act provides that for plan loans made during the 180-day period beginning on the date of enactment and December 31, 2020 the maximum loan amount is increased from $50,000 or 50% of the vested account balance to $100,000 or 100% of the vested account balance. The due date for any repayment on a loan is delayed for one year (normally five years).

To be eligible for the withdrawal and loan relief, an individual must fall within one of the following categories:

- The individual is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention.
- The individual's spouse or dependent is diagnosed with COVID-19; or The individual experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to COVID-19,
- Being unable to work due to lack of childcare due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Secretary of the Treasury.
- Plan administrators may rely on an employee's certification that the employee meets these requirements.

Required Minimum Distributions - The CARES Act suspends RMDs from IRA's and retirement plans for 2020.

BUSINESS TAX RELIEF PROVISIONS

Charitable Contributions by Corporations: Contributions cannot exceed the excess of 25% of the business' taxable income, which was increased from 10% under prior law.

Employee Retention Credit: The bill creates a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. 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.

The credit is based on qualified wages paid to the employee. 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.

Delay of Employer Payroll Taxes: Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages, and the bill allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

Temporary Increase in Business Interest Deduction: The bill temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and2020.

Keeping American Workers Employed and Paid Act

One of the important cornerstones of the CARES Act is what is described in the bill as the "Paycheck Protection Program." Congress understands that the majority of jobs in the American economy are generated by small to mid-size businesses, and the CARES Act seeks to shore up payroll in those businesses by leveraging the Small Business Administration's Section 7(a) loan program because it's the primary program for providing financial assistance to small businesses.

The CARES Act increases the maximum 7(a) loan amount to $10 million and expands the allowable uses of 7(a) loans to include "payroll support," which includes paid sick or medical leave, employee salaries, mortgage payments, insurance premiums and any other debt obligations. Under the CARES Act, the loan period for this program starts on February 15, 2020, and ends on June 30, 2020. The program generally only covers businesses with fewer than 500 employees.

To determine whether a business is eligible for this program, the CARES Act require lenders to ascertain:

(1) whether a business was operational on February 15, 2020, and
(2) whether the business had employees to whom it paid salaries and payroll taxes, or paid independent contractors, and
(3) whether the business was substantially impacted by COVID-19.

The legislation also gives more authority to lenders regarding eligibility determinations without having to run those determinations through the normal SBA approval channels. Business eligible for the expanded 7(a) loans under the CARES Act include small businesses, nonprofits and veterans' organizations with 500 or fewer employees. During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.

The CARES Act says that the allowable uses of 7(a) loans include salary, wages, commissions, tips, paid leave, healthcare payments and retirement benefit payments. It's important to note that allowable payroll costs do not include compensation to an individual employee in excess of an annual salary of $100,000 as prorated for the covered period. Qualified sick leave or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act are not included in the allowable uses. It also does not include any compensation of an employee whose principal place of residence is outside of the United States.

One of the most important aspects of the CARES Act is that the 7(a) loans are nonrecourse, except if the proceeds are used for an unauthorized purpose. In addition, no personal guarantee or collateral are required. That said, "Good Faith" certification is required, and certification has the following elements:

- The current uncertainty makes the loan necessary to support ongoing operations.
- The funds will be used to retain works and maintain payroll or make mortgage payments, lease payments, and utility payments.
- There are no duplicative amounts.
- The terms of these loans are as follows:
- Interest Rate: During the covered period, a covered loan shall bear
- an interest rate not to exceed 4 percent
- Payment Deferment: 6-12 month of deferment including principal,
- interest and fees
- Origination Fees: Lender reimbursed by the SBA

One of the most important aspects of the program is the way in which loan principal can be forgiven. Under the terms of the legislation, principal can be forgiven in an amount equal to the following costs incurred during the covered period of February 15, 2020 through June 30, 2020:

- Payroll costs
- Mortgage interest
- Rent
- Utilities

Any amounts forgiven will be reduced proportionally by any reduction in the number of 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. **Borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period. Most importantly, indebtedness cancelled will not be included in the borrower's taxable income.**

TAX CREDITS FOR EMPLOYERS

What is the Families First Coronavirus Response Act?

The Families First Coronavirus Response Act, H.R. 6201, that was signed into law on March 18 contains refundable tax credits for employers who provide paid sick leave or family or medical leave for their employees who miss work for various coronavirus-related reasons. Subject to limitations and exceptions, employers of less than 500 employees are required to provide mandatory sick time and paid family leave but are eligible for payroll tax credits to offset the costs.

How does the paid family leave work?

Subject to certain limitations, the bill provides an employer a payroll tax credit that equals 100% of the qualified family leave wages paid by the employer.

It requires employers with fewer than 500 employees to provide public health emergency leave under the Family and Medical Leave Act (FMLA), P.L. 103-3, when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the childcare provider is unavailable, due to a public health emergency related to COVID-19.

The paid leave is available for up to 10 weeks.

