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: January 8, 2021

We are providing this memorandum to ensure that you are aware of information contained in the recently enacted HR 133 **Consolidated Appropriations Act, 2021** ("CAA 2021") which not only provides annual funding for the federal government but contains additional tax and economic COVID-19 relief for individuals and small businesses. Provisions of CAA 2021 are effective December 27, 2020 unless otherwise stated below. In addition, CAA 2021 includes provisions that affect Health and Retirement Plans. Highlights of the legislation are as follows:

I. Additional Recovery Rebates (Economic Impact Payments) for Individuals

Advance direct payments of up to $600 per person and $1,200 per married couple will be provided based on information in the taxpayer's 2019 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 $87,000, $124,500 and $174,000, respectively. Families will also receive an additional $600 per qualifying child under age 17.

Taxpayers receiving an advance payment that exceeds the amount of their eligible credit will not be required to repay any amount of the payment. If the amount of the credit determined on the taxpayer's 2020 tax return exceeds the amount of the advance payment, taxpayers will receive the difference as a refundable tax credit.

II. Unemployment Benefits

CAA 2021 reinstates or amends 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. Reinstates the enhanced federal unemployment insurance known as Pandemic Emergency Unemployment Compensation ("PEUC"), providing an additional $300 per week for all workers receiving unemployment benefits for weeks beginning after December 27, 2020. CAA 2021 also includes a technical amendment that confirms that shared work plans qualify as unemployment benefits for purposes of the $300 subsidy payment.

b. Extends the PEUC program through March 14, 2021, providing additional weeks of federally funded unemployment benefits to individuals who exhaust their regular state benefits.

c. Extends the Pandemic Unemployment Assistance ("PUA") program through March 14, 2021 for independent contractors and self-employed individuals. CAA 2021 also provides a transition period where after March 14, 2021 new claimants will no longer be permitted to apply for PEUC or PUA benefits, but eligible individuals who were receiving benefits as of that date will continue to receive benefits through the week beginning on April 5, 2021.

d. Increases the maximum number of weeks an individual may claim benefits through regular state unemployment plus the emergency federal programs from 39 to 50 weeks.

III. 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. CAA 2021 extends the program through March 31, 2021 and provides the following enhancements:

a. Creates a second draw loan option for smaller business not to exceed $2 million. Eligibility provisions for the PPP Second Draw Loan include:

    i. No more than 300 employees;
    ii. Exhausted full amount of first PPP loan;
    iii. Gross receipts reduction of 25% or more in any one quarter of 2020 as compared to the corresponding 2019 quarter.

b. Expands the category of covered operating expenses that may be forgiven. The 60/40 ratio between payroll and non-payroll costs will continue to apply in order to be eligible for loan forgiveness. Covered expenses now include:

    i. Covered payroll costs
    ii. Covered mortgage obligation interest payments
    iii. Covered rent obligations
    iv. Covered utility payments
    v. Covered operations expenditures – costs for software, cloud computing, human resources and accounting needs.
    vi. Covered property damage costs – payments related to property damage due to public disturbances that occurred in 2020 not covered by insurance.
    vii. Covered supplier costs – expenditures to a supplier pursuant to a contract or order for goods in effect prior to applying for a PPP loan that are essential to the recipient's operations at the time the expenditure was made.
    viii. Covered worker protection expenditures – Personal protective equipment and adaptive investments to help a loan recipient comply with federal or state health and safety guidelines related to COVID-19.

c. Simplified loan applications and forgiveness applications for PPP loans not to exceed $150,000. Borrower must certify that they meet the revenue loss requirements.

d. Borrowers will now be permitted to choose the length of their covered period provided it is not less than 8 weeks and no more than 24 weeks.

e. Expands eligibility to include 501(c)(6) business organizations that do not 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.

f. Clarification of tax treatment of forgiveness of covered loans – provides that no amount shall be included in gross income for reason of forgiveness of PPP loans. In addition, taxpayers can also take a deduction for expenses covered by the forgiven loans.

IV. Families First Coronavirus Response Act ("FFCRA")

This program 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 from April 1, 2020 through December 31, 2020. Covered employers were eligible for a federal payroll tax credit for qualified EPSL and/or EFML paid to employees.

Although these provisions were not extended, CAA 2021 allows for a federal payroll tax credit if an employer voluntarily elects to continue to offer the leave through March 31, 2021. Qualifying reasons and documentation requirements have not changed. In addition, the amount of leave an employee is entitled to under FFCRA does not change.

V. Employee Payroll Tax Deferral

On August 8, 2020, pursuant to a Presidential Memorandum, employers could elect to defer the withholding of the employee's share of social security taxes related to certain wages paid during the period September 1, 2020 through December 31, 2020 until the four-month period beginning January 1, 2021 and ending April 30, 2021. Deferred taxes were to be paid ratably from wages paid over this four-month period.

CAA 2021 extends the repayment period to December 31, 2021. Penalties and interest on the deferred unpaid tax liability will begin to accrue on January 1, 2022.

VI. Employee Retention Tax Credit ("ERTC")

This program, originally established under the CARES Act, provides eligible employers with a credit against employment taxes with respect to qualified wages. CAA 2021 extends and enhances the program through June 30, 2021. The following provisions are available for calendar quarters beginning after December 31, 2020:

a. Extends ERTC availability to qualified wages paid before July 1, 2021.
b. Increases percentage of qualified wages available for the ERTC to 70%.
c. Increases per employee qualified wages limitation to $10,000 per quarter.
d. Increases the eligible small employer full-time employee headcount determination to a maximum of 500 employees.
e. If qualifying for ERTC based on a reduction in gross receipts, eligibility requires only a 20% reduction.

