



CARES Act Webinar - IOGA

ACT
with confidence

April 16, 2020

Session Overview

- Introduction

- ▣ Panelists:

- Marc A. Monteleone, Esquire – Bowles Rice
 - J. Marlin Witt, CPA, CFP®

- Question & Answers

- ▣ Q&A function

- ▣ Email questions to marlin.witt@actcpas.com

Session Overview

- Provide an overview of the CARES Act and other benefits to businesses specifically as it relates to:
 - ▣ Update on loans available to businesses:
 - Paycheck Protection Program
 - Main Street Lending Program
 - ▣ Overview of Relevant Tax Provisions:
 - Stimulus Checks
 - Retirement Plan Provisions
 - Charitable Contributions

Session Overview

- Provide an overview of the CARES Act and other benefits to businesses specifically as it relates to:
 - Overview of Relevant Tax Provisions:
 - Excess Business Loss Limitation
 - NOL Carryback Provisions
 - Section 163(j) Interest Limitation
 - Qualified Improvement Property
 - Retirement Plan Provisions

Session Overview

- Provide an overview of the CARES Act and other benefits to businesses specifically as it relates to:
 - ▣ Payroll Taxes
 - Payroll Tax Deferral
 - Retention Credit
 - Sick Leave and Emergency Medical Leave Credit

Links to Important Resources

- ACT COVID-19 Resource Center
 - ▣ <https://www.actcpas.com/knowledge/covid-19-resource-center>
- Small Business Administration
 - ▣ <https://www.sba.gov/>
 - ▣ <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
 - ▣ <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
 - ▣ <https://www.federalreserve.gov/monetarypolicy/main.htm>

Disclaimer

- The CARES Act was passed by Congress and signed by the President on March 27, 2020. The Act is comprised of approximately 880 pages. Guidance and clarifications relative to the Act is supposed to be issued within 30 days of enactment. In the meantime, we must rely on our interpretation of the statute. We cannot provide assurance at this time that our interpretation will ultimately be supported by future guidance.

Income Tax Provisions

Excess Business Loss Limitations

- The CARES Act postpones the excess business loss limitation for tax years beginning in 2018, 2019, and 2020.
 - ▣ Excess business loss limitation will apply to tax years beginning **after** December 31, 2020.
 - ▣ Applicable to noncorporate taxpayers

- Under TCJA, excess business losses were limited after passing a threshold amount.
 - ▣ \$250,000 for single taxpayers
 - ▣ \$500,000 for joint filers

Excess Business Loss Limitations (continued)

- Provides technical amendments to the excess business loss computation, relevant for tax years beginning after December 31, 2020.
 - ▣ Aggregate deductions are computed without regard to NOLs or Sec. 199A
 - ▣ W-2 wages will not be considered business income for purposes of the computation
 - ▣ Capital losses from a trade or business will not be taken into account in computing excess business loss

Excess Business Loss Limitations (continued)

- Tax returns for 2019 should not include an excess business loss limitation.
 - ▣ NOL carryovers originating from 2018 excess business losses will need to be recomputed prior to filing.

- 2018 returns may need to be amended.
 - ▣ Excess business losses previously limited may be used fully to offset 2018 taxable income.
 - ▣ Any loss not fully absorbed may create an NOL which could be carried back 5 years.
 - ▣ Potential relief under IRS Notice 2020-26, extension of time to file tentative carryback adjustment (Forms 1045 and 1139)

 - ▣ State conformity issues – may be a problem in states with fixed-date conformity.

Net Operating Loss Provisions

- Net Operating Losses (NOLs) arising in tax years beginning in 2018, 2019, or 2020 now have a five year carryback period under the CARES Act.
 - ▣ May be carried forward indefinitely.

- Taxpayers may elect out of the five year carryback period if it is not beneficial.
 - ▣ Time for filing the election to forgo the carryback has been extended.
 - ▣ For NOLs arising in 2018 or 2019, the election to forgo the carryback is extended to the due date (including extensions) for filing the taxpayer's return for the first taxable year ending after March 27, 2020.

Net Operating Loss Provisions (continued)

- The CARES Act also suspends the 80% taxable income limitation on the ability to use an NOL.
 - Applicable to tax years beginning in 2018, 2019, and 2020.

- Any unused NOLs arising in 2018 through 2020 will be subject to the 80% taxable income limitation for tax years beginning in 2021.

