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INSIDE THIS ISSUE

House Vote Expected Soon on Bipartisan PPP Bill

The House is expected to vote during the week of May 25 on a stand-alone, bipartisan Paycheck Protection Program (PPP) bill. The measure, HR 6886, was introduced by Reps. Chip Roy, R-Tex., and Dean Phillips, D-Min., and would make a number of changes to the Coronavirus Aid, Relief, and Economic Security (CARES) Act's (P.L. 116-136) small business loan program.

Paycheck Protection Program Flexibility Act

House Speaker Nancy Pelosi, D-Cal., told reporters on May 20 that the House would take up the stand-alone PPP bill, which would extend loan repayment and rehiring timelines, among other things. Generally, there is bipartisan support in the Senate for extending loan forgiveness for expenses beyond the eight-week covered period.

Although the bill was originally included in the recent House-passed $3 trillion economic relief package that was narrowly approved, Senate leadership has made it abundantly clear the upper chamber will not take up that measure. Thus, the House is now moving to vote on the stand-alone PPP bill to enact a number of changes currently receiving both congressional and industry support. "We saw a quick fix on how we could make this work better," Pelosi said.

According to Roy's office, the PPP bill would:

- allow forgiveness for expenses beyond the eight-week covered period;
- eliminate restrictions limiting non-payroll expenses to 25 percent of loan proceeds;
- eliminate restrictions that limit loan terms to two years;
- ensure full access to payroll tax deferment for businesses that take PPP loans; and
- extend the rehiring deadline to offset the effect of enhanced Unemployment Insurance.

Trump Administration Signals Support

Notably, the Trump administration has signaled its support for extending the forgiveness for expenses beyond the eight-week period. President Trump has said the extension "should be easy." Additionally, Treasury Secretary Steven Mnuchin told lawmakers during a recent Senate Banking Committee hearing that the Trump administration wants to work with Congress to get it done. "Companies are really having issues."

Treasury, SBA Release PPP Loan Forgiveness Application

SBA Paycheck Protection Program Loan Forgiveness Application; Treasury Press Release, May 15, 2020

Treasury and the Small Business Administration (SBA) have worked together to release the Paycheck Protection Program (PPP) Loan Forgiveness Application. According to Treasury's May 15 press release, the application and correlating instructions inform borrowers how to apply for forgiveness of PPP loans under the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act (P.L. 116-136). The PPP was enacted under the CARES Act to provide eligible small businesses with loans during the COVID-19 pandemic.

Additionally, SBA is expected to issue regulations and guidance to assist borrowers as they complete their applications, and to provide lenders with guidance on their responsibilities, according to Treasury.

IRS Adds Phone Operators for Economic Impact Payment Queries

The IRS will be adding 3,500 telephone representatives to answer queries about Economic Impact Payments. IRS Telephone Assistance and other services will remain limited, but answers for most common questions related to Economic Impact Payments are available on the IRS website (https://www.irs.gov/coronavirus/economic-impact-payment-information-center).

The IRS urges taxpayers to use the IRS website for obtaining updated answers to frequently asked questions about Economic Impact Payments and the Get My Payment tool. Those who wish to know the status of their Economic Impact Payment should check the Get My Payment webpage regularly. The information there is frequently updated as the IRS continues to process the remaining payments for delivery. Those eligible for an Economic Impact Payment but not required to file a tax return should use the Non-Filers tool if they wish to register for a payment.

IR-2020-97

Measures included in the application and instructions intended to reduce compliance burdens and simplify the process for borrowers include:

- options to calculate payroll costs using an "alternative payroll covered period" that aligns with borrowers' regular payroll cycles;
- flexibility to include eligible payroll and non-payroll expenses paid or incurred during the eight-week period after receiving their PPP loan;
- step-by-step instructions on how to perform the calculations required by the CARES Act to confirm eligibility for loan forgiveness;
- borrower-friendly implementation of statutory exemptions from loan forgiveness reduction based on rehiring by June 30; and
- the addition of a new exemption from the loan forgiveness reduction for borrowers who have made a good-faith, written offer to rehire workers that was declined.

