Schultheis & Panettieri LLP
Accountants and Consultants

Please Reply to:
450 Wireless Boulevard
Hauppauge, NY 11788
Telephone: (631) 273-4778
Fax: (631) 273-3488

21 Vernon Street
Floral Park, NY 11001
Telephone: (516) 216-5695

485A US Route 1 South
Suite 360
Iselin, NJ 08830
Telephone: (732) 268-1301

http://www.snpcpa.com

MEMORANDUM

To: Clients

From: Schultheis & Panettieri, LLP

Date: April 3, 2020

We are providing you this memorandum to ensure that you are aware of information contained in the recently enacted HR 748 **Coronavirus Aid, Relief, and Economic Security Act** ("CARES Act") as it pertains to emergency assistance and economic relief for individuals and businesses related to COVID-19.

I. <u>Highlights</u>

- **Small business**

  ✓ The CARES Act includes $349 billion for lending programs under the Small Business Administration ("SBA') – Business Loans Program Account for small businesses that maintain their payroll levels. Small businesses will be eligible for additional federally guaranteed loans if they promise to maintain their workforce, and those loans will be forgiven for businesses that continue to pay their workers.

  ✓ The CARES Act includes $562 million for lending programs under the Small Business Administration – Disaster Loans Program Account to ensure that SBA has the resources to provide Economic Injury Disaster Loans ("EIDL") to businesses that need financial support.

- **Individuals**

  ✓ Cash payments of up to $1,200 per person and $2,400 per married couple will be provided via direct deposit. 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 $99,000, $136,500 and $198,000, respectively. Families will also receive an additional $500 per qualifying child under age 17.

- ✓ Unemployment Insurance will provide an additional $600 per week for up to four months. The federal government will extend unemployment insurance benefits for an additional 13 weeks through December 31, 2020 after state unemployment insurance benefits end. In addition, self-employed, independent contractors, gig workers, and those who would otherwise not qualify for state unemployment insurance can participate.

- ✓ Relief available in regard to Retirement Plans:

    - Waiver of the 10% early withdrawal penalty for COVID-19 distributions up to $100,000 retroactive to January 1, 2020.
    - COVID-19 distributions can be repaid over a 3-year period.
    - Participants can self-certify eligibility for COVID-19 distribution.
    - Income tax deferral due on COVID-19 distribution over a 3-year period.
    - The 20% mandatory federal income tax withholding is waived but the distribution is still subject to the 10% withholding rules unless waived by the participant.
    - The 401K loan limit increased to $100,000.
    - The 401K loan repayment schedule is delayed for one year.
    - Required Minimum Distributions (RMDs) are suspended for defined contribution plans.

- **Large corporations**

    - ✓ $500 billion will be allotted to provide loans and other investments that will be overseen by the Treasury Department inspector general. These loans will not exceed five years and cannot be forgiven.

- **Hospitals and health care**

    - ✓ $140 billion to support the U.S. health system - $100 billion of which will be injected directly into hospitals. The remaining will be dedicated to providing personal and protective equipment for health care workers, testing supplies, increased workforce and training, accelerated Medicare payments, and supporting the CDC, among other health investments.

- **States and local governments**

    - ✓ State, local and tribal governments will receive $150 billion including $30 billion to be set aside for states and educational institutions, $45 billion for disaster relief, and $25 billion for transit programs.

II. <u>**Impact on Nonprofit Organizations – 501(c)(3) and 501(c)(19) organizations only**</u>:

501(c)(3) – an entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports, or prevention of cruelty for children or animals.

501(c)(19) – a post, organization, auxiliary unit, etc. of past or present members of the Armed Forces of the United States.

Option #1

Apply for a Small Business Administration ("SBA") interruption loan under the **<u>Paycheck Protection Program</u>** of up to $10 million with an advance up to $1 million.

