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Legal Matters®

Tax relief for businesses under stimulus measure

The second federal stimulus law enacted in response to the COVID-19 pandemic offers several tax benefits to businesses.

Here is a look at the key provisions:

Expenses paid with PPP loan proceeds are deductible.

The CARES Act — the first federal stimulus law that went into effect at the beginning of the pandemic — created the Paycheck Protection Program (PPP), which allowed businesses to take loans that can be forgiven under certain circumstances.

According to the original law, if a business's PPP loan was forgiven, it did not have to include the loan in its gross income. But it remained unclear whether a business could deduct business expenses it paid with loan proceeds that were eventually forgiven.

The new law, known as the 2021 Consolidated Appropriations Act (CAA), says if a business's PPP loan is forgiven, it may still deduct business expenses paid using the loan proceeds.

In addition, the tax basis of the PPP borrower's assets is not reduced by virtue of the loan being forgiven.

Certain deferred payroll taxes extended

Late last summer, President Donald Trump issued a memorandum making it possible for employers to elect to defer their employees' payroll taxes from Sept. 1, 2020 to Dec. 31, 2020.

An IRS notice required employers to increase the withholdings on



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employees' income and then pay the deferred amounts between Jan. 1, 2021 and April 30, 2021.

If an employer fails to pay by the end of that time period, it could be held liable for interest and penalties on any deferred tax liability that remains.

Under the CAA, the period for employers to pay the deferred taxes is extended through Dec. 31, 2021.

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Incentives increased for small business loans

If you're looking for working capital for your small business or you're in the market to buy a small business, now is a good time to learn more about the SBA loan program.

Last year, a provision hidden in a clause of the CARES Act offered relief for small businesses and people who sought to buy them. The clause expired in September 2020. But the new stimulus law — the 2021 Consolidated Appropriations Act (CAA) — brings the incentives back and gives them a boost.

Under the CARES Act, the SBA covered six months of small business loan payments and guaranteed 75 percent of the loan amount.

Under the new law, the SBA will cover up to eight months of loan payments, depending on the line of business. It also boosts the guarantee to 90 percent, making it even easier for banks to take a chance on financing.

The loans do not require the business to prove that it has been affected by the COVID-19 pandemic, and you can apply for a loan even if you have an existing Paycheck Protection Program (PPP) loan.

The new provisions apply from Jan. 1, 2021, through Sept. 30, 2021, or until the money runs out.

The details

The new law makes changes to the SBA 7(a) lending program and the 504 Microloan program.

A Section 7(a) loan — received through an SBA lender — can be used for working capital, inventory, equipment and/or buying a business. Under the program, a for-profit business based in the U.S. that

has fewer than 500 employees and less than \$7.5 million in average annual receipts can borrow up to \$5 million at both fixed and variable interest rates.

To qualify, the business may not be delinquent on any debt owed to the government. Loan maturities range between seven and 25 years, depending on how you're planning to use the loan.

The SBA's 504 Microloan program focuses on job creation. The loans under this program are intended for purchasing existing buildings, commercial real estate, and equipment needed to grow your business.

The loans are subject to similar requirements and the same \$5 million limit as Section 7(a) loans. But interest rates are fixed, and maturities range from 10 to 20 years.

For businesses that already have an SBA Section 7(a) or 504 Microloan, you can now have an additional three months of principal and interest payments for your loan forgiven, up to \$9,000 per month, starting Feb. 1, 2021.

An additional five months will be forgiven for loans in certain hard-hit industries, including food service, hospitality, arts, entertainment and recreation, education, and laundry and personal care services.

For any new Section 7(a) loan or 504 Microloan granted before Sept. 30, 2021, your first six months of principal and interest (up to \$9,000 a month) will be forgiven.

Applying for a loan requires the borrower to provide a business plan, tax returns and an explanation of its ability to meet the terms of the loans.

New York cyberprivacy law applies outside the state

Over the past few years, many states have been updating their cyber privacy laws.

Typically, these laws impose requirements on most businesses, which can be fined or held liable if they don't comply.

The data security provisions of the New York SHIELD Act, which went into effect on March 21, 2020, apply to businesses that operate outside of New York, if those businesses hold New York residents' private data.

That means that the New York Act applies widely. It states that the data security requirements apply to any "person or business which owns or licenses computerized data which includes private information" of a resident of New York. In addition, the law specifically indicates that any third-party service providers that

have access to private data of customers, employees or both will be held to the same safeguards.

Interestingly, the law only mentions third parties in the administrative safeguards section, but it is wise for businesses to assume that any third party would also have to meet the full range of safeguards listed in all categories to comply with the New York law.

The law generally requires businesses to set up a cybersecurity program, appoint a coordinator for the program and train their employees in it. It also requires businesses to disclose data breaches. Non-compliance carries significant penalties of up to \$250,000. Consult with an attorney to understand how the provisions of the law specifically apply to your business.



