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CARES ACT – An Aggressive Response to the COVID-19 Pandemic

As the Coronavirus ("COVID-19") makes its way across the United States and is impacting families and businesses throughout, the federal government is taking steps to counter-act the financial impact of the pandemic by way of an economic stimulus package. Phase III of this stimulus package, the Coronavirus Aid, Relief, and Economic Security Act ("CARES" Act) was signed into law by President Trump on March 27, 2020 and is intended to provide vital economic support for families, individuals and businesses of all sizes. Below is an overview of some of the relief offered by the Act:

Expanded Unemployment Insurance (UI)

Under CARES, unemployment insurance for individuals laid off as a result of the economic impact of COVID-19 will receive a $600 per week increase in benefits for up to four months. In addition, federal funding of UI benefits is being expanded to those not typically eligible, including self-employed individuals, independent contractors, and those with limited work history. The federal government is incentivizing states to repeal any "waiting week" provisions that prevent unemployed workers from getting benefits as soon as they are laid off by fully funding the first week of UI for states that suspend such waiting periods. Additionally, the federal government will fund an additional 13 weeks of unemployment benefits through December 31, 2020 after workers have run out of state unemployment benefits.

Tax Rebates for Individual Taxpayers

CARES is intended to provide a $1,200 direct payment tax rebate for individuals ($2,400 for joint taxpayers). Additionally, taxpayers with children will receive a flat $500 for each child. The rebates would not be counted as taxable income for recipients, as the rebate is a credit against tax liability and is refundable for taxpayers with no tax liability to offset. The rebate does phase out at $75,000 for singles, $112,500 for heads of household, and $150,000 for joint taxpayers at 5 percent per dollar of qualified income, or $50 per $1,000 earned. It phases out entirely at $99,000 for single taxpayers with no children and $198,000 for joint taxpayers with no children.

Tax returns filed in 2018 or 2019 will be used to calculate the rebate advanced to taxpayers, however taxpayers eligible for a larger rebate based on 2020 income will receive it in the 2020 tax season. Taxpayers with higher incomes in 2020 will see the overpayment associated with their rebate forgiven. This credit is a one-time credit, but policymakers may consider additional rebates if the downturn is prolonged.

Penalties Waived for Early Withdrawal from Retirement Accounts

The CARES Act waives the 10 percent early withdrawal penalty on retirement account distributions for taxpayers facing virus-related challenges. Withdrawn amounts are taxable over three years, but taxpayers can recontribute the withdrawn funds into their retirement accounts for three years without affecting retirement account caps. Eligible retirement accounts include

individual retirement accounts (IRAs), 401Ks, qualified trusts, certain deferred compensation plans, and qualified annuities. The Act also waives required minimum distribution rules for certain retirement plans in calendar year 2020.

Employer Payments of Student Loans Excluded from Taxable Income

Certain employer payments of student loans on behalf of employees are excluded from taxable income. Employers may contribute up to $5,250 annually toward student loans, which is typically treated as taxable income. Under CARES, these payments made on behalf of the employee would be excluded from that employee's income.

Paycheck Protection Program

Under CARES, the federal government will allocate $350 billion to the Paycheck Protection Program, which is meant to help small businesses (less than 500 employees) cover payroll and other expenses between February 15 and June 30. Notably, small businesses may take out loans up to $10,000,000. The amount of the loan is configured based on 2.5 times the applicant's payroll costs from the year prior to the origination date. Loans may be forgiven if a company uses the funds for: employee or independent contractor compensation; costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; interest payments on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation); rent; utilities; or interest on any other debt obligations that were incurred before the period beginning on February 15, 2020 and ending on June 30, 2020. However, borrowers should be aware that there are certain limits on the amounts of forgiveness offered. As this type of loan is aimed at workforce retention during this crisis, CARES sets forth that the amount of forgiveness a borrower may receive can be reduced if the borrower decreases its number of full-time employees or reduces the wages of any of its full-time employees (who make less than $100,000) by more than 25% during the prescribed eight-week period.

$454 Billion in Emergency Lending to Businesses, States, and Cities

Under the Act, $454 billion in emergency lending will be made available through the U.S. Treasury's Exchange Stabilization Fund. These funds include $25 billion in lending for airlines, $4 billion in lending for air cargo firms and $17 billion in lending for firms deemed critical to U.S. national security. Companies taking loans must not engage in stock buybacks for the duration of the loan plus one year thereafter and must retain at least 90 percent of its employment level as of March 24, 2020. Loans also come with terms limiting employee compensation and severance pay. Emergency lending will be overseen by a Congressional Oversight Commission and a Special Inspector General.

$150 Billion for State and Local Governments

Under CARES, $150 billion will be set aside in a Coronavirus Relief Fund for state and city government expenditures incurred due to dealing with the coronavirus public health emergency. The fund would be allocated by population proportions, with a minimum of $1.25 billion for each state.

Business Tax Implications

- Employers are eligible for a 50 percent refundable payroll tax credit on wages paid up to $10,000 during the crisis. This credit would be available to employers whose businesses were disrupted due to COVID-19 related shutdowns and those experiencing a decrease in gross receipts of 50 percent or more when compared to the same quarter last year. It is available for employees retained but not currently working due to the crisis for firms with more than 100 employees, and for all employee wages for firms with 100 or fewer employees.

- Employer-side Social Security payroll tax payments may be delayed until January 1, 2021, with 50 percent to be due on December 31, 2021 and the other half due on December 31, 2022. The Social Security Trust Fund will be backfilled by general revenue in the interim period.

- Firms may take net operating losses (NOL) earned in 2018, 2019, or 2020 and carry back those losses five years. The NOL limit of 80 percent of taxable income is also suspended, so firms may use NOLs they have to fully offset their taxable income. CARES also modifies loss limitations for non-corporate taxpayers, providing rules governing excess farm losses, and allowing a technical correction to the treatment of NOLs for the 2017 and 2018 tax years.

- Firms with tax credit carryforwards and previous alternative minimum tax (AMT) liability can claim larger refundable tax credits than they otherwise could.

- The net interest deduction limitation, which currently limits a company's ability to deduct interest paid on its tax returns to 30 percent of earnings before interest, tax, depreciation, and amortization (EBITDA), has been expanded to 50 percent of EBITDA for 2019 and 2020. This will help businesses increase liquidity if they have debt or take on more debt during this crisis.

- The excise tax applied on alcohol used to produce hand sanitizer is temporarily suspended for tax year 2020.

- Aviation excise taxes are suspended until January 1, 2021. This is estimated to reduce federal revenue by roughly $8 billion in 2020.

While not a cure all in these complicated times, CARES is a positive step towards combatting a downturn in economic activity and providing much needed financial relief to businesses and individuals facing economic collapse.

If you have questions about the CARES Act and how it impacts your business, please contact Johnson & Bell Shareholders, Christopher J. Carlos, Joseph F. Spitzzeri, Mark D. Belongia or the Johnson & Bell attorney with whom you regularly work.