PETRINOVICH PUGH & CO LLP
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Financial Relief Packages for Small Business

Monterey Bay Economic Partnership

January 21, 2021

Ron Zraick, Director
Petrinovich Pugh and Company
CPAs and Consultants

AGENDA

- California Relief Grant Program
- CAA - Consolidated Appropriations Act (Follow-Up to CARES Act)
- PPP Round 1 Forgiveness and Round 2 Requirements

California Relief Grant Program

(info from the California Grant Relief Program websites:

careliefgrant.com

californiasbdc.org/covid-19-relief-grant)

ELIGIBLE BUSINESS GROSS REVENUE	GRANT AWARD AVAILABLE PER BUSINESS
Annual gross revenue $1,000 to $100,000	**$5,000** grant
Annual gross revenue greater than $100,000 up to $1,000,000	**$15,000** grant
Annual gross revenue greater than $1,000,000 up to $2,500,000	**$25,000** grant

California Relief Grant Program

- Total amount available under CRG = $500 million
- The first round of applications has closed as of January 13, 2021.
  - Notification via email or text to first round applicants from January 11 to January 22
  - Funds disbursed starting January 22 for 45 days
  - If applicant does not receive a round 1 grant, they will be moved to round 2
- Round 2 opens February 2 at 8am and ends February 6 at 6pm
- Find CA Relief Grant Partners that can help at **careliefgrant.com**

California Relief Grant Program

- Only “eligible” small businesses and nonprofits qualify:
  - Sole proprietor, independent contractor, business entity or non profit with between $1,000 and 2.5 million in revenue
  - Active since at least June 1, 2019
  - Must be currently operating or have a “clear plan” to reopen when permitted
  - Business was impacted by COVID health and safety restrictions
  - Must provide tax, entity formation/filing information, business license
  - Business must be able to provide acceptable form of government-issued photo ID (?)
  - Owners of multiple businesses can only apply once using the business with the highest revenue

California Relief Grant Program

- How will grant recipients be determined:
  - First, is the grant application complete
  - Then, under the following criteria
    - Geographic distribution based on COVID-19 health and safety restrictions following California's Blueprint for a Safer Economy and county status and the new Regional Stay At Home Order
      - i.e. the "color coded" tier system
    - Industry sectors most impacted by the pandemic
      - How is this determined?
    - Businesses majority owned and run/managed by women, minorities/persons of color, veterans and businesses located in low-to-moderate income and rural communities

California Relief Grant Program

- “**Ineligible” businesses and nonprofits**:
  - Businesses without a physical CA location
  - Any non-profit that is not a 501(c)(3) or 501(c)(6)
  - Government entities/elected officials (except Native American Tribes
  - Businesses primarily engaged in political or lobbying activities
  - Speculative Businesses, passive business, investment companies and investors who file Schedule E on tax returns (maybe not all)
  - Religious organizations
  - Banks, finance companies and factoring companies
  - Businesses engaged in any activity that is illegal under federal, state or local law (so no cannabis related businesses)
  - Businesses of a prurient sexual nature
  - “Predatory” businesses such as check cashing and rent to own
  - Businesses that restrict customers other than based on capacity
  - Business with a 10+% owner who has a civil judgment or criminal conviction within the last 3 years or is currently charged.

CAA - Consolidated Appropriations Act
(the Prequels)

- **A summary of the CARES Act passed March 27, 2020 and subsequent COVID relief legislation.**
- CARES Act signed into law March 27, 2020
- Paycheck Protection Program and Healthcare Enhancement Act signed into law April 24, 2020 (less than a month later)
- Paycheck Protection Program Flexibility Act signed into law June 5, 2020 (6 weeks later)
- Consolidated Appropriations Act signed into law December 27, 2020 (more than 6 months later)

The CARES Act (March 27, 2020)
Coronavirus Aid, Relief, and Economic Security Act

Key Provisions:

