COVID-19 for Nonprofits: Federal Incentives and Changes

By Bill Manne
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Congress has just passed two bills in rapid succession: the Families First Coronavirus Response Act (FFCRA) and the much longer Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), containing over 800 pages of changes designed to provide financial relief to Americans and their business enterprises. This article focuses on provisions of these acts that can impact nonprofits and, where appropriate, links to other articles in our coverage for a more extensive discussion. In addition to the two federal acts referenced above, this article provides additional links to other areas that nonprofits might consider, such as insurance coverage.

TAX LAW CHANGES (CARES ACT)

Expansion of Charitable Income Tax Deductions

“Above the Line” Charitable Income Deductions. For tax years beginning in 2020, eligible individuals may deduct up to $300 of qualified charitable contributions from their adjusted gross income. This deduction applies only to individuals who do not itemize and is for cash contributions to specific types of charities, with some exceptions.

Suspension of Charitable Contribution Limitations for 2020. Certain cash contributions made to specific categories of charitable organizations during calendar 2020 will, in the case of individual taxpayers, not be subject to traditional limitations that were based on adjusted gross income, or in the case of corporate taxpayers subject to a higher limitation (25% instead of 10%). In the case of partnerships and S corporations, the election to treat certain cash contributions as being excluded from the limitations will be made at the partner or shareholder level. There is also a specific increase in the limitation applicable to charitable contributions of food.

Payroll Tax Credits and Deferred Payment

Employee Retention Tax Credit. Employers carrying on a trade or business and tax exempt organizations who, during 2020, experience full or partial suspension of the operation of their business in any calendar quarter due to orders from a governmental authority limiting commerce, travel, or group meetings because of COVID-19 will be eligible for a payroll tax credit equal to 50% of “qualified wages” paid to employees, not to exceed $5,000 per employee for the year, based on wages paid after March 12, 2020 and before January 1, 2021. Similar to the structure used in the recently passed Families First Coronavirus Response Act, the credit will first be applied against employer payroll taxes due and, if the credit exceeds those taxes, a refund will be issued.

Businesses will also be eligible for the credit if in any calendar quarter there is a decline in gross receipts, compared to the same calendar quarter one year ago. The period covered by this test begins with the first calendar quarter in 2020 in which the business experiences a 50% or more decline in gross receipts, for the reasons stated above, and ends at the end of the first calendar quarter in which gross receipts exceed 80% of the prior year’s quarter. The credit applies to all operations of tax exempt organizations, and such organizations are only required to meet the first test (not the decline in gross receipts test).

“Qualified wages” for an employer who had an average of more than 100 full-time employees during 2019 are wages paid to employees who are not providing services due to the full or partial suspension of operation of the business as a result of orders from a governmental authority. For employers who had an average of fewer than...
100 full-time employees during 2019, qualified wages are all wages paid to employees. In all cases, qualified wages paid may not exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period. Qualified wages can also include the cost of employer provided group health plan coverage for the employee for the applicable periods.

There are additional special rules that apply in certain situations to limit the credit and avoid the possibility of double benefits. Of particular note is a provision that limits employers to either utilizing this credit or receiving an SBA Paycheck Protection loan, but not being able to qualify for both. The credit is not available to governmental employers, including the government of any state or political subdivision, or any agency or instrumentality thereof.

Payment of Employer Payroll Taxes Postponed. Employers will be allowed to delay payment of a portion of applicable payroll taxes without penalty or interest, except in certain circumstances, for payroll taxes due beginning on the date of the bill’s enactment and ending before January 1, 2021, provided 50% of the amounts deferred is paid before December 31, 2021 and the balance is paid before December 31, 2022. Employers who have indebtedness forgiven under the SBA Payroll Protection Loan program (see below) are not eligible for payroll tax deferral under this provision.

EXPANDED EMPLOYEE LEAVE PROVISIONS (FFCRA)

There are two expanded federal paid leaves that nonprofits with fewer than 500 employees must provide, which are summarized in this chart. As explained in articles about each of the expanded Emergency Paid Sick Leave and Emergency Family and Medical Leave, certain COVID-19 related circumstances will entitle employees to leave and provide pay, within limits, that is offset by tax credits.

LOANS (CARES ACT)

The CARES Act provides two expanded SBA loan programs designed to provide businesses. The Paycheck Protection Program is available to 501(c)(3) and 501(c)(19) veterans organizations, as well as certain tribal businesses, and includes the possibility of loan forgiveness, to the extent the loan proceeds are used for payroll costs, rent, utilities, and mortgage interest. Both the Paycheck Protection Program and Expanded Economic Injury Disaster Loan provide advantageous federally insured loans, on an expedited basis, to continue operations. Related rules also provide for deferral of payments under existing loan programs. Finally, in some circumstances, federally backed property loans might be eligible for separate forbearance provisions that some nonprofits may find helpful.

See the links below for information on assistance programs under the CARES Act:

- CARES Act: Federal Stimulus Package to Provide Emergency Relief to Borrowers and Financial Institutions
- CARES Act Expands Small Business Lending and Provides Potential Loan Forgiveness
  In addition to the “Paycheck Protection Program” loans (administered under SBA 7(a)), there is also an “Expanded Economic Injury Disaster Loan (“EIDL”) & Emergency Grants” program, administered under SBA 7(b), that loosens credit standards from traditional EIDLs and even provides a rapid grant procedure that can put $10k into a nonprofit’s hands within three days.
- CARES Act Provides Relief for Federally Backed Property Loans and Renters

Disclaimer: This article is not legal advice. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps business must take under applicable laws.
INSURANCE COVERAGE
Many nonprofits will experience events that may be covered under existing insurance policies. To assist in evaluating potential claims, please see the following articles.

- Five Things To Do Now to Protect Your Business Interruption Insurance Claim
- Insurance Recovery for COVID-19 Losses

For more information about ongoing developments related to COVID-19, visit Miller Nash Graham & Dunn’s resource library.

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