Net Operating Loss Provisions (continued)

- NOLs carried back may not be used to offset Section 965 income (transition tax).
 - Taxpayer is treated as having made the election to not use NOLs to offset Sec. 965 income.
 - Taxpayers may elect to exclude Sec. 965 income years from the carryback period.
 - Election must be made by the due date (including extensions) for filing the return for the first tax year after March 27, 2020

Net Operating Loss Provisions (continued)

□ IRS Notice 2020-26

- Extends the period of time for submitting Form 1139, Corporation Application for Tentative Refund and Form 1045, Application for Tentative Refund.
- For 2018 calendar year taxpayers, the tentative refund claim must be submitted by June 30, 2020.
- Allows for expedited refunds.

Section 163(j) – Business Interest Limitation

- The CARES Act increases the general limitation on the amount of deductible business interest expense from 30% of adjusted taxable income (ATI) to 50% of ATI.
 - ▣ The limitation is still increased by the taxpayer's business interest income and floor plan financing.

- Applicable for tax years beginning in 2019 and 2020 (except for partnerships).

Section 163(j) – Business Interest Limitation (continued)

- For partnerships, the 50% of ATI limitation is only applicable for tax years beginning in 2020.
 - ▣ Still 30% ATI limitation for 2019.

- For partners receiving allocations of excess business interest for 2019:
 - ▣ 50% of the excess business interest will be treated as business interest not subject to the Sec. 163(j) limitation, and
 - ▣ 50% of the excess business interest will be subject to the Sec. 163(j) rules previously in place.
 - Subsequent allocation of excess taxable income or excess business interest income.

Section 163(j) – Business Interest Limitation (continued)

- Taxpayers may elect to use 2019 ATI for 2020 Sec. 163(j) limitation.
- Intended to allow for additional deduction in 2020 assuming taxable income has been negatively impacted by the pandemic.
- For partnerships, this election is made by at the partnership level.

Qualified Improvement Property

- Technical correction under the CARES Act provides that qualified improvement property (QIP) will be treated as 15 year property.
- Eligible for 100% bonus depreciation.
- Applies to QIP placed in service after December 31, 2017.

Qualified Improvement Property (continued)

- Taxpayers may be able to file amended returns for 2018 to claim the additional deductions.
 - ▣ Coordination and planning with expanded NOL carryback.
 - ▣ Alternatively, an accounting method change may be filed.

- It is possible that the IRS will issue procedural guidance for correcting the failure to claim bonus on the QIP.

- Guidance will also be necessary for taxpayers wanting to elect out of bonus depreciation.
 - ▣ Allowed or allowable trap.

- State conformity issues.

Retirement Plan Provisions

- COVID-19 related distributions from retirement plans
 - ▣ not subject to 10% penalty
 - ▣ \$100,000 aggregate limit in 2020
 - ▣ Spread over 3 years – 2020 through 2022
 - Can be repaid within 3 years – avoid income recognition
 - Taxpayer or spouse diagnosed – COVID-19
 - Experiences financial hardship related to COVID-19
- Elimination of Required Minimum Distributions for 2020
 - ▣ Applies to IRAs and certain defined contribution plans
 - ▣ Plan amendments to comply must be made on or before the first plan year beginning on or after January 1, 2022
 - ▣ 5 year distribution rules – ignore 2020

Retirement Plan Provisions (continued)

- Retirement Plan Loans
 - ▣ Limit increased to \$100,000 (up from \$50,000)
 - ▣ Outstanding loans
 - repayment dates between 3/27 and December 31, 2020 are delayed by one year.
 - Subsequent payments as well as interest accruals are deferred accordingly

Charitable Contributions

- Cash contributions limit increased for 2020
 - ▣ 100% of AGI limitations (up from 60%)
- Corporate limit increased for 2020
 - ▣ 25% of Taxable Income (up from 10%)
- Non-itemizers
 - ▣ \$300 above the line deduction for 2020

Corporate AMT Credits

- Excess minimum tax credits
 - Corporations
 - Remaining from TCJA repeal of Corporate AMT
 - 50% refundable in 2018 tax year
 - All remaining refundable in 2019 tax year
 - May elect to take the entire amount in 2018 tax year

Payroll Tax Provisions

Payroll Tax Penalty Relief

- Eliminates Penalties for failure to deposit payroll taxes
 - To extent of refundable tax credits
 - Families First Act
 - Qualified Leave wages
 - CARES Act
 - Retention Credit
 - Payroll Tax Deferral

Delay of Payment of Employer Payroll Taxes

- The Act provides that employers and self-employed individuals may defer 50% of Federal payroll taxes.
 - For payroll taxes incurred between March 27, 2020 through December 31, 2020
 - Employer's portion of the Old-Age, Survivors, and Disability Insurance (OASDI) Tax - 6.2% percent
 - 6.2% of OASDI for self-employed individuals

Delay of Payment of Employer Payroll Taxes

- Extended payment dates
 - 50% of deferred payroll taxes due December 31, 2021
 - Remaining balance due December 31, 2022
- Deferral period does not apply to taxpayers with loan forgiveness under the Paycheck Protection Program.

