GOMEL, DAVIS
&WATSON, LLP
ATTORNEYS AT LAW

M E M O R A N D U M

RE: Summary of Key Business Provisions Contained in the Coronavirus Aid, Relief and Economic Security Act

FROM: Gomel, Davis & Watson, LLP

DATE: March 27, 2020

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), expected to be signed by the President on March 27, 2020, contains provisions allowing eligible employers to receive loans through the Small Business Administration ("SBA") which can be forgiven if the proceeds are used for specific purposes within a specific time period. Interested businesses should contact their current lenders or an FDIC-insured financial institution to inquire as to the forms and procedures to take advantage of the Paycheck Protection Program.

Key provisions the Paycheck Protection Program include:

- Eligible businesses are defined as employing not more than 500 employees.
- The loan must be made between February 15, 2020 and June 30, 2020.
- The maximum loan amount is $10 million per borrower. However, the amount of any loan is determined by the payroll costs incurred by the business / borrower.
    - To determine the amount of loan for a borrower, the average monthly payments by the borrower for "payroll costs" during the one year period before the date the loan is made is multiplied by 2.5.
    - The above is increased by the amount of any loan received by the borrower, unrelated to COVID-19, from the SBA during the period beginning January 31, 2020 and ending on the date on which such loan can be refinanced under the Paycheck Protection Program.
    - Payroll costs include payments for:
        - Salaries and wages;
        - Vacation, parental or sick leave;
        - Severance amounts;
        - Health care benefits, including premiums; and
        - Retirement benefits.

- However, payroll costs do <u>not</u> include:
- Qualified family leave wages for which a credit is allowed under the Families First Coronavirus Response Act;
- Any salary to any employee in excess of $100,000 per year.
    - There is a reference to this $100,000 limit "as prorated for the covered period." For the purpose of determining the loan amount, the time period is, generally, one year. Therefore, the reference to any pro-ration may need to be clarified in future guidance.

– Rather than determining "ability to repay," lenders are allowed to confirm the business was operational on February 15, 2020 and paid salaries/wages to employees, or compensation to independent contractors.
– Collateral and personal guarantee requirements are waived.
– The requirement that credit cannot be obtained elsewhere is waived.
– Eligible businesses must provide a good faith certification that:
    - The loan is needed due to economic conditions caused by COVID-19;
    - The funds will be used only for specific purposes; and
    - They are not receiving duplicative funds for the same purposes from another SBA program.
– If an eligible business is receiving or has received an "economic injury disaster loan" ("EIDL"), unrelated to COVID-19, through the SBA, the business can refinance that loan into the Paycheck Protection Program.
    - Any emergency grant awarded under the EIDL will reduce the amount forgivable under the Paycheck Protection Program.
– Any loan amount not forgiven will have a maturity of not more than 10 years and will have an interest rate of no more than 4%.
– There will be at least a six-month payment deferral period, which may be allowed up to one year.

The loan forgiveness provisions of the Paycheck Protection Program include:

– The amount of forgiveness equals the amount expended on specific purposes during an eight week period after the origination date of the loan.
– The specific purposes include:
    - Payroll costs (see above)
        - Limited to an annual maximum of $100,000 for each employee, pro-rated for the "covered period" of February 15, 2020 through June 30, 2020.
        - Since the time period for the forgiveness is eight weeks, it appears the $100,000 limit may be $15,384 per employee ($100,000 ÷ 52 weeks x 8 weeks).

- Interest on any mortgage that:
  - Was incurred prior to February 15, 2020; and
  - Is secured by an interest in real or personal property.
- Rent on any lease in force on February 15, 2020.
- Utilities for which service began before February 15, 2020.

– The amount forgiven will be reduced by any reduction in:
  - The average number of full-time equivalent employees per month employed during the covered period (i.e., February 15, 2020 through June 30, 2020) divided by either:
    - The average number of full-time equivalent employees during February 15, 2019 and June 30, 2019,

    OR (at the borrower's election)
    - The average number of full-time equivalent employees per month during January 1, 2020 and February 29, 2020.
  - The compensation of any employee, during the covered period, that is in excess of 25% of the total compensation of the employee for the most recent full quarter before the covered period.
    - As used immediately above, "employee" does not include any employee who received compensation of more than $100,000 on an annualized basis/rate.

– One or both of the above reductions may be avoided if, by June 30, 2020, the borrower eliminates the reduction in full-time equivalent employees and/or the reduction in compensation, when comparing (a) the time period between February, 15, 2020 and 30 days after enactment of the CARES Act to (b) February 15, 2020.

– The amount of forgiveness must be supported by documents submitted by the borrower to the lender.

– The amount of forgiveness will <u>not</u> be taxable to the borrower.

<u>Other Business Provisions:</u>

Net Operating Loss Modification

– The CARES Act will allow net operating losses incurred in a tax year beginning in 2018, 2019 or 2020 to be carried back five years. In addition, the CARES Act removes the limitation on the amount of taxable income that can be offset by such a loss. The modifications change provisions that were imposed by the 2017 Tax Act, which do not allow most losses to be carried back and which limit the amount of taxable income that can be offset by a loss.

- All businesses are eligible for this benefit, regardless of the number of employees employed.

Interest Expense Deduction

- The CARES Act increases the amount of interest expense that can be deducted from 30% to 50% of taxable income (with certain adjustments) for 2019 and 2020.
- The interest expense limitation impacts businesses, in general, with over $25 million of gross receipts, on average, over the three past tax years.

Additional Payroll Tax Credit

- If a business does not participate in the Paycheck Protection Program, the business may be eligible for payroll tax credits. The credit allowed is after determining any payroll tax credit allowed per the Families First Coronavirus Response Act (which expanded paid sick leave and paid family leave if related to COVID-19).
- This credit is allowed for businesses whose operations were fully or partially shut down due to a COVID-19 related order, or whose gross receipts declined by more than 50% when compared to the same quarter in 2019.
- For businesses with more than 100 full-time employees, qualified wages are wages paid when the employee is not providing services due to the COVID-19 related shut down.
- For businesses with 100 or fewer employees, qualified wages are wages paid whether or not the employee is providing services.
- Qualified wages also include the cost of providing health benefits.
- The credit is allowed for the first $10,000 of qualified wages per employee per quarter.
- If the credit exceeds the amount of payroll taxes that would otherwise be due, the excess is refundable.
- The credit is allowed for qualified wages paid from March 13, 2020 through December 31, 2020.

Delay of Payment of Some Payroll Taxes

- If business has not had any loan forgiveness under the Paycheck Protection Program, the business has the option of deferring paying a portion of its payroll taxes.
- The deferred taxes must be paid in two installments, with 50% being due by December 31, 2021 and the other 50% due by December 31, 2022.
- The deferral relates to payroll taxes due between the date of enactment of the CARES Act and before January 1, 2021.
- As written, the CARES Act does not limit the deferral provisions based on the number of employees of the business.

Payroll Tax Credits under the Families First Coronavirus Response Act

- The CARES Act made clarifying revisions to the payroll tax credit provisions of the Families First Coronavirus Response Act.
- At the time of preparing this summary, the Department of Treasury has not published guidance related to such payroll tax credits.

Please note that this summary is for your general information, and is not legal or tax advice. If you have any questions or if you would like specific guidance as to how we may be able to assist you in your particular situation, please contact us.

GOMEL, DAVIS & WATSON, LLP

(404) 223-5900

www.gomeldavis.com

2400 MARQUIS ONE TOWER, 245 PEACHTREE CENTER AVENUE, N.E.

ATLANTA, GEORGIA 30303-1241