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Tax relief for businesses under stimulus measure

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Business meals 100 percent deductible

Under current tax law, businesses may deduct meals that are directly related to the active conducting of a business at a level of 50 percent of the cost.

Under the CAA, businesses may deduct 100 percent of business-related meal expenses incurred during 2021 and 2022. The rule applies only to food and beverages provided by a restaurant.

The business must document the business purpose of the meal, as well as the person or people involved.

Paid leave tax credits extended

In March, the Families First Coronavirus Response Act (FFCRA) was signed into law. The measure was intended to help provide paid leave to employees affected by COVID-19.

The law covered the time period from April 1, 2020, through Dec. 31, 2020.

It required employers with fewer than 500 employees to provide paid leave to certain individuals affected by COVID-19 through Dec. 31, 2020. It also allowed employers to claim a credit against payroll taxes to mitigate the cost of the leave.

While the CAA does not require employers to offer paid leave for affected workers beyond Dec. 31, 2020, it continues the payroll tax credit for employers who continue to offer paid leave through March 31, 2021.

Employee retention tax credit extended, with adjustments

The CARES Act gave eligible employers who paid qualified wages from mid-March through December 31, 2020, a refundable payroll tax credit.

This employee retention tax credit was equal to 50 percent of qualified wages for each eligible employee, with a limit of \$10,000 in qualified wages per employee (which equals a \$5,000 credit).

The new law extends the employee retention credit through June 30, 2021.

In addition, the law includes the following provisions related to the employee retention tax credit. These provisions apply from Jan. 1, 2021 through June 30, 2021:

- The limit on qualified wages per employee has been increased to \$10,000 per calendar quarter, up from \$10,000 total.
- The credit rate has been increased from 50 percent to 70 percent of the employee's qualified wages.
- Qualified wages include allocable health care costs, even if no other wages are paid.
- Qualified wages do not include wages covered under the paid sick leave and paid family leave provisions of the FFCRA.
- Eligible employers are those whose operations were completely or partially suspended due to government orders, and those employers with gross receipts for any quarter that are less than 80 percent of its gross receipts from the same quarter in 2019.
- The law expands the size of employers that are covered. Under the CARES Act, the credit was available to employers with 100 or fewer employees. The new law covers employers with 500 or fewer employees.
- Businesses not in existence for all or part of 2019 are now eligible for the credit.



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Capital gains taxes might lie ahead for business sellers

For business owners thinking of selling in the next few years, it's important to be aware that capital gains tax rates might eventually rise under President Joe Biden.

Under his tax plan, Biden is seeking to nearly double capital gains tax rates.

His proposal says that the rate would increase from 20% to 39.6% on investment profits over \$1 million. The rate would essentially match the highest income tax bracket.

However, such a change isn't likely to happen right away, especially with the ongoing COVID-19 pandemic.

If a change is made, be aware that tax changes can be retroactive to the beginning of the tax year.

The key takeaways are:

- If you're thinking of selling your business soon, pay attention to legislation as it arises and moves through Congress. While it will be tough to predict, you might want to try to close sooner rather than later, before any potential change is finalized.
 - Pay closer attention to the after-tax proceeds of a potential deal, rather than the sale price itself.
- Speak to a business attorney in your area for advice on selling your business.

New York cyberprivacy law applies outside the state



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Lists of safeguards

The New York law doesn't include detailed requirements that a business's security program must meet.

Instead, it notes lists of administrative safeguards, technical safeguards and physical safeguards.

Administrative safeguards include such actions as identifying foreseeable internal and external risks, training and managing employees in executing the program, and selecting the appropriate providers to ensure security measures are in place.

For technical safeguards, the New York law notes assessing any risks in network and software design, as well as information transmission and storage, detecting and responding to any failures in cybersecurity systems, and regularly monitoring any systems or procedures in place.

Physical safeguards under the law include actions like evaluating any risks associated with information storage and disposal, protecting against the unauthorized use of private information, and disposing of it within a reason-

able time when your business no longer needs it.

According to the New York law, a business that implements the listed safeguards is "deemed" to be in compliance with the law.

Requirements depend on size of business

The law's requirement to disclose data breaches applies to all businesses, no matter how big or small. But the extent of the cybersecurity measures a business must take varies depending on its size.

A business's program can be scaled depending on its size and complexity, the nature and scope of its activities, and the level of sensitivity of the consumer data it collects.

A business must meet requirements appropriate to its size, based on the safeguards noted in the Act.

Under the Act, a business is defined as a "small business" if it meets one of the following criteria:

- Has fewer than 50 employees;
- Has less than \$3 million in annual gross revenue in each of the last three fiscal years; or
- Has less than \$5 million in year-end total assets.