Retention Credit

- Up to \$5,000 per employee
 - ▣ Operations impacted by the shutdown
 - ▣ Significant decline in gross receipts (50%)
 - ▣ Until gross receipts returns to 80%
 - ▣ 50% of Qualified Wages up to \$10,000
 - ▣ Refundable credit against EE and ER - 6.2% OADSI
- Employers < 100 employees
 - ▣ Applies to all employees
- Employers >100 employees
 - ▣ Applies to affected employees

Retention Credit

- Available to tax exempt – for Shutdown
- Wages
 - ▣ based on similar period prior year
 - ▣ include allocable health care costs
- Not available:
 - ▣ 45S Credit claimed
 - ▣ If Small business interruption loans are taken

Payroll Taxes by Provision

- Retention Credit
 - ▣ Normal Wages paid
- Paid Sick and FMLA Leave
 - ▣ Payments not subject to Employer OASDI (6.2%)
 - ▣ Payments subject to HI/Medicare (1.45%)
- Payroll Tax Deferral
 - ▣ Employer Share of OASDI (6.2%) payroll taxes deferred

Families First Coronavirus Response Act

- Emergency Sick and FMLA Leave
- Employers \leq 500
 - ▣ For COVID-19 affected employees
 - Emergency Sick Leave
 - Expanded FMLA coverage
- Effective April 1, 2020
- 80 hours for full time employees
- Offsetting tax credit against payroll taxes
 - ▣ Credit is for amounts paid for leave
 - ▣ Can offset federal payroll tax deposits
 - ▣ Apply for refund if credit is greater than liability (Form 7200)

Families First Coronavirus Response Act

- Emergency Sick Leave – 100% pay rate
 - Employee subject to Federal, State, or local quarantine or isolation order related to COVID-19
 - Employee has been advised by health care provider to self quarantine due to concerns related to COVID-19
 - Employee is experiencing symptoms of COVID-19 and is seeking diagnosis
 - \$511 per day/\$5,110 aggregate maximum

Families First Coronavirus Response Act

- Emergency Sick Leave – 2/3 pay rate
 - Employee is caring for an individual who is subject order in 1 or 2 above
 - Employee is caring for a son or daughter if school or place of care is closed due to COVID-19 precautions
 - Is experiencing any other substantially similar condition specified by the HHS
 - \$200 per day/\$2,000 aggregate maximum

Families First Coronavirus Response Act

- FMLA Expansion – 2/3 pay rate
 - ▣ Expands FMLA
 - ▣ Covers employers with less than 50 employees – for this provision only
- Covers 10 weeks
 - ▣ First two weeks unpaid/PTO/Other Sick time, etc
 - ▣ Employee is caring for a son or daughter if school or place of care is closed due to COVID-19 precautions
 - ▣ \$200 per day/\$2,000 aggregate maximum

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Paycheck Protection Program

Basic Facts of Paycheck Protection Program (PPP)

- \$349 billion appropriated to PPP
- The application period runs through June 30, 2020
- Application window is open for all entities that qualify
- President Trump and Secretary of Treasury Mnuchin are requesting additional funding for the PPP

Key Highlights of the PPP

- Loan proceeds up to \$10 million
- To the extent that loan proceeds are used for qualifying uses, principal will be forgiven
- Loan principal forgiven will not constitute taxable income
- Loan bears interest at 1.0%
- Payments under PPP loans will be deferred for 6–12 months
- Loan matures in 2 years
- No certification from borrower that it is unable to obtain credit elsewhere
- No collateral requirement
- No personal guarantees
- No fees paid by the borrower

