CARES Act: Nonprofit Organizations

March 27, 2020

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes provisions beneficial to nonprofit organizations.

Paycheck Protection Program Loans

A significant feature of the CARES Act is the loan program known as the Paycheck Protection Program. Applicants can receive loan proceeds to be used for the payment of eligible payroll costs including compensation, medical or sick leave, group health care benefits (including insurance premiums), interest on debt obligations incurred before the covered period (February 15, 2020–June 30, 2020), and rent, mortgage and utility payments during the covered period. Loan proceeds expended for those purposes during the eight week period following the origination of the loan may be forgiven upon application by the borrower.

The Paycheck Protection Program is only available to Section 501(c)(3) organizations and not to other nonprofit organizations.

Participation in the Paycheck Protection Program may affect the availability of the employment tax benefits discussed below.

Emergency Injury Disaster Loans

Private nonprofit corporations, including Section 501(c)(6) organizations, are eligible for economic injury disaster loans (EIDLs) under section 7(b)(2) of the SBA Act. Some requirements otherwise applicable to EIDLs made in response to Covid-19 during the period from January 31, 2020 - December 31, 2020 do not apply. These include:

- Personal guarantees on advances and loans not exceeding $200,000;
- Business operations for at least a year;
- Inability to obtain credit elsewhere.

Evaluation of the creditworthiness of an applicant for an EIDL may also be limited by a lender to the applicant's credit score (and the lender need not require tax returns or transcripts) or other appropriate methods in order to determine ability to repay.

Emergency EIDL Grants

Private nonprofit corporations are eligible for grants up to $10,000 which may be used to provide COVID-19 sick leave, maintain payroll and make rent or mortgage payments.

Employment Tax Benefits

Postpone Payment of Employer's Share of Social Security Tax. Nonprofit organizations will be able to delay the payment of the employer portion of the Social Security payroll tax until year-end. Payment of the hospital insurance ("Medicare") tax is not postponed. The postponed amount would be paid equally over the two succeeding years. Half of self-employment tax would be similarly postponed and paid.

If the organization has loan forgiveness under the **Paycheck Protection Program**, the provision permitting the employer to postpone the payment does not apply.

Credit for Employment Taxes. Nonprofit organizations, other than those who participate in the **Paycheck Protection Program, will be allowed a** credit against Social Security taxes if their whose operations are fully or partially suspended due to a governmental order limiting commerce, travel or group meetings or for employers whose gross receipts are less than half of the gross receipts for the comparable calendar quarter of 2019 (and continuing until the calendar quarter after gross receipts reach 80% of 2019 gross receipts for the same calendar quarter).

For organizations with more than 100 full-time employees, wages paid to an employee who is not providing services qualify for the credit (although the amount of such wages is limited to $10,000 per calendar quarter). For employers with 100 or fewer full-time employees, all wages paid during the suspension qualify and as do wages paid during the calendar quarters qualifying due to the reduction in gross receipts.

The credit amount is limited to 50% of the qualifying wages. The employment taxes against which the credit may be taken are first reduced by the credits against those taxes allowed under the Families First Coronavirus Response Act (by reason of paid sick leave or paid family leave).

Some clarification on the refundability of a credit amount in excess of the employment tax liability may be needed. The credit applies only to wages paid after March 12, 2020 and before January 1, 2021.

Unemployment Compensation – Reimbursing Employers

Many nonprofit organizations are "reimbursing employers" for unemployment compensation purposes. Significant lay-off of staff would ordinarily have significant cost to the organization.

As part of the CARES Act, the Department of Labor is encouraged to issue guidance to allow unemployment compensation laws to be interpreted in a manner to provide maximum flexibility to reimbursing employers regarding timely payment of obligations, interest and penalties.

Perhaps, reimbursing organizations will be afforded a lengthy period to meet the reimbursement obligations.

Charitable Contribution Provisions

Charitable organizations may benefit from provisions encouraging enhanced charitable giving.

"Above-the-Line" Charitable Contribution Deduction. Individuals who do not itemize deductions can claim a $300 deduction for cash contributions made to public charities (other than supporting organizations or donor advised funds).

Percentage Limitation Eliminated For Cash Gifts Made in 2020. The percentage limitation on deductibility of gifts by individuals to public charities is eliminated in 2020 for cash gifts. But, this benefit does not apply to gifts to donor advised funds or supporting organizations.

Increase in Limitation for Contributions by Corporations. The percentage limitation on deductibility of gifts by corporations to public charities is increased to 25% in 2020 for cash gifts.

Increase in Limitation for Gift of Food Inventory. The limitation on the deduction for charitable contributions of food was increased from 15% of income to 25% of income.

Additional Information

This is part of a series of our **COVID-19 alerts** providing clients with practical advice on measures they can take to navigate through these troubled times. Please contact your Miller Canfield attorney to discuss questions about the CARES Act.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.