CARES Act Relief for Nonprofit Organizations

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) contains significant tax relief benefits for nonprofit organizations. The objective of the CARES Act is to provide liquidity to organizations faced with funding shortfalls during the COVID-19 crisis. In addition, the IRS recently extended its tax filing and payment postponement relief to nonprofits. This summary highlights some key features of the recent legislation and guidance. It is not intended to address all the new developments in detail. Taxpayers are encouraged to consult with their tax advisors regarding the applicability of any provision to specific situations.

Tax Return and Payment Due Dates

On April 9, 2020 with its fourth round of filing and payment postponements, the IRS provided nonprofits with long-sought relief for their tax returns and payments. In Notice 2020-23 and, by reference, Revenue Procedure 2018-58, tax returns and payments due from April 1, 2020 through July 14, 2020 are postponed to July 15, 2020. The nonprofit returns and payments postponed are as follows:

- Form 990-T Exempt Organization Business Income Tax Return
- Form 990-PF Return of a Private Foundation
- Form 990 series Return of an Organization Exempt from Income Tax
- Form 990-W Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations
- Form 4720 Return of Certain Excise Taxes under Chapters 41 and 42 of the IRC

Extension requests are not required to be filed to receive filing or payment postponements. If a postponed return is not ready to be filed by July 15, 2020, Form 8868 should be filed to extend the due date of the return. Upon filing an extension request on Form 8868, the return will be extended for six months from its original due date, not the postponed due date. No interest, late filing penalties or late payment penalties will be assessed for payments or filings postponed under Notice 2020-23. If a return is not filed or extended by July 15, 2020 or if any required taxes are not paid by July 15, 2020, applicable interest and penalties for late payment and/or late filing will accrue beginning July 16, 2020.

Payroll Tax Credits and Deferrals

Availability for nonprofits: generally available.

<u>Payroll Tax Deferral</u>

The CARES Act allows employers to defer payment of the employer portion of the 6.2% Social Security tax through the end of 2020. The payroll tax deferral period is the period beginning on March 27, 2020 and ending before January 1, 2021. Half the deferred payroll tax is due by the end of 2021 and the other half is due by the end of 2022.

Employers who receive a Small Business Association Paycheck Protection Program (PPP) loan may not defer the deposit and payment of payroll tax that is otherwise due after the employer receives a decision from the lender that all or a portion of the PPP loan was forgiven.

Employee Retention Tax Credit

Availability for nonprofits: generally available, except to governmental employers and small businesses who take SBA PPP loans.

The CARES Act provides a refundable 50% credit for wages paid from March 13, 2020 through December 31, 2020 by eligible employers to certain employees. The credit is available to employers who carry on a trade or business in 2020 and experience either a full or partial suspension of activity by government order due to COVID-19 during the calendar quarter, or employers who experience a decline in gross receipts of more than 50% from the comparable quarter in 2019. When the employer's gross receipts exceed 80% of the comparable quarter in 2019, or the business is no longer subject to a shutdown order, the employer no longer qualifies for the credit at the end of that quarter.

For organizations that employed an average of 100 or more fulltime workers in 2019, eligible wages are those paid to employees who are not providing services due to a COVID-19 shutdown order or reduced operations. For organizations that employed an average of fewer than 100 fulltime employees in 2019, all wages qualify for the credit, regardless of whether the employer is open for business or subject to a shutdown order and whether or not the employees are providing services to the employer during that time. The maximum employee retention tax credit is $5,000 of wages (including qualified health plan expenses) per employee or up to $10,000 of wages paid to each eligible employee in 2020.

The refundable credit is claimed against federal employment taxes, including taxes withheld, equal to 50% of eligible wages paid per employee. Employers can claim the credit on Form 941 or, under a new procedure established by the IRS, Form 7200.

The employee retention tax credit is not available to recipients of Payroll Protection Program (PPP) loans.

