LAVINE, LOFGREN,
MORRIS & ENGELBERG, LLP

CERTIFIED PUBLIC ACCOUNTANTS

March 31, 2020

Dear Friends and Valued Clients:

On Friday March 27, 2020, the House passed the Coronavirus Aid, Relief, and Economic Security Act (CARES ACT), and shortly thereafter the President signed the Act into law. This is the Phase 3 stimulus package designed to mitigate the economic fallout arising from the Coronavirus Pandemic. The CARES Act is overarching, providing support for state and local governments fighting the pandemic as well as economic relief for individuals and businesses affected by this crisis. A Phase 4 Stimulus Package is currently in discussion by Congress.

Key Points

Below is an overview of key points of the CARES Act as well as from earlier phases and how this may affect you and your organization.

Individuals

- **Stimulus check:** Eligible individuals are allowed a tax credit on their 2020 tax return equal to $1,200 per individual ($2,400 if filing jointly) plus $500 per dependent under age of 17. The credit starts to phase out at $5 for every $100 over the following adjusted gross income amounts:
  - $150,000 for married filing jointly
  - $112,500 for head of household
  - $75,000 for all other taxpayers

  The credit will be provided in the form of an advance in the coming weeks, if the taxpayer meets the income threshold mentioned above for the most recently filed 2018 or 2019 tax return.

- **Changes to retirement accounts:**
  - The deadline to contribute to IRA and certain other types of retirements plans for 2019 has been extended from April 15th to July 15th
  - Waiver of early withdrawal penalties from qualified retirements accounts up to $100,000 if recipient, spouse, or dependent diagnosed with the coronavirus or financially impacted by it. The taxable income and tax on the above-

    mentioned distribution could be spread ratably over three years. The individual has three years to contribute the funds back into the retirement account.
  - Loans from qualified retirement plans have increased from $50,000 to $100,000 and from 50% to 100% of balance (up to $100,000).
  - A waiver on required minimum distributions (RMD) from IRA and certain defined contribution plans in 2020.
  - For retirement plans that have a 5-year distribution period, 2020 distribution could be disregarded and not be part of the 5-year period. This essentially converts the distribution period from five-year to six-year.

- **High Deductible Plans:** A high deductible health insurance plan is allowed to provide a zero deductible for remote care services and testing and treatment of COVID-19.

- **Net operating losses (NOLs):**
  - Under old law, NOLs could offset only 80% of taxable income. With CARES Act, that limitation went away effective January 1, 2021.
  - Under old law, NOLs could only be carried forward to future tax years. With CARES Act, the NOLs for 2018, 2019, and 2020 could generally be carried back to each of the preceding five tax years. If your NOLs were limited in 2018 or 2019, there may an opportunity to amend the federal tax return.

- **Removal of Excess Business Loss Limitations:** Under old law, business losses by noncorporate taxpayers were limited to $250,000 ($500,000 for married filing jointly). With the CARES Act, the limitation no longer applies for years 2018, 2019, and 2020. If your business losses were limited in 2018 or 2019, there could be an opportunity to amend the federal tax return.

- **Charitable contributions:**
  - Cash charitable contributions up to $300 could be taken as an above the line deduction for taxpayers that do not itemize.
  - Cash charitable contributions will generally no longer have a limitation of 60% of AGI.

- **Student loan employer reimbursement:** Repayment of up to $5,250 for a higher education loan will not be taxable to the employee in 2020.

Businesses

- **Small Business Loan Program:** The Cares Act established the Paycheck Protection Program (PPP) under the SBA’s 7(a) program. These loans have an interest rate caped of 4% and are 100% backed and guaranteed by the Federal Government and thus do not require any collateral. The amount loaned can be the lesser of 2.5 times the average monthly payroll or $10 million. Payments on the loans will be generally deferred for up to 6 months to a year. Should certain requirements be met, a portion or the entirety of these loans can be forgiven.

