Tax Notes

The CARES Act – Relief for Nonprofit Organizations

By Garrett M. Higgins, CPA, Partner and Eva Mruk, EA, Director

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, a $2.2 trillion economic stimulus package legislated to provide immediate relief for nonprofits, businesses, individuals and state and local governments in response to the COVID-19 pandemic. In the law are a number of provisions relevant to nonprofit organizations, including:

- expanded eligibility for emergency disaster loans,
- payroll-related credits and tax deferral,
- charitable giving incentives for donors, and
- other corporate tax modifications to the Alternative Minimum Tax (AMT) and Net Operating Loss (NOL) regulations.

This article provides a summary of the important provisions from the perspective of nonprofit organizations.

Paycheck Protection Program (PPP) Loans [Emergency SBA 7(a) Loans]

The CARES Act includes a loan program, known as the Paycheck Protection Program (PPP), which shall provide special emergency loans of up to $10 million to eligible nonprofits and small businesses. Applicants can receive loan proceeds to be used for the payment of eligible payroll costs (the sum of payments to any employee in an amount not more than $100,000 for one year and prorated for the covered period) which includes salary, commissions, payment for vacation, parental, family, medical, and/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; or payment of any state or local tax assessed on the compensation of employees; interest on debt obligations; and rent, mortgage and utilities payments.

Nonprofit Eligibility

The Paycheck Protection Program is available to nonprofit organizations exempt under Internal Revenue Code (IRC) §501(c)(3) and veterans' organizations tax-exempt under IRC §501(c)(19). Under an earlier version of this legislation, nonprofit organizations could not access these loans if they were eligible for Medicaid payments; however, fortunately, this limitation was eliminated from the final version of the bill which now offers loan opportunities to many other nonprofit organizations, including those offering services for people with disabilities, nursing homes, mental health centers, and similar organizations receiving Medicaid payments.

Expiration Date

The Paycheck Protection Program expires on June 30, 2020.

Loan Forgiveness Provision

Employers that maintain employment between February 15, 2020 and June 30, 2020 would be eligible to have their loans forgiven, essentially turning the loan into a grant. The amount of loan forgiveness would be equal to the amount spent by the borrower during an 8-week period after the origination date of the loan. Loan forgiveness will not be included in income tax.

Key Elements

Some of the key elements of this provision are highlighted as follows:

- **Date Eligibility**: Available to entities that existed on February 15, 2020 and had paid employees or paid independent contractors.
- **Charitable Eligibility:** Available for nonprofits with 500 or fewer employees, counting each individual – full time or part time [not including full time equivalents (FTEs)]. Employees of affiliated nonprofits may need to be counted toward the 500 employee cap depending on the degree of control of the parent organization.
- **Personal Guarantee**: No personal guarantee or collateral will be required in securing a loan.
- **Loan Amount**: The lesser of $10 million or 2.5 times the average total monthly payroll (including benefits) costs from the one-year period prior to the date of application.
- **Loan Use**: Loan funds can be used to make payroll and associated costs, including health and retirement benefits, facilities costs, and debt service.
- **Loan Forgiveness**: Employers that maintain employment for the eight weeks after the origination of the loan, or rehire employees by June 30, would be eligible to have their loans forgiven, essentially turning the loan into a grant. Amounts that may otherwise be subject to forgiveness will be proportionately reduced if the borrower's salary/wages decrease in the covered period.
- **Recordkeeping for Loan Forgiveness***:* To be eligible to receive loan forgiveness, a borrower is subject to strict recordkeeping requirements. For example, it must submit a complete application to the lender containing documentation verifying the number of FTEs on payroll and pay rates for pre- and post-covered periods; payroll and unemployment insurance tax filings; documentation such as cancelled checks verifying mortgage interest, lease, and utility payments; and, a certification affirming that the amount for which forgiveness is requested was used to retain employees, and/or to make interest, rent, or utility payments.

Economic Injury Disaster Loans (EIDL) – Emergency Loans

The CARES Act expands emergency loans for private nonprofit organizations (of any size) enabling them to receive advances for $10,000 within three days of applying for the loan. EIDLs are loans of up to $2 million that carry interest rates of 2.75% for nonprofits, as well as principal and interest deferment. In essence, this advance is a grant and is not required to be repaid, even if the application is denied; however, the amount of the advance must be deducted from any loan forgiveness amounts under a PPP loan, discussed above.