Credits Available for Funding Coronavirus-Related Paid Leave

FS-2020-6

The IRS is urging qualifying employers to use the new employment tax credits to which they are entitled to cover the costs associated with providing paid sick leave and paid family and medical leave to employees unable to work due to the coronavirus (COVID-19). The credits are refundable to the employer if the amount of the credit exceeds the amount of tax owed. These credits were provided by the Families First Coronavirus Response Act (P.L. 116-127), and are available to eligible employers beginning April 1, 2020, for qualifying leave they provide between April 1, 2020, and December 31, 2020.

Eligible Employers

Eligible employers are businesses (including tax-exempt organizations) that have fewer than 500 full-time and part-time employees within the United States or any U.S. territory or possession, and that meet certain employer paid leave requirements. The U.S. Department of Labor has

REFERENCE KEY

USTC references are to ***U.S. Tax Cases***
Dec references are to ***Tax Court Reports***

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provided information on the 500-employee threshold and the paid leave requirements (see https://www.dol.gov/agencies/whd/pandemic/ffcra-questions).

Required Paid Leave

Employees who are unable to work or telework because they are quarantined or experiencing COVID-19 symptoms and seeking a medical diagnosis can receive up to 80 hours of *paid sick leave*. This pay is at their regular rate of pay (or the applicable minimum wage if higher), up to $511 per day and $5,110 in total. Employees also can receive up to 80 hours of paid sick leave at 2/3 of their regular pay (or the applicable minimum wage if higher), up to $200 per day and $2,000 in total, if either (1) they need to care for an individual subject to quarantine, a child whose school or place of care is closed, or a child whose child-care provider is unavailable, due to COVID-19, or (2) they are experiencing similar conditions, as specified by the U.S. Department of Health and Human Services.

In addition, an employee who is unable to work or telework because of a need to care for a child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19 is entitled to *paid family and medical leave*, equal to 2/3 of the employee's regular pay, up to $200 per day and $10,000 in total. An employee qualifies for paid family and medical leave if they have been on an employer's payroll for 30 calendar days or more.

IRS Issues Guidance on USMCA

The IRS has released guidance on the Agreement between the United States of America, the United Mexican States and Canada (USMCA). Upon its entry into force, the USMCA will supersede the North American Free Trade Agreement (NAFTA). The USMCA sets forth modernized standards for trade and investment among the three countries going forward. The Treasury and the IRS, including the U.S. Competent Authority, believe that any reference to NAFTA in a U.S. bilateral income tax treaty should be interpreted as a reference to the USMCA. The Treasury and the IRS will reach out to countries that have an applicable tax treaty containing references to the NAFTA to confirm that they agree with this interpretation.

Announcement 2020-6

Paid Leave Credits

An eligible employer is entitled to a fully refundable tax credit equal to the required paid sick leave wages and/or required paid family leave wages. Eligible employers can also get an additional credit for the employer's share of Medicare tax imposed on the qualified sick leave wages and/or the qualified family leave wages, and its cost of maintaining health insurance coverage for the employee during the particular leave period. The employer is not subject to the employer portion of Social Security tax on those wages.

Claiming the Credits

Eligible employers report their total qualified leave wages and the related credits for each quarter on their federal employment tax return, usually Form 941, Employer's Quarterly Federal Tax Return. They can benefit by reducing their federal employment tax deposits for that quarter by the amount of the qualified leave wages, allocable qualified health plan expenses, and the employer's share of Medicare tax on the wages. They will account for the reduction in deposits due to the leave credits on the Form 941 they file at the end of the quarter.

If an eligible employer does not have enough federal employment taxes to cover the amount of the credits after it has deferred deposits of employer Social Security taxes, the employer can request an advance payment of the credits from the IRS by submitting a completed Form 7200, Advance Payment of Employer Credits Due to COVID-19, to the IRS via fax, at 855-248-0552.

Advice Issued on Abandonment Loss Deduction of Capitalized Costs

AM 2020-003

The IRS has advised that a taxpayer may not deduct as an abandonment loss under Code Sec. 165 previously capitalized costs that facilitated an initial public offering when the taxpayer later ceases to be a publicly traded company as a result of a take private transaction. The costs would be capitalized via netting against the proceeds, so there would be no amount to later recover.