Qualifying small businesses include “any business concern, nonprofit organization, veteran’s organization, religious organizations or Tribal business” that have:

- 500 employees or fewer, whether employed on a full-time, part-time, or other basis; or
- meet the SBA’s industry-based “size standard” requirements for the applicable North American Industry Classification System (NAICS) code, which are based either on number of employees or annual receipts, if larger than 500 employees, in which the concern operates.

To determine an applicant’s receipts or number of employees, each applicant can generally expect that it must aggregate all employees on an affiliate basis, including subsidiaries and, in the context of private equity-backed and venture capital-backed businesses, portfolio companies. Exceptions are made in the legislation for:

- independently owned franchises, who are approved by the SBA, and hospitality businesses that fall within NAICS code 72, “Accommodation and Food Services,” (including hotels, casinos, bars and restaurants) and each of location with 500 or fewer employees; and
- any business receiving financial assistance from a Small Business Investment Company (“SBIC”).

Sole proprietors, independent contractors, gig economy workers, and self-employed individuals are all eligible for the Paycheck Protection Program.
Forgiven amounts will not constitute cancellation of indebtedness income for federal tax purposes.

- **Payroll taxes**
    - **Employee Retention Payroll Tax Credit:** Credit up to $5,000 per employee for certain employers that continue to pay employee wages while operations are either 1) materially affected by Government Orders or 2) had a 50% reduction in gross receipts in this quarter compared to the same quarter last year. For employers with less than 100 employees, all employee wages are eligible. For employers with more than 100 employees in 2019, the eligible wages are wages of employees who aren't providing services because of the business suspension or reduction in gross receipts described above. This credit is not available if you have taken out a loan under the Paycheck Protection Program.
    - **Employee Sick Leave Payroll Tax Credit:** A credit for wages paid to employees who are sick or quarantined or who are taking care of family members who are sick and quarantined. The amount is limited to $511 per sick day, $200 per day for taking leave to care for someone and expected FMLA benefits with an aggregate total of $10,000 per employee.
    - **A deferral of payment of employer’s share of payroll taxes:** As a means of increasing cash flow for affected business, under the new Act businesses can elect to defer the employer’s portion of payroll taxes related to Social Security. One half of the deferred amount would be due on December 31,

2021 with the remaining half due on December 31, 2022. Businesses who took advantage of loans under the Paycheck Protection Program will not qualify.

- **Acceleration of Alternative Minimum Tax (AMT) Credits:** Under the TCJA, the Corporate AMT was abolished. However, prior AMT payments were allowed as credits until 2021. Under the CARES Act, the ability to use these credits were accelerated and can now be used as refundable credits in 2018 and 2019.

- **Increase in the Business Interest Expense Limitation:** For businesses with revenues over $25 million interest was capped at 30% of Adjusted Taxable Income (ATI). The CARES Act increases the limitation from 30% to 50%. In addition, due to the expected downturn in 2020, taxpayers can elect to use the 2019 ATI when calculating the business interest expense limitation under Section 163(j).

- **Reclassification of Qualified Improvement Property:** This provides a fix to the TCJA in which Qualified Improvement Property (QIP) had been misclassified as 39-year property. The Act reclassifies such property as 15-year property as is applicable for all QIP placed in service after December 31, 2017. Taxpayers who had such property in service can opt to amend their 2018 tax returns.

- **Temporary Excise Tax Exemption for alcohol used to produce hand sanitizer:** Typically, distilled spirits are subject to Federal excise tax. However, for the 2020 tax year any distilled spirits used in the production of hand sanitizer consistent with FDA guidelines is exempt from excise tax.

- **Charitable contribution:** Corporation charitable contribution deduction limits have increased in 2020 from 10% to 25%

Most of these provisions will expire after December 31, 2020 or December 31, 2021.

Questions?

If you have any questions or concerns, please contact your LLME advisor at (858) 455-1200 or by email.

We hope that you and your loved ones will continue to be safe and healthy during this uncertain time. Thank you for your continued trust and confidence in our firm.

Yours very truly,

Lavine, Lofgren, Morris & Engelberg, LLP