- Paycheck Protection Loans*
- Economic Injury Disaster Loans and Grants*
- Employee Retention Credit (initially not allowed if employee took a PPP loan)*
- Deferred Payment of Employer Payroll Tax and Self-Employment Tax (Note – Executive Order issued on August 8 allowed for deferral of employee's portion)
- Changes to the Interest Expense Deduction Limitation Rules
- Changes to the Net Operating Loss Rules
- Removal of Net Business Loss Limitation
- Qualified Improvement Property – 15 year depreciation (correction to 2017 TCJA)

* These rules changed with subsequent legislation

Paycheck Protection Program and Healthcare Enhancement Act (April 24, 2020)

- Additional $321 billion for Paycheck Protection Loans.
- Additional $50 billion for EIDL Loans and $10 billion for EIDL Grants
- $75 billion for Healthcare Provider Expenses Related to COVID 19
- $25 billion for COVID-19 testing

Paycheck Protection Program Flexibility Act (June 5, 2020)

- Extended PPP loan payback period from 2 years to 5 years for loans not forgiven
- Extended the timeframe to use PPP loan proceeds and qualify for forgiveness from 8 weeks to 24 weeks
- Decreased the percentage of payroll related costs paid with PPP loan proceeds from 75% to 60% to qualify for forgiveness
- Made it easier to obtain PPP loan forgiveness if they could not replace FTEs
- Allowed employers to defer the employer 6.2% share of 2020 Social Security tax even if PPP loan is forgiven

Consolidated Appropriations Act (December 27, 2020)

- On December 27, 2020 then President Trump signed into law the $2.3 billion Consolidated Appropriations Act of 2021 (CAA), a nearly 5,600-page piece of legislation that includes:
  - $900 billion in long awaited individual, business, nonprofit and government stimulus relief for the COVID-19 pandemic and
  - $1.4 trillion omnibus spending bill for the 2021 federal fiscal year.
- The omnibus bill consists of 12 separate annual appropriations bills and prevented a government shutdown.
- The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 is Division M of the 5,600- page legislation. Division N contains additional coronavirus provisions.
- The CAA also contains numerous other tax, payroll and retirement provisions.
- The bill is one of the largest, in number of pages in in amount of dollars, spending measures ever enacted, surpassing the $2.2 trillion CARES Act, enacted in March 2020.

Key Business Provisions of the CAA

- $285 billion additional funding for PPP loans, including the possibility of a second PPP loan
- $20 billion for EIDL loans and $20 billion for EIDL grants through December 31, 2021
- Favorable Tax Treatment of PPP Funded Expenses and Loan Forgiveness
- Live Venue Aid Grants
- Extends the Employee Retention Tax Credit through July 31, 2021 and expands the credit allowing PPP borrowers to claim the credit retroactively for wages paid after March 12, 2020 and
  - However, ERC is not available for wages paid with PPP loan proceeds if the loan is forgiven
- Extends Families First Coronavirus Response Act (FFCRA) Credits through March 31, 2021.
  - Emergency Paid Sick Leave (EPSL)
  - Emergency Family and Medical Leave (EFMLA).
  - Now voluntary for employers
  - Can take FFCRA Credits and obtain PPP loan
  - Cannot take FFCRA Credits and obtain PPP loan forgiveness for wages used to get the credits
- The “Three Martini Lunch” deduction

Key Individual Provisions of the CAA

- Recovery Rebates (aka direct payments)
- Expanded Unemployment Benefits
- Medical Expense Deductions
- Charitable Contributions
- Retirement relief
- Housing relief (this will help landlords too)

Let's look at some of these CAA relief opportunities in more detail

CAA Provides Favorable Tax Treatment of PPP Funded Expenses and Loan Forgiveness

- Before the CAA:
  - PPP loans forgiven are not included in income for Federal and CA purposes.
    - Note: CA AB 1577
  - CARES Act, PPPHCE Act and PPPFA were silent as to deductibility of forgiven expenses
  - Secretary Mnuchin’s position was to disallow deductions for expenses paid with PPP loan proceeds and EIDL grants that are forgiven.
  - As early as May 2020 Senators Grassley (R) and Wyden (D) and House member Neal (D) advocated for allowing deductions for forgiven expenses
  - IRS Revenue Ruling 2020-27 “formalized” disallowance of deductions for expenses paid with PPP loan proceeds and EIDL grants if they are forgiven or if there is a “reasonable expectation” that the loan will be forgiven.

