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MEMORANDUM

To: Clients

From: Schultheis & Panettieri, LLP

Date: March 15, 2021

We are providing this memorandum to ensure that you are aware of information contained in the recently enacted HR 1319 commonly referred to as the **American Rescue Plan Act of 2021,** ("ARPA") which contains additional tax and economic COVID-19 relief for individuals and small businesses. Provisions of ARPA are effective March 11, 2021 unless otherwise stated below. In addition, ARPA includes provisions that affect retirement plans. Highlights of the legislation are as follows:

I. <u>2021 Recovery Rebates to Individuals</u>

Advance direct payments of up to $1,400 per person and $2,800 per married couple will be provided based on information in the taxpayer's 2019 income tax return or, if already filed, the 2020 income tax return. Individuals, head of household, and joint filers with adjusted gross income ("AGI") of less than $75,000, $112,500, and $150,000, respectively, would receive the full payment, but those earning more will see their payments phased out. Payments would stop entirely for those with AGI of more than $80,000, $120,000 and $160,000, respectively. In addition, taxpayers will receive an additional $1,400 for each dependent.

II. <u>Child Tax Credit</u>

The annual credit will be increased up to a maximum of $3,000 per child under age 18 ($3,600 for children under age 6) for the 2021 tax year only. Individuals, head of household, and joint filers with AGI of less than $75,000, $112,500, and $150,000, respectively, would receive the full credit, but those earning more will see their additional credit phased out. The additional credit would stop entirely for those with AGI of more than $95,000, $132,500 and $170,000, respectively. Taxpayers are expected to receive 50 percent of the credit via direct payments from July 2021 to December 2021 with the remaining amount to be claimed on their 2021 income tax return.

III. Unemployment Benefits

ARPA extends certain provisions set forth under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") that have since expired. The provisions include but are not limited to the following:

A. Extends the supplemental $300 weekly benefit provided under the Federal Pandemic Unemployment Compensation ("FPUC") program through September 6, 2021.

B. Extends the enhanced federal unemployment insurance known as Pandemic Emergency Unemployment Compensation ("PEUC") through September 6, 2021 and increases the maximum number of weeks from 50 to 79.

C. Extends the Pandemic Unemployment Assistance ("PUA") program through September 6, 2021 for independent contractors and self-employed individuals and increases the maximum number of weeks from 50 to 79.

D. ARPA includes provisions making the first $10,200 in unemployment compensation received in 2020 not includible in federal gross income for taxpayers with AGI of less than $150,000.

IV. Paycheck Protection Program ("PPP")

This program, originally established under the CARES Act, provides small businesses with potentially forgivable loans to cover certain operating expenses provided the small businesses maintain payroll levels. The following nonprofit entities were previously deemed eligible for PPP via the CARES Act and the Consolidated Appropriations Act 2021 ("CAA 2021"): 501(c)(3), 501(c)(6) and 501(c)(19).

ARPA expands eligibility to include all nonprofit entities described in 501(c) and exempt from tax under 501(a) of the Internal Revenue Code with the exception of 501(c)(4) – Civic Leagues and Social Welfare Organizations. These additional covered nonprofit entities cannot receive more than 15% of receipts from lobbying activities. In addition, lobbying activities cannot comprise more than 15% of total activities and cannot exceed $1 million during the most recent completed tax year prior to February 15, 2020. The additional covered nonprofit entities cannot employ more than 300 employees.

Lastly, these additional covered nonprofit entities would also be eligible for a second draw PPP loan provided they meet the criteria outlined in CAA 2021. Please consult our previous memo dated January 8, 2021 for more information on CAA 2021.

S&P Observation

As of the date of this memorandum, PPP is set to expire March 31, 2021. The American Institute of CPAs (the "AICPA") has testified before Congress urging the administration to consider extending the deadline so the newly eligible entities may take advantage of the program. Legislation on this matter has been introduced to the House of Representatives with hopes that Congress can pursue a standalone vote on this critical matter as ARPA does not include an extension.

V. Credits for Paid Sick and Family Leave

This program, originally established under Families First Coronavirus Response Act ("FFCRA"), provided eligible employees of covered employers with Emergency Paid Sick Leave ("EPSL") and Expanded Family and Medical Leave ("EFML") for specified reasons related to COVID-19. Covered employers were eligible for a federal payroll tax credit for qualified EPSL and/or EFML wages paid to employees during the period April 1, 2020 through December 31, 2020. CAA 2021 allowed for a continued federal payroll tax credit if the employer voluntarily elected to continue to offer the leave through March 31, 2021.

ARPA provides for a program reset effective April 1, 2021 through September 30, 2021. The program continues to be based on voluntary participation by employers as established under CAA 2021.

As the program under ARPA differs slightly from the previous program, we have outlined provisions below:

A. Qualifying reasons and documentation requirements have not changed although ARPA adds the following two covered reasons:

    i. obtaining an immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization; or

    ii. seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19, when such employee has been exposed to COVID-19 or the employer has requested such test or diagnosis.

B. The amount of leave offered under EPSL provides for a reset effective April 1, 2021. Therefore, if an employee already exhausted the 80 hours previously made available prior to April 1, 2021, they would now be eligible for an additional 80 hours of sick leave.