An abandonment loss was would not be available to the taxpayer upon consummation of the take private transaction. No abandonment occurred because the taxpayer would continue to benefit from once being a publicly traded company. Benefits the taxpayer identified—such as the ability to raise capital quickly to fund strategic acquisitions, an enhanced public profile, name recognition and the ability to attract management and employees—affected its corporate structure. These benefits were not an isolated item which the taxpayer could abandon, but rather they already affected the taxpayer's corporate structure and continue to provide benefits to it.

Additional Partner Materials Provided for Economic Impact Payments

IR-2020-96

The IRS has announced the availability of additional material for partner groups sharing information related to Economic Impact Payments. This includes a new partner toolkit in Spanish, and a variety of other print and visual items. To help reach people who do note normally file a tax return, the IRS has embarked on a sweeping outreach effort to share information in multiple languages inside and outside the tax community. The IRS has also partnered with new organizations that work with groups focusing on veterans, homeless, low-income taxpayers, as well as non-English speaking audiences to share information about the payments.

The materials are available at the IRS's Economic Impact Payments: Partner and Promotional Materials website, which includes:

- IRS e-posters and Twitter images that can be used on websites, social media, newsletters and other platforms; and
- print materials that include Tax Tips and "Ready to Use" articles that can be shared with family, friends, partners and clients in emails, newsletters and web sites.

The IRS has also introduced a special partner toolkit, available in both Spanish and English, which offers a summary of various items related to Economic Impact Payments that partner groups can share. The organizations are encouraged to share new developments related to Economic Impact Payments and other provisions related to the CARES Act via Twitter, Facebook, Instagram and YouTube.

As part of the wider outreach effort, the IRS has been working with other federal agencies to share information, such as the Treasury Department, the Bureau of Fiscal Service, the Social Security Administration, and the Department of Veterans Affairs. Other federal agencies that have additional information of interest to taxpayers include:

- *FDIC:* The FDIC website has created a special page which includes information for people describing where to find a bank that can open an account online and how to choose the right account.
- *Consumer Financial Protection Bureau (CFPB):* CFPB has produced several videos related to Economic Impact Payments and other COVID-19 information.

2021 Health Savings Account Inflation Adjustments

The IRS has released the 2021 inflation-adjusted amounts for health savings accounts under Code Sec. 223. For calendar year 2021, the annual limitation on deductions for an individual with self-only coverage under a high-deductible plan is $3,600 ($7,200 for an individual with family coverage). A "high-deductible health plan" is a health plan with an annual deductible that is not less than $1,400 for self-only coverage or $2,800 for family coverage, and annual out-of-pocket expense limits (deductibles, copayments and other amounts, but not premiums) that do not exceed $7,000 for self-only coverage or $14,000 for family coverage.

Rev. Proc. 2020-32

TAX BRIEFS

Bankruptcy

A federal district court decision requiring the IRS to remit a tax overpayment to Chapter 7 bankruptcy debtors was vacated and remanded. The plain language of Code Sec. 6402(a), and of 11 U.S.C. §553(a) of the Bankruptcy Code, dictated that the government's right of offset could not be subordinated or otherwise affected by the debtors' attempt to claim their tax overpayment as exempt property. (Vacating and remanding a DC Va. decision, 2018-2 USTC ¶50,406.)

Copley, CA-4, 2020-1 USTC ¶50,135

Liens and Levies

Forms 12257, Summary Notice of Determination, Waiver of Right to Judicial Review of a Collection Due Process Determination, and Waiver of Suspension of Levy Action, executed by an individual taxpayer and IRS Appeals were not contracts that obligated the IRS to refrain from further collection action. Internal Revenue Manual (IRM) 8.22.9.13 does not apply to Forms 12257, so Appeals was free to make a determination contrary to those reflected in the Forms 12257 without abusing its discretion. Further, Appeals had no duty to inform the taxpayer of her late husband's estate's efforts to secure credit for the payments in issue or its receipt of legal advice supporting the estate's position.

Richlin, TC, Dec. 61,670(M)

There was no abuse of discretion by an IRS settlement officer (SO) in sustaining a notice of federal tax levy. The taxpayers failed to make a concrete proposal for a collection alternative and the SO was not required to make one for them. The taxpayers failed to supply the necessary supporting financial information even a month after the deadline had passed.

Nesbitt, TC, Dec. 61,671(M)