- After the CAA:
  - After the CAA: **“No deduction shall be denied or reduced, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income.”**
    - **Note: CA has not complied. Expenses paid with PPP loan that is forgiven are not deductible**

Live Venue Aid Grants

- A new $15 billion grant program through the "SBA" to assist struggling live venue operators and related businesses. To be eligible a business, non-profit or individual must be:
  - A live performing arts organization operator, live venue operator or promoter, theatrical producer;
  - A talent representative
  - A movie theatre
  - A "qualified" museum
- There are very detailed requirements to qualify for each of these categories, but generally:
  - The grantee was fully operational on February 29, 2020
  - The grantee's gross earned revenue during a calendar quarter in 2020 fell by at least 25 percent from the same quarter in 2019
  - The grantee has resumed or intends to resume its respective operations or is currently representing talent
  - The grantee must be a US privately held business or non-profit with less than 500 employees

Live Venue Aid Grants (cont.)

- According to the SBA Grants up to lesser of $10 million or 45% of 2019 revenue, issued in four “tranches” based on loss of revenue and number of employees:
  - First 14-day tranche - 90% loss in revenue, 50 employees or less
  - Second 14-days tranche - 70% loss in revenue , 50 employees or less
  - Third 14-day tranche - 25% loss in revenue, 50 employees or less
  - Then, if there’s any money left, anyone can apply.
  - As of January 20, 2021, the SBA is not taking applications yet

Employee Retention Credit Under the CARES Act

- Employers get a refundable credit against its 6.2% share of social security taxes equal to 50% of qualified wages paid to an employee.
  - Eligible wages are capped at $10,000 per year.
  - Program ends January 1, 2021
- Employers qualify if:
  - Their operation was fully or partially suspended by government order; or
  - They had less than 100 employees and had at least a 50% reduction in business;
- Exceptions:
  - Wages used to calculate the FMLA or EPSLA credits
  - Employers who received a PPP loan

Employee Retention Credit Under the CAA

- Employers get a refundable credit against its 6.2% share of social security taxes equal to **70%** of qualified wages paid to an employee.
  - Eligible wages are capped at $10,000 **per quarter**.
  - Program ends **June 30, 2021**
- Employers qualify if:
  - Their operation was fully or partially suspended by government order; or
  - They had less than **500** employees and had at least a **20%** reduction in business;
  - Employers who receive Paycheck Protection Program (“PPP”) loans may still qualify for the ERC with respect to wages that are not paid for with forgiven PPP proceeds.
  - Employers who were not in existence in 2019 may claim the credit.
  - Certain government and non-profits that provide medical care can take the credit.

Deferred Payment of Employer's and Employee's Payroll Tax and Self Employment Tax

Two separate items:

- CARES Act modified by the PPPFA:
  - **Employer's** portion of 6.2% social security taxes on wages paid between March 27, 2020 and December 31, 2020 can be deferred and paid 50% by December 31, 2021 and 50% by December 31, 2022 without penalties or interest
  - Originally deferral was not allowed if employer had a PPP loan that was forgiven.
  - PPPFA modified to allow deferral with a forgiven PPP loan
- Executive Order issued August 8, 2020:
  - Payment of **employee's** portion of 6.2% social security taxes on wages of less than $4,000 bi-weekly paid between September 1, 2020 and December 31, 2020 can be paid on or before April 30, 2021
  - CAA extended the repayment period to December 31, 2021 without penalties or interest

The “Three Martini Lunch” Deduction

- Since 1994 the deduction for business meals and other entertainment expenses has been limited to 50%.
- In 2017, the TCJA eliminated the deduction for entertainment expenses (golf, sporting events, etc.), but kept the deduction for meals at 50%
- The CAA reinstates the 100% deduction for the cost of meals paid or incurred before January 1, 2022
- An attempt to address the crisis in the restaurant industry caused by COVID
- Nowhere near as beneficial as the$120B Restaurants Act passed by the house in October 2020 as part of the $2.2T HEROS Act (Health and Economic Recovery Omnibus Emergency Solutions Act) that would have provided direct funding in the form of grants to the restaurant industry. Never got further than the House.