- The first 10 days of the leave may consist of unpaid leave. However, the employee may choose to use any accrued paid time off.
- The amount paid per day is calculated based on the "two-thirds rule" discussed in H.R. 6201.

- The credit is generally available for up to $200 in wages for each day an employee receives qualified family leave wages. A maximum of $10,000 in wages per employee would be eligible for the credit.
- The paid leave benefit is available to self-employed taxpayers.

  Employers with fewer than 50 employees can be exempted from the requirement and healthcare providers and emergency responders can be excluded from this rule.

How does the paid sick time work?

Two weeks of sick pay must be paid when the employee is unable to work or telework for any of the following:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order.
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

There are exceptions for healthcare workers and emergency responders. And, employers with fewer than 50 employees can be exempted from the requirement.

The amount of sick pay is set at:

The employee's standard rate of pay (or minimum wage, if greater) for leave taken in situations 1, 2 and 3 discussed above and two-thirds of that amount for leave taken in situations 4, 5 and 6 above.

The maximum amount of paid sick time is:

$511 per day ($5,110 in total) for leave paid because of situations 1, 2 and 3 above

$200 per day ($2,000 in total) for leave paid due to situations 4, 5 and 6 above

The duration of the sick pay is 80 hours for full-time employees and equal to the average hours worked over a two-week period for part-time workers.

What is the tax credit applied against?

The credit can be used against the employer's portion of Social Security (6.2%) and Medicare (1.45%) taxes.

Do self-employed taxpayers also qualify for the credit?

Eligible self-employed individuals are eligible for a refundable credit against income tax for qualified family leave and qualified sick leave equivalent amounts.

An eligible self-employed individual is an individual who regularly carries on any trade or business (as defined in Sec. 1402) and would be entitled to receive paid leave under the Emergency Paid Sick Leave Act if the individual were an employee.

EMPLOYEE RETENTION CREDIT FOR EMPLOYER SUBJECT TO CLOSURE DUE TO COVID-19

An eligible employer is allowed a credit against applicable employment taxes for each calendar quarter equal to 50% of qualified wages for each employee for such calendar quarter. The amount of qualified wages for any employee taken into account by an employer for all calendar quarters is limited to $10,000.The credit is limited to the employment taxes owed as reduced by other credits (including the Sick Leave and Family and Medical Leave credits under the Families First Coronavirus Response Act) for all employees of the eligible employer for such calendar quarter. If the employee retention credit exceeds this amount, the difference is an overpayment which can be refunded.

An eligible employer is one who (a) was carrying on a trade or business during calendar year 2020; (b) with respect to any calendar quarter for which (i) operations are fully or partially suspended due to orders from an appropriate government authority limiting commerce, travel, or group meeting due to COVID-19 or (ii) in which (beginning in first calendar quarter after 12/31/2019) there has been a significant decline in gross receipts (i.e., less than 50% gross receipts for same quarter in prior year and ending with calendar quarter for which gross receipts are greater than 80% same calendar quarter in prior year. Tax exempt organizations can also benefit from this credit.

OTHER BUSINESS TAX PROVISIONS

NET OPERATING LOSS (NOL) RULES ARE RELAXED

Many of the rules limiting the use of net operating losses under the Tax Cuts and Jobs Act (TCJA) are suspended under the Stimulus Bill. NOLs from 2018, 2019 or 2020 are eligible to be carried back for five years.

Additionally, the 80% limit on use of NOL carryforwards is also temporarily removed so that the NOL can fully offset income. Those impacted by this rule should seek to carry back available losses to obtain refunds.

EMPLOYER AND SELF-EMPLOYER INDIVIDUAL DEFERRAL OF PAYROLL TAXES

Employers and self-employed individuals can defer the payment of the employer portion of employment taxes or self-employment taxes due during the "payroll tax deferral period" to December 31, 2021, and December 31, 2022. 50% of the deferred taxes will be required to be paid on these dates. Penalties will not apply for failure to make timely deposits for withholding these amounts. The Payroll Tax Deferral Period is defined as the period beginning on date of enactment to January 1,2021. This does not appear to be retroactive to January 1, 2020.

LIMITATION OF INDIVIDUALS' USE OF BUSINESS LOSSES

Under the TCJA, non-corporate taxpayers' net business losses were limited under IRC section 461(l) to $250,000 ($500,000 for a joint filer). The Stimulus Bill would permit use of net business losses without limit for the 2018 tax year through 2020. If you were limited in the use of carryover used in 2018, this can produce a refund opportunity.

BONUS DEPRECIATION ALLOWED ON QUALIFIED IMPROVEMENT PROPERTY (QIP)

The Tax Cuts and Jobs Act intended to permit immediate write-off of costs related to Qualified Improvement Property. Due to a drafting error, this provision was not put into that legislation and caused QIP only to be eligible for depreciation over 39 years. The Stimulus Bill fixes this drafting error and specifically permits bonus depreciation to be taken on qualified costs retroactively. This allows amendment of 2018 and 2019 filed returns and provide a source of cash.