The loans may be used for broader purposes including expenses that could have been met had the disaster not occurred, such as for payroll and other costs as well as to cover increased costs due to supply chain interruption, to pay obligations that cannot be met due to revenue loss, and for other uses.

Eligible grant recipients must have been in operation on January 31, 2020.

A business that receives an EIDL between January 31, 2020 and June 30, 2020, as a result of a COVID-19 disaster declaration, is eligible to apply for a Paycheck Protection Program loan, or the business may refinance their EIDL into a Paycheck Protection Program loan. In either case, the emergency EIDL grant award of up to $10,000 would be subtracted from the amount forgiven in the PPP. ***Note:*** This provision eliminates creditworthiness requirements for all applicants, including nonprofit organizations.

Employee Retention Payroll Tax Credit

The CARES Act allows for a refundable credit (to be claimed on payroll tax returns) applicable for all wages paid between March 13, 2020 and before January 1, 2021. The credit is computed on a calendar-quarter basis and equals 50% of qualified wages up to $10,000 paid to each employee or $5,000 in actual credit.

This credit can be used by nonprofit organizations if its operations were fully or partially suspended by a COVID-19 governmental order limiting commerce, travel or group meetings or by those that suffer a 50%

loss in gross receipts in a fiscal quarter in 2020 relative to the same quarter in 2019, until the business recovers to 80% of gross receipts relative to the same quarter of 2019.

In calculating the credit, "wages" is dependent on the number of employees. For employers with more than 100 full-time employees, qualified wages are only those wages paid to employees during the period that the employees are **not** providing services due to certain COVID-19-related circumstances – in other words, only the wages of employees who are furloughed or face reduced hours as a result of their employer's closure or reduced gross receipts are eligible for the credit. For employers with 100 or fewer full-time employees, all employee wages paid during the applicable period qualify for the credit, **regardless** of whether the employee is furloughed. ***Note:*** Employers receiving Paycheck Protection Program loans would **not** be eligible for these credits.

Mid-Size Loan Program

The CARES Act established an economic stabilization fund that allows nonprofit organizations that have between 500 and 10,000 employees to be eligible for loans under this provision. Although there is no loan forgiveness provision, the mid-size business loans would be charged an interest rate of no higher than 2 percent and would not accrue interest or require repayments for the first six months. Nonprofit organizations that qualify for a mid-size business loan must retain at least 90% of their staff at full compensation and benefits until September 30, 2020.

Delayed Payment of Employer's Share of Social Security Tax

The CARES Act allows nonprofit employers, except those who have loan forgiveness under the Paycheck Protection Program, to ***defer*** payment of the employer share of the Social Security tax (incurred between March 27, 2020 and December 31, 2020) that they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2 percent Social Security tax on employee wages.

The provision requires that the deferred employment tax be paid over two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. ***Note***: Payment of the hospital insurance (Medicare) tax is **not** postponed.

Self-Funded Nonprofits and Unemployment Benefits

Under the CARES Act, nonprofit organizations that self-fund unemployment benefits could receive reimbursement for **up to half** the costs of benefits provided to their laid-off employees. Some charitable nonprofits pay state unemployment taxes (SUTA) based on the organization's "experience rating," a formula based on the recent history of unemployment claims by their former employees. Charitable nonprofit organizations, however, have the option of **electing of self-insuring** rather than paying SUTA. ***Note:*** Those charitable nonprofit organizations that elect this option are required to reimburse their state unemployment insurance trust funds for the amount of benefits their terminated or laid-off employees claim.

Charitable Contribution Provisions

- **"Above-the-Line" Charitable Contribution Deduction**: Currently, only individuals who itemize can claim a charitable deduction. Under the CARES Act, an **eligible individual** may take a qualified charitable contribution deduction of up to $300 against their adjusted gross income (AGI) in 2020. An eligible individual is any individual taxpayer who does not elect to itemize his or her deductions. The provision applies to **cash** contributions made in 2020 and can be claimed on tax returns in 2021. It does not apply to noncash gifts and may not be used to make contributions to a donor advised fund or a supporting organization.
- **Percentage Limitation Eliminated for Cash Gifts Made in 2020***:* For those who itemize, the CARES Act increases the existing cap on annual giving from 60 percent of AGI to 100 percent.
- **Increase in Limitation for Contributions by Corporations***:* For corporate charitable giving, the CARES Act raises the annual limit from 10 percent to 25 percent of taxable income.
- **Increase in Limitation for Gift of Food Inventory***:* The cap on deductibility of food donations from corporations would increase to 25 percent of taxable income, up from the current 15 percent cap.

