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COVID-19: Loans, Tax Credits, Contract Issues & More

Posted on March 27, 2020

We have seen a flurry of activity from all sectors of government in recent days to assist businesses who are dealing with this unprecedented time in our economy and public health arena. The following summarizes some loan opportunities, tax credits, and contract considerations.

Loans

SBA Loans

As part of the Coronavirus Aid, Relief & Economic Security (CARES) Act (expected to be passed and signed into law soon), the **Paycheck Protection Program** will reimburse eligible small businesses, nonprofit entities and other eligible businesses for certain payroll, employee benefit, insurance mortgage, rent and interest costs incurred.

Eligible Small Businesses include small business concerns, 501(c)(3) entities and other eligible businesses that have no more than than 500 employees or that do not exceed the employee size limitations published by the SBA, whichever requirement is greater. The Act also allows small businesses with more than one location, such as restaurant chains and hotels, to have the 500 person limit apply by location, not overall. Loan funds are to be used for payroll costs (continuation of group health care benefits during period of paid sick, medical or family leave, and insurance premiums), employee compensation, mortgage interest, rent, utilities and interest on certain debt obligations.

Loan payments are deferred for a period of no less than 6-months, and not more than 12-months. Interest rates shall not exceed 4%, and loans may not have a term in excess of 10 years. Payroll costs (not including individual compensation in excess of $100,000), mortgage interest, rent and utility payments for an 8 week period for loans originated during the period of February 15, 2020 through June 30, 2020 will be forgiven in full unless your company laid off employees during the covered period.

To get the full benefit of the loan forgiveness, small businesses must keep their employees and pay them at least 75% percent of their prior-year compensation. To encourage employers to re-hire works laid off by the COVID-19 crisis, employers that re-hire previously laid-off workers will not be penalized for having a reduced payroll at the beginning of the period.

The SBA lenders will waive credit tests. The eligible employer (including self-employed persons) must have been in business and had employees on 2/15/2020.

A summary of SBA loans can be found here.

State & Local Loans

Statewide, there are available loans from Pennsylvania Industrial Development Authority (PIDA). Loans are limited to $100,000 and available to businesses with no more than 100 employees.

Locally, there are available loans from the Erie County Redevelopment Authority. Loans are limited to $50,000, 0.0% interest, and payment deferrals for ninety (90) days.

Also, the Erie County Gaming Revenue Authority (ECGRA) and Bridgeway Capital have teamed up to provide patient loan capital to small businesses and nonprofits in Erie County.

Employee Retention Tax Credits

The CARES Act also creates a refundable tax credit for businesses and nonprofit organizations that close temporarily (on a full or partial basis) due to government orders and whose revenue shrinks by more than 50% from the same quarter in 2019.

The tax credit would be allowed for 50% of compensation, including health benefits (up to $10,000 per employee) paid for each employee during the closure, which amount would be creditable to against payroll taxes, with any excess amount refundable. The employee retention credit would apply only to wages paid after March 12, 2020, and it would be reduced by certain payroll tax credits available under the Families First Coronavirus Response Act. Employers that take covered loans under the Paycheck Protection Program mentioned above **are not** eligible for the employee retention credit.

Payroll Tax Deferral

The CARES Act allows employers and self-employed individuals to defer payment of the 6.2% employer share of Social Security taxes through the end of the 2020. Half of the deferred amount of Social Security taxes would be due by the end of 2021, and the other half would be due by the end of 2022.

However, like the employer retention tax credit, employers that take covered loans under the Paycheck Protection Program mentioned above **are not** eligible for the payroll tax deferral.

Contractual Issues: Force Majeure

Force Majeure provisions in contracts generally delay performance in the event of an act of God and other factors. As many businesses may struggle to obtain supplies, timely shipments, employees, and other items, businesses should analyze these provisions to ensure there is no breach of agreement. Businesses may also want to ensure their customers are either obligated or relieved from performing their end of the bargain in the midst of this health emergency. Read more here.

Contractual Issues: Loan Covenants and Debt Service

Financial institutions are keenly aware of the economic climate. However, to the extent certain financial covenants set forth in your loan documents are violated, a business could be deemed in breach, and their financial institution require certain pay-downs, modifications, additional collateral, or worse case, call the entire loan due and payable.

Dealing with your banker on the front end proactively to address these issues, particularly now, would be beneficial. Many financial institutions are entering into loan modifications and deferment agreements given a certain borrower's circumstances.

Also, in conjunction with the SBA loan programs under the CARES Act, the federal government is providing relief to banks and lenders in anticipation of the short-term relief requested and needed by small businesses. For example, the SBA will purchase the aforesaid SBA loan forgiveness amounts from its certified lenders and this cancelled indebtedness will not result in taxable income to the respective small businesses.

Knox Law is prepared to help you navigate the uncharted paths created by the COVID-19 pandemic and is available for immediate assistance.

Please contact your Knox Law attorney to learn more. If you are not currently a client, please call 814-459-2800 to leave a message and someone will get back to you within 1-2 business days.

More resources and information regarding COVID-19

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