In addition, CAA 2021 retroactively allows small businesses that have a PPP loan to also claim the ERTC with the only limitation being that wages cannot be double counted.

CAA 2021 clarifies the definition of gross receipts for tax exempt organizations. For ERTC purposes, gross receipts should coincide with gross receipts reported on the organization's Form 990 – Return of Organization Exempt From Income Tax.

VII. Provisions for Retirement Plans

a. Under the CARES Act, qualified participants were permitted to take a penalty free distribution of up to $100,000 from certain types of retirement plans and IRAs. CAA 2021 provides that a money purchase plan is now permitted to make an in-service withdrawal that qualifies as a Coronavirus Related Distribution. This provision is retroactive to January 1, 2020.

b. As a rule, a 20 percent reduction in participants during a plan year raises issues of partial termination of a qualified plan. An employer who partially terminates a plan must determine which participants require an acceleration of vesting due to the partial termination.

   CAA 2021 states that a plan will not be treated as having a partial termination during any plan year which includes the period beginning on March 13, 2020, and ending on March 31, 2021, provided the number of active participants covered by the plan on March 31, 2021 is restored to 80 percent of the number of active participants covered by the plan on March 13, 2020.

c. Currently, a pension retirement trust may provide an in-service withdrawal to participants who have reached age 59 ½ but have not yet separated from employment. CAA 2021 permits certain participants in the building and construction industry participating in a multiemployer pension retirement trust to be eligible for an in-service withdrawal at age 55 if the following requirements are met:

   i. Employee must be a participant in the plan on or before April 30, 2013;
   ii. Trust must have been in existence before January 1, 1970;
   iii. Plan must have received a favorable IRS determination letter dated prior to December 31, 2011 at a time when the plan provided that distributions may be made to an employee who has attained age 55 and who is not separated from employment at the time of such distribution.

d. CAA 2021 includes disaster relief with respect to retirement plan distributions and loans for certain natural disasters declared between January 1, 2020 through February 25, 2021. It does <u>not</u> apply to the COVID-19 related national disaster.

   Qualified individuals may take a distribution from their retirement account not to exceed $100,000 without incurring the early distribution penalty. These distributions can be repaid, and income tax can be deferred over a 3-year period.

   In regard to loans made to qualified individuals during the period December 27, 2020 through June 25, 2021, the limit on the amount of a plan loan may be increased to the lesser of 100% of the qualified individual's plan account balance or $100,000. In addition, loan repayments scheduled during the disaster period and up to 180 days following the end of the disaster period may be delayed for one year or until June 25, 2021, if later.

   To the extent a plan sponsor implements these changes, plan amendments will need to be put in place on or before the last day of the first plan year beginning on or after January 1, 2022, or such later date as dictated by the Secretary of the Treasury.

VIII. <u>Provisions for Health and Welfare Plans</u>

a. CAA 2021 provides temporary relief for Flexible Spending Arrangements ("FSAs"). A number of provisions intend to permit flexibility of health and dependent care FSAs. Some of the provisions are as follows:

   i. Plan participants may carry over unused benefits in health and dependent care FSAs from 2020 to 2021 and 2021 to 2022.
   ii. Plans can adopt an extended grace period of 12 months for 2020 and 2021 which employees may request reimbursements with respect to such years.
   iii. Plans may allow mid-year election changes for contributions prospectively without regard to life events through 2021.

   Plan amendments must be adopted by the end of the calendar year beginning after the end of the plan year in which the change is effective.

b. Surprise Medical Billing

   Effective January 1, 2022, group health plans and insurance carriers are required to protect covered persons from surprise medical billing (i.e. billing for costs incurred when a nonparticipating provider is unexpectedly involved in a patient's care). CAA 2021 requires group health plans and insurance carriers to consider the following services as if they were in-network services: out-of-network emergency care, certain non-emergency services provided by out-of-network providers at in-network facilities, and air ambulance services. Any cost-sharing payments made by a participant for these services must count towards the in-network deductible and out-of-pocket maximum as if they were performed by participating providers. CAA 2021 also prevents nonparticipating providers from balance billing the participant for such services.

c. Pharmacy Benefits Reporting

   Under CAA 2021, plans will be required to submit prescription benefits paid information to the Department of Labor ("DOL"), the Internal Revenue Service ("IRS") and Department of Health and Human Services ("HHS") annually with the first report due by December 27, 2021. Subsequent reports will then be required by June 1st of each year thereafter.

d. Transparency Guidelines – Health Plans

CAA 2021 prohibits "gag clauses" regarding price and quality information. Plans cannot enter into agreements with health care providers or third-party administrators that would restrict the plan from the following:

i. providing provider-specific cost or quality of care information to referring providers, the plan sponsor, enrollees, or individuals eligible to become enrollees of the plan or coverage;
ii. electronically accessing de-identified claims and encounter information or data for each enrollee in the plan or coverage, upon request and consistent with HIPAA, GINA and ADA[1].
iii. sharing information or data described above, or directing that such data be shared, with a business associate and consistent with HIPAA, GINA and ADA[1].

Summary

We anticipate further developments in connection with CAA 2021 and the CARES Act 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 CAA 2021. Please contact our office if you require further details on any of these provisions.

[1] Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); Genetic Information Nondiscrimination Act of 2008 ("GINA"); and the Americans with Disabilities Act of 1990 ("ADA").