C. Employees no longer have to take the first two weeks under EPSL for COVID reasons related to family care or lack of childcare. Leave can now be taken under EFML immediately and the aggregate cap on EFML is increased to $12,000 accordingly ($200/day for 12 weeks). In addition, the amount of leave offered under EFML provides for a reset effective April 1, 2021. Therefore, employees who have previously exhausted the 400 hours prior to April 1, 2021 are now eligible to have an additional 480 hours of EFML leave.

D. Under FFCRA, employment tax credits are increased by the qualified health plan expenses allocable to, and the employer's share of Medicare tax on, the qualified leave wages. ARPA also increases the employment tax credits for amounts paid pursuant to a collective bargaining agreement for defined benefit pension contributions and apprenticeship program contributions allocable to the qualified leave wages.

VI. Employee Retention Tax Credit ("ERTC")

ERTC, originally established under the CARES Act, provides eligible employers with a credit against employment taxes with respect to qualified wages. CAA 2021 extended and enhanced the program through June 30, 2021. ARPA further extends the tax credit through December 31, 2021.

VII. Premium Tax Credit – Improving Affordability by Expanding Premium Assistance for Consumers

ARPA modifies the affordability percentages used for the refundable premium tax credits in connection with a qualified health plan for 2021 and 2022. These modifications increase the tax credits for individuals eligible for assistance under the current law. ARPA also provides refundable premium tax credits for taxpayers with income below 400 percent of the federal poverty line. This provision is effective for tax years beginning after December 31, 2020.

VIII. Premium Assistance for COBRA Continuation Coverage

ARPA provides COBRA continuation coverage premium assistance ("COBRA subsidy") for individuals to maintain employer-sponsored coverage without having to pay any portion of their premiums through Sept. 30, 2021. ARPA creates a tax credit that employers may apply against the Medicare tax. The COBRA subsidy applies to coverage paid between April 1, 2021 and September 30, 2021.

The COBRA subsidy is only available to individuals who are involuntarily terminated or had their hours reduced. The COBRA subsidy is not considered taxable to the recipient and is available to qualified beneficiaries as well.

The participant may elect to enroll in different coverage provided that coverage does not exceed the premium for coverage in which the individual was previously enrolled in at the time such qualifying event occurred.

Eligible participants must receive a communication from the employer outlining the availability of the COBRA subsidy including the option to select different coverage if applicable. Model notices detailing notification requirements will be made available within 30 days of enactment from the Department of Labor.

IX. Retirement Plan Provisions

A. Temporary Delay of Designation of Multiemployer Plans as in Endangered, Critical, or Critical and Declining Status.

Under ARPA, a plan could elect to "freeze" its funding zone status for either the first or second immediately preceding plan year beginning on or after March 1, 2020 to the same status as the preceding plan year. A plan in endangered or critical status would not have to update its plan or schedules until the plan year beginning on or after March 1, 2021.

Actuarial certification for a plan in critical status, regardless of their election to freeze, will be granted relief from excise taxes imposed for failure to meet minimum funding standards.

B. Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status for 2020 or 2021

Under ARPA, a plan in endangered or critical status for a plan year beginning in 2020 or 2021 could extend its rehabilitation period by five years. This would give a plan additional time to improve its contribution rates, limit benefit accruals, and maintain plan funding. This provision is effective for plan years beginning after December 31, 2019.

C. Adjustments to Funding Standard Account Rules

Funding shortfalls as a result of investment losses are currently required to be made up over a period of 15 years. Under ARPA, for investment losses or reductions in regularly scheduled employer contributions, a plan could use a 30-year amortization base to spread out losses over time. This provision is effective for plan years ending on or after February 29, 2020.

D. Special Financial Assistance Program for Financially Troubled Multiemployer Plans

ARPA creates a special financial assistance program under which cash payments would be made by the Pension Benefit Guaranty Corporation ("PBGC") to financially troubled multiemployer pension plans to ensure that such plans can continue paying retirees' benefits. The PBGC would be provided with the amounts necessary to provide such payments through a general Treasury transfer.

Multiemployer pension plans that would be eligible for this program generally would include plans in critical and declining status and plans with significant underfunding with more retirees than active workers in any plan year beginning in 2020 through 2022. In addition, plans that have suspended benefits and certain plans that have already become insolvent also would be eligible.

Applications for special financial assistance under this program must be submitted no later than December 31, 2025. Once an application is approved, the payment made by the PBGC to the eligible multiemployer pension plan would be made as a single, lump sum payment. The amount of financial assistance would be such amount required for the plan to pay all benefits due during the period beginning on the date of enactment and ending on the last day of the plan year ending in 2051 with generally no reduction in a participant's or beneficiary's accrued benefit. Plans would be required to invest such amounts in investment-grade bonds or other investments as permitted by the PBGC.

In addition, the legislation would increase the PBGC multiemployer plans insurance premium rate to $52 per participant starting in calendar year 2031. Such premium rate would be indexed for inflation.

Summary

We anticipate further developments in connection with ARPA and will keep you apprised of additional guidance as it becomes available. The above is intended to be a summary and does not contain all provisions of ARPA. Please contact our office if you require further details on any of these provisions.