CARES Act Loan Provisions

Paycheck Protection Program (PPP)

Paycheck Protection Program (PPP) loans under the CARES Act expand on existing Small Business Association (SBA) loans available to businesses and nonprofit organizations. Eligible organizations include §501(c)(3) tax-exempt charities and §501(c)(19) veterans' organizations in existence on February 15, 2020 with 500 or fewer employees. Loan proceeds may be used to cover certain operational needs such as payroll, rent, health benefits, utilities and mortgage interest payments. The maximum amount of the loan is the lesser of 1) 250% of the organization's average monthly payroll1 for the prior year or 2) $10 million.

An attractive feature of the PPP loan is the forgiveness of the loan for proceeds used to pay payroll, mortgage interest, rents and utility payments for the eight-week period after the loan is originated. No more than 25% of the loan forgiveness may be for non-payroll costs. The loan forgiveness amount is reduced for reductions in employment2 and employee compensation3 that is not restored by June 30, 2020.

Read COVID-19: Loan Resources Available to Businesses Under the CARES Act for additional information on the PPP loan program.

Economic Injury Disaster Loans (EIDL) and Emergency Grants

Availability for nonprofits: generally any small business including 501(c)(4) (social welfare organizations) and 501(c)(6) (trade and professional associations) in existence on March 1, 2020, with 500 or fewer employees.

The Economic Injury Disaster Loan (EIDL) is a preexisting SBA loan program that was modified by the CARES Act. The existing EIDL program provides nonprofits loans of up to $2 million at an interest rate of 2.75%. These loans are required to be repaid. Organizations can use proceeds to pay fixed debts, payroll and other bills that cannot be paid because of a disaster.

The CARES Act also provides for an emergency EIDL advance of up to $10,000. Funds will be available following a successful application. Nonprofits can use the emergency advance funds to meet obligations that cannot be met because of revenue losses, such as payroll, rent or mortgage obligations. The emergency economic advance will not have to be repaid, even if the advance recipient's EIDL application is eventually declined.

On April 3, 2020, the SBA posted FAQs on its website regarding participation of faith-based organizations in the PPP and EIDL. These FAQs clarify faith-based organizations are generally eligible to participate in the loan programs, how affiliations rules are applied for number of employees and other issues.

Other CARES Act Changes

Net Operating Losses and Carryback Opportunity

The CARES Act revises the TCJA to allow a full deduction for a nonprofit's unrelated business taxable income (UBTI) net operating loss (NOL) for tax years beginning after December 31, 2017 and beginning before January 1, 2021. In addition, any NOLs during these years are eligible to be carried back to the five previous years. If the nonprofit paid tax on UBTI in a carryback year, the deduction for the NOL may give rise to a refund of the taxes paid.

Charitable Contribution Deductions

Individuals are allowed increased deductions for 2020 charitable contributions. Individual taxpayers who do not itemize their deductions are allowed a $300 above-the-line deduction. For those who itemize, the AGI limitation for deductions of cash contributions is increased to 100% of 2020 adjusted gross income (up from the normal 60%). The new provisions only apply to cash contributions and are not applicable for donations to donor advised funds, private non-operating foundations and supporting organizations. Note also individuals subject to the required minimum distribution (RMD) requirements for IRAs and other qualified plans are not required to take an RMD for 2020. Charities that have received qualified charitable distributions from the IRAs of individuals over age 70 ½ may see a decrease in that source of funding. Corporation charitable contributions for 2020 are deductible up to 25% of modified taxable income (increased from the normal 10%). Finally, for 2020 corporate contributions of food inventory, the deduction limitation is increased to 25% of taxable income (up from the normal 15%).

For additional information, please contact Carolyn Amster, Tamara McInerney or Elena Serebriakova in BPM's Nonprofit Industry Group.

This summary of some of the tax provisions of the CARES Act, IRS Notice 2020-23 and other updates is not intended to address all of the details of the various changes contained in the new tax laws. We encourage you to reach out to your BPM tax advisor with any questions you may have regarding your nonprofit organization. Additional information, including recorded webinars, is available on the BPM COVID-19 Resource Center