- Maximum amount is 250 percent of their average monthly payroll costs incurred in the one-year period before the date of the loan, up to a total of $10 million. This amount is intended to cover 8 weeks of payroll costs and any additional amounts for making payments towards debt obligations. This 8-week period may be applied to any time frame between February 15, 2020 and June 30, 2020.

- Proceeds must be used for payroll costs, health care benefits, mortgage interest, rent; utilities, and interest on outstanding debt.

- Application deadline is June 30, 2020.

- As dictated by the US Department of Treasury, all loans under this program will have the following terms and conditions:
  - ✓ Interest rate of 1.0%
  - ✓ Maturity of 2 years
  - ✓ First payment deferred for six months
  - ✓ 100% guarantee by SBA
  - ✓ No collateral
  - ✓ No personal guarantees
  - ✓ No borrower or lender fees payable to SBA
  - ✓ Loan forgiveness if proceeds used for payroll costs and other designated business operating expenses in the 8 weeks following the date of loan origination (due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs).

    - o Expenses for the eight-week period after the origination of the loan will be analyzed by the lender. Any portion of the loan used to make payroll, pay for utilities, rent, mortgage, and existing business debt <u>may</u> be forgiven, dollar for dollar. The borrower is not responsible for the interest accrued in the 8-week covered period if the full principal is forgiven.

    - o To receive this dollar-for-dollar loan forgiveness, workers need to remain employed through the end of June.

- In the case of reduced headcount, lenders may reduce the amount of forgiveness for businesses that lay off employees during the first eight weeks following the loan. If wages of employees who earn less than $100,000 a year are reduced, the level of forgiveness may also get reduced. Businesses that have already let employees go before accepting the loan will not be subject to such penalties. And if those businesses rehire employees after accepting the loan, they'll receive additional credit to cover their wages.

"Payroll costs" are very broadly defined to include salary, wage, commission, or similar compensation, payment of cash tip or equivalent, payment for vacation, parental, family, medical, or sick leave, allowance for dismissal or separation, payment required for the provisions of group health care benefits, including insurance premiums, payment of any retirement benefit, and payment of state or local tax assessed on the compensation of employees.

Excluded from payroll costs are amounts attributable to payroll in excess of $100,000 per employee <u>and</u> amounts for which you are getting credit under the Families First Coronavirus Response Act ("FFCRA").

Option #2

The CARES Act also created the <u>**Employee Retention Payroll Tax Credits Program**</u>. The amount of the employee retention payroll tax credit generally equals 50% of the "qualified wages" paid by "eligible employers" but the amount of "qualified wages" considered for an individual employee shall not exceed $10,000.

An "eligible employer" means any employer conducting a trade or business in 2020—including tax-exempt entities—the operations of which have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings, or that have experienced a reduction over 50 percent in quarterly receipts measured against the same quarter last year.

For eligible large employers (average of 100 or more full time employees in 2019), "qualified wages" means wages paid to an employee who is <u>not</u> performing services for the employer due to COVID-19. For eligible small employers (average of less than 100 full time employees in 2019), "qualified wages" include all wages paid by the employer regardless of whether the employee is performing services for the employer. The number of an employer's full-time employees in 2019 is determined under the methodology established under the Affordable Care Act.

The credit applies against the employer's share of Social Security tax. To the extent that the credit exceeds the employer's share of Social Security taxes for the quarter, the excess will be refunded to the employer. The CARES Act grants the IRS the authority to advance tax credit payments to eligible employers and to waive failure to deposit penalties for employers that do not make payroll tax deposits in anticipation of receiving the credit. The credit will apply to wages paid between March 13, 2020 and December 31, 2020.

The CARES Act generally provides that (1) "wages" do not include wages taken into account under FFCRA for purposes of computing the tax credit attributable to sick leave wages and expanded family and medical leave wages (and corresponding "qualified health expenses") and (2) an employer receiving a small business interruption loan is not eligible for employee retention payroll tax credit.