Who May Participate

- Small businesses, generally defined as less than 500 employees – exceptions do apply
 - Can qualify based on employee or revenue size standard corresponding to primary industry
 - Alternative size standard test as of March 27, 2020 – can qualify if both tests met
 - Maximum tangible net worth of business is not more than \$15 million
 - Average net income after federal income taxes for last 2 full fiscal years before application date is not more than \$5 million
- Some nonprofits, mostly 501(c)(3)
- Includes independent contractors and those who are self-employed

PPP Q&A dated April 8, 2020

- Clarifies the \$100,000 cap
 - ▣ Cash compensation is capped at \$100,000
 - ▣ Non-cash benefits are add-on's:
 - Employer contributions to DB or DC plans
 - Payments for provision of group health care coverage, including insurance premiums
 - Payment of state and local taxes assessed on compensation of employees
- Payroll costs are calculated on a gross basis

PPP Q&A dated April 8, 2020

- Period used to determine average 12 month's of payroll costs can be used calendar year 2019 OR 12 months preceding application date
- Payments made to independent contractors or sole proprietors should be excluded from payroll costs

PPP Accounting – Journal Entries

- Entry to record PPP loan
 - ▣ Dr. Cash (either existing or new bank account)
 - Cr. Loan Payable under PPP (or how the client wants to call it but segregated from other loans)

- Entry to record “allowable costs” under the PPP
 - ▣ Dr. Payroll expense
 - ▣ Dr. Utilities
 - ▣ Dr. Rent (or interest on covered mortgage)
 - Cr. Cash (either existing or new bank account)

PPP Accounting – Journal Entries

- Entry to record transfer between bank accounts

- ▣ Dr. Cash (existing bank account)

- Cr. Cash (new PPP bank account)

- This entry is to record a transfer between bank accounts for allowable costs if a company sets up a new bank account and pays out of existing account

- It is imperative to have adequate documentation and tracking of allowable expenses under the PPP Loan

- Forgiveness accounting – To be Determined!

Main Street Lending Program

Basic Facts of Main Street Lending Program (MSLP)

- ❑ Launched by Federal Reserve on April 9
- ❑ \$600 billion lending program for small and medium sized businesses
- ❑ Federal Reserve is seeking comments through April 16, 2020
- ❑ 4 year loans for businesses that qualify
- ❑ Principal and interest payments will be deferred for 1 year
- ❑ Borrowers who took out a PPP loan can still get a MSLP loan

MSLP Highlights

- Who is an eligible borrower:
 - Businesses with less than 10,000 employees, OR
 - 2019 annual revenues up to \$2.5 billion
- How much can be borrowed:
 - Main Street New Loan Facility (MSNLF) – new loans that originate on or after April 8, 2020 (lesser of):
 - \$25 million
 - An amount, when added to the borrower’s existing outstanding and committed (but undrawn) debt, does not exceed 4x 2019 EBITDA

MSLP Highlights

- How much can be borrowed:
 - Main Street Expanded Loan Facility (MSELF) – allows banks to increase the size of an outstanding loan issued prior to April 8, 2020 (lesser of):
 - \$150 million
 - 30% of the borrower’s existing outstanding and committed (but undrawn) debt
 - An amount, when added to the borrower’s existing outstanding and committed (but undrawn) debt, does not exceed 6x 2019 EBITDA

MSLP Highlights

- A borrower cannot participate in both a MSNLF and MSELF
- Loan terms are 4 year maturity
- Adjustable rate of Secured Overnight Financing Rate (SOFR) plus 250-400 basis points
- Minimum loan size of \$1 million

MSLP Highlights

- Requires various attestations by borrower:
 - Requires financing due to COVID-19 and will use those funds to make reasonable efforts to maintain payroll and retain employees during the term of the loan
 - Cannot use the proceeds of the loan to repay other loan balances
 - Must commit to refrain from repaying other debt of equal or lower priority (other than mandatory principal payments) until MSLP loan is paid in full

MSLP Highlights

- Requires various attestations by borrower:
 - Will follow compensation, stock repurchase and capital distribution restrictions through the duration of the loan AND for 12 months following the date on which the loan is paid off:
 - May not repurchase an equity security listed on National Exchange
 - May not pay dividends or make other capital distributions with respect to the common stock of the business
 - Must comply with limitations on compensation under Section 4004 of the CARES Act:
 - Certain limits on compensation for officers or employees with total compensation of \$425,000 in 2019 – can't receive more than that during the covered period
 - Officers and employees with total compensation over \$3 million in 2019 shall not receive total compensation over \$3 million and 50% of the excess over \$3 million of what was received in 2019.