How the COVID-19 Economic Stimulus Bill Affects Churches and Nonprofits

Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (S. 748)

March 27, 2020

While IRS Regulations are needed to provide implementation details for the CARES Act, the following represents our current understanding of the Act relating to the issues of the most interest to churches and nonprofits:

- **Above the line deduction for charitable contributions.** This provision was strongly promoted by ECFA. We urged Congress to provide a much larger deduction (often referred to as the Universal Charitable Deduction) to individual taxpayers and to make the provision permanent. We supported the Lankford amendment, which would have provided a universal deduction for gifts up to one-third of the itemized deduction, but it was not included in the Act.
  While the CARES Act provides for above the line deductions for charitable contributions, the deduction is limited to only $300 and *it only applies to the 2020 tax year*. While there have been reports that this is a permanent provision in the law, we believe the wording of the Act does not support this conclusion. **Section 2204.**
- **Limitation on charitable contributions.** The CARES Act encourages individuals to contribute to churches and charitable organizations in 2020 by relaxing some of the limitations on charitable contributions:
  - Suspending the 60% adjusted gross income limitation on individuals and increasing it to 100% (*Observation*: This change will especially be advantageous to major donors),
  - increasing to 25% the 10% limitation on corporations,
  - and increasing to 25% the 15% limitation on food inventory.

  The suspension of the individual contribution limitation is only for cash gifts that go to a public charity. If a donor gives cash to, say, a private foundation, the old deduction rules apply. And while the organizations that manage donor advised funds are public charities, a donor does not get the higher deduction for donating cash to a donor advised fund.

  If a donor's assets are substantial enough that they can give more than their taxable income this year, they won't lose the deduction for the excess amount. They can carry forward the unused deduction to the next year, as has always been the case. **Section 2205.**
- **Payroll protection loans/grants.** The CARES Act creates a new Loan Program category. For the period from February 15, 2020 to June 30, 2020, the law allows the Small Business Administration to provide 100% federally backed loans up to a maximum amount to eligible (500 or fewer employees) organizations. There are no apparent restrictions with respect to churches or other religious organizations. **Title I, Section 1102.**
  The maximum loan amount (capped at $10 million) is generally 2.5 times average total monthly payroll costs incurred in the one-year period before the loan is made. There are special rules for seasonal employers and organizations not in existence for a full year prior to the loan date.

  In determining payroll costs, the following *are* included:

  - Salaries and other wages
  - Employer-paid health care benefits
  - Employer-paid retirement benefits
  - Employer-paid state and local payroll taxes

  In determining payroll costs, the following are *excluded*:

  - Compensation of an employee in excess of an annual salary of $100,000
  - Federal payroll taxes
  - Compensation of an employee whose principal place of residence is outside of the U.S.
  - Emergency sick leave or emergency family leave payments that qualify for a credit under the Families First Coronavirus Response Act

  There are no personal loan guarantees and no recourse to any individuals unless the loan funds are used for an unauthorized purpose. There are very few borrower requirements to obtain a loan under the new program. Those requirements include (but are not limited to):

  - a good-faith certification that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the borrower,
  - the funds will be used for payroll costs, paid sick, medical, or family leave, mortgage interest (but not principal), interest on other debt obligations incurred before February 15, 2020, rent, and utilities,
  - the borrower was in operation on February 15, 2020, and
  - the borrower had employees for whom it paid salaries and payroll taxes of independent contractors as reported on Form 1099-MISC as of February 2020.

  Employers that maintain employment between March 1 and June 30, 2020 are eligible to have their loans forgiven, essentially turning the loan into a grant. The forgiveness amount is reduced by an amount calculated under a formula designed to measure whether the borrower reduced its workforce during a specific period in early 2020. Amounts not forgiven are subject to an interest rate not to exceed 4% over a maximum of 10 years. **Section 1106.**
- **Economic Injury Disaster Loans (EIDL).** The Act eliminates creditworthiness requirements so the eligible nonprofits and other applicants can get checks for $10,000 within three days. While nonprofits are eligible for these loans, churches are not. **Section 1110.**
- **Delay of payment of employer payroll taxes.** Effective with the date of enactment of the CARES Act, employers may defer payment of 50% of employer payroll taxes attributable to wages paid during 2020 until December 31, 2021 with the remaining 50% deferred to December 31, 2022. For the purposes of this provision applicable to churches and other nonprofit organizations, *payroll taxes is only the employer's portion of Federal Insurance Contribution Act (FICA). Caution:* This provision is not like a loan that can be renegotiated when it comes due. The IRS will expect to be paid the amount of employer's FICA taxes on December 31, 2021 and December 31, 2022. **Section 2302.**
- **Employee retention payroll tax credit.** The Act creates a *refundable payroll tax credit* (offset against an organization's social security tax liability) of up to $5,000 for each employee on the payroll when certain conditions are met. For employers with more than 100 full-time employees, only employees who are currently not providing services for the employer due to COVID-19 causes are eligible for the credit. The employee retention credit is effective for wages paid after March 12, 2020, and before January 1, 2021.

  Eligible employers must have carried on a trade or business during 2020 and satisfy one of two tests:

  - Have business operations fully or partially suspended operations due to orders from a governmental entity limiting commerce, travel, or group meetings; or
  - Experience a year-over-year (comparing calendar quarters) reduction in gross receipts of at least 50% – until gross receipts exceed 80% year-over-year. For churches and nonprofit organizations, the entity's whole operations must be taken into account when determining the decline in revenues. **Section 2301.**
- **Unemployment issues.** The Act provides payments to states to reimburse nonprofit organizations for half of the costs they incur through December 31, 2020 to pay unemployment benefits. This benefit relates to nonprofit organizations who have elected the reimbursement method with respect to unemployment insurance coverage. (Note: Most churches are not subject to unemployment insurance.) **Section 2103.**

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