III. <u>Impact on Nonprofit Organizations – all other organizations not exempt under 501(c)(3) or 501(c)(19)</u>:

Option #1

<u>Economic Injury Disaster Loan ("EIDL")</u> offered through Small Business Administration ("SBA").

- This is not a new program under the CARES Act – SBA has always offered this type of loan product.

- Under the CARES Act, for the period January 1, 2020 through December 31, 2020, eligibility is expanded to include sole proprietors, independent contractors, cooperatives, private non-profits and ESOPS with not more than 500 employees.

- Under the CARES Act, a $10,000 emergency advance is available within 3 days after applying; if the application is denied, the applicant is not required to repay $10,000 advance.

- The Economic Injury Disaster Loan program provides small businesses with working capital loans of up to $2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing. The loan advance will provide economic relief to businesses that are currently experiencing a temporary loss of revenue. Funds will be made available within three days of a successful application, and this loan advance will not have to be repaid.

- The Economic Injury Disaster Loans have up to a 30-year term and amortization (determined on a case-by-case basis).

- Economic Injury Disaster Loans carry interest rates up to 3.75% for companies and up to 2.75% for private non-profits, as well as principal and interest deferment for up to 4 years. The loans may be used for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.

Option #2

The CARES Act also created the **<u>Employee Retention Payroll Tax Credits Program</u>**. The amount of the employee retention payroll tax credit generally equals 50% of the "qualified wages" paid by "eligible employers" but the amount of "qualified wages" considered for an individual employee shall not exceed $10,000.

An “eligible employer” means any employer conducting a trade or business in 2020—including tax-exempt entities—the operations of which have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings, or that have experienced a reduction over 50 percent in quarterly receipts measured against the same quarter last year.

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The CARES Act generally provides that (1) “wages” do not include wages taken into account under FFCRA for purposes of computing the tax credit attributable to sick leave wages and expanded family and medical leave wages (and corresponding “qualified health expenses”) and (2) an employer receiving a small business interruption loan is not eligible for employee retention payroll tax credit.

IV. <u>Other relevant business tax provisions under the CARES Act available to all organizations</u>

<u>Employer portion of Social Security payroll tax payment deferral</u>

The CARES Act generally provides for deferral for the employer portion of any Social Security taxes for the period beginning on March 27, 2020 and ending before January 1, 2021 (the “Payroll Tax Deferral Period”)

- 50% of the employer portion of any Social Security taxes for the Payroll Tax Deferral Period are generally deferred until December 31, 2021 and
- the remaining amount of the employer portion of any Social Security taxes are generally deferred until December 31, 2022.

The CARES Act states that the deferral of the employer portion of Social Security taxes generally does not apply if the employer has any loan authorized by the Small Business Administration <u>forgiven</u> under the CARES Act.

V. IRS Form 7200 – advance payment of employer credits due to COVID-19 legislation under FFCRA and the CARES Act

Use Form 7200 to request an advance payment of the tax credits for qualified sick and qualified family leave wages and the employee retention credit that is claimed on Form 941.

If quarterly employment tax deposits that are otherwise required are less than the amount of credit for which the employer is eligible, the employer may receive the remaining credit in advance, using Form 7200.

Eligible employers who pay qualified sick and family leave wages or qualified wages eligible for the employee retention credit should retain an amount of the employment taxes equal to the amount of qualified sick and family leave wages (plus certain related health plan expenses and the employer's share of the Medicare taxes on the qualified leave wages) and their employee retention credit, rather than depositing these amounts with the IRS.

The employment taxes that are available for the credits include withheld federal income tax, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees. If there aren't sufficient employment taxes to cover the cost of qualified sick and family leave wages (plus the qualified health expenses and the employer share of Medicare tax on the qualified leave wages) and the employee retention credit, employers can file Form 7200 to request an advance payment from the IRS.

VI. Summary

We anticipate continuing developments in connection with the CARES Act and will keep you apprised of additional guidance as it becomes available. If your organization is considering one or more of these programs, please contact our office so we can evaluate your eligibility.