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FLORIDA'S BUSINESS LAW FIRM

CLIENT ALERT - COVID-19: IMPLICATIONS OF NEW COVID-19 RELIEF PACKAGE FOR BUSINESSES

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Late last night, Congress passed a long-awaited additional stimulus package to address further impacts from the COVID-19 pandemic. While not yet signed by the President, the bill contains several provisions which, if enacted as expected, could provide additional relief to businesses.

First, and perhaps most impactful, the bill clarifies that expenses paid with Paycheck Protection Program (PPP) proceeds such as rent and utilities can be deducted as business expenses. This is a significant reversal from the positions previously taken by the IRS and Secretary Mnuchin, and a welcome addition to the previously-established position that PPP loan forgiveness would not constitute taxable income.

Second, the bill makes significant changes to the PPP. As with all things PPP-related, however, the devil will be in the details which we will not have until the SBA issues its implementing regulations. Here is a list of the key points of the PPP changes provided in the bill:

- The bill establishes new rules for new PPP borrowers and those existing PPP borrowers who have not yet applied for forgiveness.
- The bill establishes 4 new categories of expenses allowed to be paid for with PPP loan proceeds: **covered operations expenditures** such as software or cloud computing services that facilitate business operations, **covered property damage** costs for property damage resulting from vandalism or looting stemming from public disturbances in 2020 not otherwise covered by insurance, **covered supplier costs**, and **covered worker protection** costs related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19. Keep in mind, however, that the bill does not change the cap on overall non-payroll expenses to 40% of the amount forgiven.
- The bill establishes new options for covered periods. Rather than having to choose either an 8-week or 24-week covered period, a borrower can now choose any period lasting between 8 and 24 weeks.
- The bill establishes a streamlined forgiveness process for PPP loans under $150,000. Not only is the forgiveness application shorter, the risk of an audit is limited to fraud or misuse of funds. It is also possible but not yet clear that these small borrowers might escape the reductions to forgiveness related to reductions in salaries or employee headcount.
- The bill establishes a second round of PPP loans. These loans appear to be more targeted in that eligibility is capped at 300 employees (down from 500), and eligible businesses must be able to document a 25% drop in gross receipts during a quarter in 2020 compared to that same quarter in 2019. If eligible, though, certain businesses in the hospitality industry (bars, restaurants and hotels, for example) may be eligible for up to 3.5 times it average monthly payroll (up from the standard 2.5 times). These loans are capped at $2 million.
- The bill establishes specific grant relief for certain shuttered venue operators such as promoters, theatrical producers, live performing arts operators, museum operators, and some movie theater operators.

Finally, the bill contains several other provisions designed to assist businesses including, for example, deadline extensions both for the Employee Payroll Tax Deferral as well as the payroll tax credit offered under the Families First Coronavirus Response Act.

It is important to note that one provision many businesses were hoping would make it into the bill, namely liability protection from virus-related lawsuits, did not make it into the bill. Whether a predicted "avalanche" of lawsuits by worker and/or customers will hit or not remains unclear, as does whether Congress will attempt to address this issue in the near future. In the meantime, businesses are urged to continue to exercise reasonable care in deploying cost-effective precautions to prevent infection, complying with laws, regulations and orders protecting public health and safety, conforming to industry standards for health and safety, and documenting all such steps.

We will continue to monitor the bill as it makes its way to the President's desk, as well as the SBA's actions in issuing guidance and regulations regarding these new provisions.

The COVID-19 pandemic continues to create rapidly-changing issues for businesses, and government aid processes and measures designed to assist businesses may also change materially from when this Client Alert is issued. We therefore encourage you to monitor our website, review our future Client Alerts and generally remain alert for additional updates or modifications to laws and regulations.

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