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COVID-19 SBA Loans and Employment Implications

April 3rd 2020

Agenda

- Employment Related Provisions of CARES Act & Family First Coronavirus Response Act
- Small Business Administration (SBA) Loans and Disaster Assistance
- Closing & Q&A

Panelists



Adam Steinberger

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Chris DeVoe

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Christopher Spiegelman

Managing Director, Client Group Leader for the Alternative Investment Funds practice

Employment Related Provisions of CARES Act & Family First Coronavirus Response Act

Sick and Emergency Family Leave

- Family First Response Act
- Employers with less than 500 employees are required to pay sick leave and emergency family and medical leave:
 - 80 hours sick leave
 - 10 additional weeks of Family and Medical Leave
- Maximum payment - \$200 or \$511 per day depending on reason for payment

Sick and Emergency Family Leave

- Offset payments against employer share of Social Security tax
- Self-employed individuals are eligible for the credit as if they were employees
- Credit amount treated as income to employer

Employee Retention Credit

- Credit against Social Security tax up to \$5,000 per employee (50% of wages up to \$10,000)
 - More than 100 employees - wages paid to an employee who is not providing services
 - 100 or less employees - all employees' wages
 - Wages paid March 13, 2020 to December 31, 2020
- Excess credit refundable
- Taxpayers receiving an SBA loan are not eligible for this credit

Deferred Payment of Payroll Taxes

- Employers and self-employed individuals can defer payment of the employer share of the Social Security tax on wages paid from March 27, 2020 through December 31, 2020
 - 50% due on December 31, 2021, and
 - 50% due on December 31, 2022
- Forgiveness of a CARES Act SBA loan terminates deferral

Small Business Administration *Loans and Disaster Assistance*

Small Business Administration (SBA)

- Created in 1953 - headquartered in Washington, D.C. with regional offices across the country
- Assists small businesses
 - Advocacy
 - Contracting
 - Entrepreneurial development
 - Access to capital

Types of Capital Assistance

- Disaster Loans
 - Physical Damage
 - Economic Injury
 - Emergency Economic Injury Grants
- Guaranteed Loan Program “7(a) Loans”
- Other Funding

Economic Injury – Disaster Loans (“EIDL”) & Grants

- Designed for areas designated as a “Disaster Area”
 - For COVID-19, all U.S. states and territories are currently eligible to apply for disaster loans and grants
 - Up to \$2M available at an interest rate of 3.75% for small businesses and 2.75% for non-profit entities
- Grants – an emergency advance of up to \$10,000 within 3 days of applying for an SBA EIDL
 - May be used to keep business operating during the disaster

Economic Injury – Disaster Loans (“EIDL”) & Grants

- Eligibility for EIDL & Grants
 - Sole proprietorships, with or without employees
 - Independent contractors and cooperatives
 - Tribal small businesses
 - Small business concerns meeting the size standards for SBA and non-profits of any size
 - Size standards vary by industry and the SBA utilizes the 6-digit North American Industry Classification Code
 - 3-year average annual revenue

Economic Injury – Disaster Loans (“EIDL”) & Grants

- Application procedure
 - All applications for EIDL & Grants are made through the SBA website: <https://disasterloan.sba.gov/ela/>
- NOTES:
 - Applicant must show that they cannot find credit elsewhere
 - For disaster loans, a personal guarantee is required
 - These loans do not offer loan forgiveness

CARES Act - Payroll Protection Program Loans

- Provides lenders with authority to grant Section 7(a) SBA Loans under new criteria and new terms
 - CARES Act Authorized \$349,000,000,000
- Designed to assist employers in maintaining payroll during the COVID-19 emergency

Eligibility

- Fewer than 500 employees, or *meets the SBA industry-based “size standard” requirements for the applicable NAICS code*
 - *Employees whose principal place of residence is the U.S.*
 - *Must be a “small business concern”*
 - *Need to consider SBA Affiliation Rules*
- Individuals who operate a sole proprietorship, independent contractors, or self-employed individuals
- Non-profit entities
- Must make a good faith certification
 - That the uncertainty of the current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient
 - Acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments

Affiliation Rule

- SBA utilizes affiliate rules to determine eligibility for companies to qualify as “small businesses”
 - Affiliation exists when one business controls or has the power to control another business or when a third party (individual or entity) controls or has the power to control more than one company
- These rules are not waived for most businesses seeking the Payroll Protection Program Loans
 - Rules only waived for companies in the food and accommodations industries (NAICS code 72) as well as franchises in the SBA Franchise Director

Affiliation Rule

- In determining whether affiliation exists, the SBA may consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation
- Key is Power to Control
- Items of Consideration
 - Ownership
 - Options, Convertible Securities, Agreements to Merge
 - Common Management
 - Identify of Interest
 - Joint Ventures
 - Negative Covenants

Loan Duration and Amount

- Maximum maturity of 2 years
- Maximum interest rate of 1%
- Amount of loan is lesser of
 - \$10 million, or
 - 2.5 times the average monthly payroll costs for the past year
 - Special rules for companies not in existence in 2019
 - Special rules for seasonal companies
- Funds can be used for
 - Payroll support (including benefits), mortgage interest payments, rent, and utilities

Payroll Costs Included:

- Salary, wage, commission, or similar compensation;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment of any retirement benefit
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of state or local tax assessed on the compensation of the employee
- For sole proprietors – payments of any compensation

Payroll Costs Excluded:

- Compensation of an individual employee in excess of an annualized salary of \$100,000
- Payroll taxes, railroad retirement taxes, and income taxes
- Any compensation of an employee whose principal place of residence is outside of the United States
- Qualified sick leave wages for which a credit is allowed under Section 7001 of the Families First Coronavirus Response Act (Public Law 116– 5 127); or qualified family leave wages for which a credit is allowed under Section 7003 of the Families First Coronavirus Response Act

Loan Forgiveness

- An eligible recipient shall be eligible for forgiveness of indebtedness in an amount equal to the **cost of maintaining payroll continuity** and **other allowable costs during the covered period** (8 weeks from loan origination)
- Loan forgiveness amount reduced by any reduction in employee wages in **excess of 25%** or **a reduction in the number of employees in the covered period**

Special Topics

- Documentation is required to support loan forgiveness
- Loan forgiveness amounts will not be treated as income subject to tax
- Any amounts not forgiven will be carried forward at the original terms of the loan
- Principal and interest are deferred for 6 months after disbursement of the loan

How to Apply

- Companies interested must apply for the loan directly with an SBA-approved lender, federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating
 - SBA Form 2483
- Applications begin TODAY!
 - Sole proprietorships and independent contractors can apply beginning April 10th
- Additional information can be found on the SBA website at SBA.gov

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Dennis A. Minich
Managing Director – Chicago

Dennis Minich has over 38 years of tax experience and is part of US National Tax for Andersen. Dennis specializes in compensation and employee benefit issues, primarily relating to qualified retirement plans, nonqualified plans, employee health and welfare benefits and executive compensation.

He serves companies in a wide variety of industries on matters such as:

- Consultation and diagnostic reviews of qualified

- pension and welfare benefit plans
- Design and implementation of nonqualified deferred compensation arrangements and other executive compensation plans
- Design and implementation of equity programs
- Consultation on compensation issues in connection with merger and acquisitions
- Review and consultations regarding benefit plan operations and practices

Before joining Andersen, Dennis was with the Compensation and Benefits Practice at KPMG.

Dennis is an Adjunct Professor in the Master of Taxation program at DePaul University, and he

frequently speaks at various organizations on compensation and benefit matters.

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Chris DeVoe

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Chris DeVoe is a Managing Director in Andersen's Greenwich office. He has over 17 years of finance and accounting experience, in both public and private practice.

As part of Andersen's Private Accounting Solutions Practice, Chris works with a team of professionals who serve the day-to-day financial accounting and controllership needs of high net worth individuals, families and their related closely held businesses, trusts, estates, and not-for-profit entities.

Prior to joining Andersen, Chris spent time in public accounting firms focused on assisting clients in accounting and tax processes across a broad range of industries. Chris also worked in the tax department of GE Capital, where he was responsible for the International Tax Operations and Reporting for a multi-billion dollar business.



Christopher J. Spiegelman

Managing Director – Greenwich

Chris Spiegelman is the current national Client Group Leader for the Alternative Investment Funds practice at Andersen. He has over 25 years of diverse tax experience including extensive knowledge of alternative investments, partnership taxation and real estate taxation.

Chris focuses on assisting investment partnerships with tax planning and compliance, fund structuring and fund accounting and administration. Chris' skills

also include consulting with general partners and managers regarding their individual taxation, estate planning as well as federal and state compliance for management companies.

Before joining Andersen, Chris was the Tax Director for a private equity and hedge fund firm that encompassed a variety of investment strategies including buyouts, mezzanine financing and venture capital. Prior to that, Chris was with PwC.

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Adam Steinberger
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Adam Steinberger is the national Client Group Leader for the Commercial Practice at Andersen and the Office Managing Director of the firm's Silicon Valley office. He has over 20 years of domestic and international tax experience serving clients from emerging growth companies to large multinational enterprises. Adam advises both publicly-held and private businesses in a variety of industries, including semiconductor, SAAS, software, manufacturing, biotechnology, retail, media, and real estate.

Adam's primary tax and business practice areas include:

- Accounting for income taxes (ASC 740), including analysis of uncertain tax positions
- Compensation and benefits tax planning, including tax accounting for stock compensation (ASC 718)
- Tax controversies
- Global mergers and acquisition planning
- Tax credits, including research and experimentation tax credits
- Tax compliance, including preparation/review of federal and state tax returns

Before joining Andersen, Adam was with Arthur Andersen and KPMG in Seattle, Washington.

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EDUCATION

- University of California at Irvine, BS

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Adam has authored articles and lectured on accounting for income taxes and compensation and benefit tax matters at various organizations.



C. Ellen MacNeil
*Managing Director – US National
Tax – Washington, D.C.*

Ellen MacNeil is the Managing Director of US National Tax for Andersen and is a member of the Board of Directors of Andersen Global. She has over 30 years of experience in tax consulting for major U.S. businesses. Prior to joining Andersen, she was a Partner with Deloitte and with Arthur Andersen in their National tax practices.

Ellen has served on the Board of Directors of The

Tax Council. She has also served as chair of the ABA Taxation Section's Tax Accounting Committee and chair of the AICPA's Tax Accounting Committee. She has chaired the ABA Taxation Section's Committee on Government Submissions and has also served as a member of the Executive Committee of the AICPA's Tax Division.

Ellen has spoken at numerous tax institutes, including the Tax Council Policy Institute, PLI's Annual Symposium on Mergers and Acquisitions, the New York University Federal Tax Institute, the Southern Federal Tax Institute, the University of Texas Tax Conference, The Parker C. Fielder Tax Conference, and at many TEI, and ALI-ABA seminars. Her articles have appeared in Tax Notes, Journal of Taxation,

Taxation for Accountants, Taxation for Lawyers, and Journal of Partnership Taxation. She has also served as an adjunct professor of law at Georgetown University Law Center.

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