Corporate Alternative Minimum Tax (AMT) Credits Accelerated

The Tax Cuts and Jobs Act (TCJA) repealed the AMT on nonprofit organizations taxed as corporations on their unrelated business income (UBI) and, as a result, AMT credits were made available as refundable credits over several years ending in 2021.

The CARES Act allows the refundable AMT credit to be completely refunded for taxable years beginning after December 31, 2018, or by election, taxable years beginning after December 31, 2017.

PKFOD Observation: To obtain additional cash flow during the COVID-19 emergency, this provision offers accelerated refunds to impacted large tax-exempt organizations (whose average annual gross receipts for the prior three years exceeded $7.5 million) that generated UBI and were subject to the AMT tax.

Temporary Repeal of Taxable Income Limitation for Net Operating Losses (NOLs)

Under existing law, NOLs are currently subject to a taxable-income limitation and cannot fully offset income. The amount of the NOL deduction is equal to the lesser of (1) the aggregate of the NOL carryovers to such year and NOL carrybacks to such year, **or** (2) 80% of taxable income computed without regard to the deduction allowable in this section.

The CARES Act temporarily removes the taxable income limitation to allow a NOL to fully offset income. The CARES Act eliminates the 80% limit on deductions for net operating losses for 2020 and the prior two tax years – 2018 and 2019.

PKFOD Observation: Nonprofit organizations that would otherwise have been limited on their 2019 tax returns can now calculate their 2019 and 2020 tax liabilities without regard to the 80% limit. Furthermore, nonprofit organizations that were limited in their use of net operating losses in 2018 should consider filing amended tax returns to claim refunds.

Modification of Rules Relating to Net Operating Loss (NOL) Carrybacks

Under current law, net operating losses arising in tax years beginning after December 31, 2017 cannot be carried back. The CARES Act provides that NOLs arising in a tax year beginning after December 31, 2018 and before January 1, 2021 can be carried back to each of the five tax years preceding the tax year of such loss.

PKFOD Observation: Nonprofit organizations should evaluate whether there is an opportunity to file amended returns to claim refunds as a result of this provision.

Contact Us and Resources

PKF O'Connor Davies, LLP is continuing to monitor the legislative and regulatory developments, including a potential Phase 4 Congressional relief package, and will provide additional guidance as it is released. Please note that the situation surrounding COVID-19 is evolving and that the subject matter in this article may change on a daily basis as regulatory and administrative clarifications are made. Future updates will be posted on our COVID-19 Resource Center.

Loans will be available through SBA and Treasury approved banks, credit unions, and some nonbank lenders. SBA plans to issue regulations to carry out all of the CARES Act loan provisions described above within 15 days of enactment of the law. Additional guidance for obtaining emergency disaster loans can be obtained by visiting the SBA. Due to loan submission deadlines, we recommend applications to be prepared without delay.

If your organization has been financially impacted by the COVID-19 pandemic and would like to know how the CARES Act provisions could provide your organization with needed relief, please contact Garrett M. Higgins, CPA, Partner at ghiggins@pkfod.com or a member of your tax-exempt client service team at PKF O'Connor Davies, LLP.

About PKF O'Connor Davies

O’Connor Davies, LLP is a full-service certified public accounting and advisory firm with a long history of serving clients both domestically and internationally. With roots tracing to 1891, twelve offices in New York, New Jersey, Connecticut, Maryland and Rhode Island, and more than 800 professionals, the Firm provides a complete range of accounting, auditing, tax and management advisory services. PKF O’Connor Davies is ranked 29th on *Accounting Today’*s 2019 “Top 100 Firms” list and is recognized as one of the “Top 10 Fastest-Growing Firms.” PKF O’Connor Davies is also recognized as a “Leader in Audit and Accounting” and is ranked among the “Top Firms in the Mid-Atlantic,” by *Accounting Today*. In 2020, PKF O'Connor Davies was named one of the 50 best accounting employers to work for in North America, by *Vault*.

PKF O’Connor Davies is the lead North American representative in PKF International, a global network of legally independent accounting and advisory firms located in over 400 locations, in 150 countries around the world.

Our Firm provides the information in this e-newsletter for general guidance only, and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.