CARES Act Provisions for Businesses

- **Utilization of Business Losses –** The Tax Cuts and Jobs Act of 2017 (TCJA) limited business losses available to offset other income at $250,000 single and $500,000 married filing joint, with any excess carrying over.
  - The CARES Act suspends this law for 2018, 2019 and 2020. And keep this in mind when filing your 2020 tax return. Also, 2018 and 2019 tax returns which had limited losses, these returns can be amended to fully apply the losses against other income and potentially claim a refund.
- **Net Operating Losses** – The 2017 TCJA eliminated net operating loss (NOLs) carry backs and limited the amount of income that carry forwards could offset in any given year to 80% of taxable income.
  - The CARES Act allows 2018, 2019, and 2020 NOLs to be carried back up to 5 years.
  - Alternatively, taxpayers may carry the NOLs forward to 2019 and 2020 without the 80% income limitation.
  - Corporate losses incurred in 2018, 2019 and 2020 can be carried back 5 years, thus, taking advantage of tax years with an effective corporate rate of 35% rather than the current 21%.
- **Qualified Improvement Property** - The CARES Act makes a technical correction to TCJA with respect to qualified improvement property, making it 15-year property instead of 39-year property, which also makes it available for 100% bonus depreciation.
  - This change is retroactive to January 1, 2018, so if you have QIP property you may be able to amend prior years' returns and reap the benefits of the greater deduction earlier.

Individual CAA Provisions That May Help Businesses

- **Recovery Rebates (aka direct payments)**
  - $600 for individuals
  - $1,200 for couples plus $600 per child
  - Rebates are reduced by $5 for every $100 of income above these AGI thresholds:
    - $75,000 for singles
    - $112,500 for head of household
    - $150,000 for married filing jointly
- **Expanded Unemployment Benefits**
  - Extra $300 per week over and above state unemployment benefits, for 11 weeks.
  - It also extends unemployment benefits to workers who typically don't qualify, including the self-employed, gig economy workers and others in nontraditional employment for 11 weeks.
- **Medical Expense Deductions**
  - Unreimbursed medical expenses in excess of 7.5% of AGI may be deduction for years beginning January 1, 2021
  - The AGI limit was scheduled to increase to 10% on January 1, 2021

Individual CAA Provisions That May Help Businesses (cont.)

- Charitable contributions
  - Under the CARES Act, taxpayers who don't itemize their deductions on their tax returns can nonetheless claim a $300 "above-the-line" deduction for cash contributions to qualified charitable organizations in 2020. The CAA extends that deduction through 2021 and doubles the deduction for married filers to $600.
  - The CARES Act also loosened the limitations on charitable deductions for cash contributions made in 2020, boosting it from 50% to 100% of AGI. The CAA carries that over for 2021.
- Retirement Relief:
  - CAA continues the CARES Act's provision that waives the 10% penalty on up to a $100,000 withdrawal from certain retirement accounts to pay expenses related to COVID.
- Tenant and Landlord assistance
  - The CDC moratorium on evictions for nonpayment of rent that was to expire Dec. 31, 2020 has been extended to Jan. 31, 2020.
  - $25 billion was allocated for dedicated rental assistance.
    - Details on how the $25B will be distributed are limited but we believe
      - The funds will be distributed to state and local governments, which will need to develop guidelines for distributing the money. This may take a while.
      - Landlords will be able to apply for rental assistance on behalf of their tenants. If a landlord does not want to apply for funding, a tenant can apply for direct assistance.

The Fine Print

Things are changing rapidly. This information is accurate at the time of the presentation. Please note that this webinar and the material contained herein have been prepared for informational purposes only and are not intended to provide, nor should be relied upon for, tax advice. Please consult with a certified tax professional and/or certified lender for advice and recommendations.

Thank you!

Ron Zraick, Director

Petrinovich, Pugh & Co.

rzraick@ppandco.com

Direct 408-200-9024

San Jose
333 W. Santa Clara Street
Suite 800
San Jose, CA 95113

Santa Cruz
740 Front Street,
Suite 365
Santa Cruz, CA 95060

(408) 287-7911

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