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Financial Relief for Nonprofits under the CARES Act

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These are difficult times for all Americans, but nonprofit organizations have been hit particularly hard. Many of the services provided by nonprofit organizations such as delivering meals, providing social services or sheltering the vulnerable and homeless are critical to the social safety net of our society. Organizations can take various steps to reduce the exposure to their employees, but social distancing or closing the doors may not be viable options.

In addition to virus concerns, this is a time of significant financial stress for nonprofit organizations. Given the recent performance of the stock market and the disruptions to society, fundraising is difficult or impossible. Many normally scheduled fundraising events are canceled or postponed significantly. Concern for the employees of nonprofits is heightened given that these employees typically work for less than market wages and are particularly vulnerable in the economic disruption that has been created.

Paycheck Protection Act. The "Coronavirus Aid, Relief and Economic Security Act" (the "CARES Act") signed into law on Friday provides some good news for nonprofits. Typically, nonprofits do not qualify for Small Business Administration ("SBA") loan programs. However, the SBA loan program created by Section 1102 of the CARES Act to stabilize businesses and support employee retention, known as the "Paycheck Protection Act" ("PPA"), specifically made certain nonprofits under the Internal Revenue Code (the "Code") Sections 501(c)(3) and 501(c)(19) (Veterans organizations) eligible for the loan program.

The CARES Act provides $349 billion for these loan programs. In general, this expansion under PPA of the SBA loan program will allow businesses and qualifying nonprofits with less than 500 employees to secure loans that may be all or partially forgiven by the government at year-end subject to conditions and restrictions.

The program allows loan amounts of up to 2.5 times the borrower's average monthly payroll costs, not to exceed $10 million with a maximum interest rate of 4%. Borrowers are eligible for loan forgiveness equal to the amount the borrower spent on certain items during the eight (8) week period beginning on the date of the loan origination.

Forgiveness Details. The loan programs will have conditions, including restrictions on the use of funds, and will need to be carefully considered. The loan proceeds cannot be used for executive compensation (or any salary greater than $100,000 per year). The employer must retain at least 90% of its employees during the applicable period. The funds may be used to retain workers, for payroll, to make lease or mortgage payments, and to pay utility bills.

Emergency Economic Injury Disaster Loan Grants. Section 1110 of the CARES Act also provides for $10 billion for the SBA to provide Emergency Economic Injury Disaster Loan ("EIDL") Grants from January 31, 2020 until December 31, 2020. The program is generally available to "private nonprofit organizations" with 500 or fewer employees, which includes Code Section 501(c)(3) entities, as well as those not eligible for loans under the "Paycheck Protection Act". This includes Code Section 501(c)(4) social welfare organizations and 501(c)(6) trade organizations. Section 1110 of the CARES Act waives certain requirements typically under the EIDL program, including (i) providing a personal guaranty on loans up to $200,000, (ii) that the nonprofit be in operation for one year prior to the disaster (although the nonprofit must have been in existence on January 31, 2020) and (iii) that the applicant be unable to obtain credit elsewhere. Applicants to the EIDL program may receive a $10,000 emergency advance that will be provided within 3 days of applying, and even if the application for the EIDL program is denied, the applicant will not be required to repay the $10,000 advance. The advance can be used for various costs including costs of payroll, rent, and mortgage payments. In addition, Section 501(c)(3) and 501(c)(19) organizations may apply for a PPA loan, as discussed above, in addition to an EIDL grant, provided that the loans are not used for the same purpose.

Economic Stabilization Fund. Mid-size nonprofits with between 500 and 10,000 employees are eligible for certain loans and loan guarantees under Section 4003 of the CARES Act. The loans would be capped at an annualized interest rate of no higher than 2% per annum with no principal or interest payment in the first six months. The borrower must make a good-faith certification that: (i) the uncertainty of economic conditions makes the loan request necessary to support ongoing operations; (ii) that funds received will be used to retain at least 90% of the recipient's workforce, at full compensation and benefits, until September 20, 2020; and (iii) the recipient intends to restore not less than 90% of the workforce as it existed on February 1, 2020 and to restore all compensation and benefits no later than four months after the end of the COVID-19 crisis. There are numerous other certifications required under this program.

Employee Retention Payroll Tax Credits. Nonprofits generally classified under Section 501(c) of the Code are eligible under Section 2301 of the CARES Act for a refundable payroll tax credit of up to 50 percent of the qualified wages paid to employees during the COVID-19 crisis. To be eligible, the entity must have carried on a trade or business in 2020 and either (i) had business operations partially or fully suspended because of orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19; or (ii) gross receipts declined by more than 50% when compared to the same quarter in the prior year. The nonprofit's whole operations must be taken into account when determining eligibility. The credit is provided for the first $10,000 of compensation, which includes health benefits, paid to an eligible employee. This provision shall only apply to wages paid after March 12, 2020, and before January 1, 2021. If a Section 501(c)(3) or 501(c)(19) organization received a PPA loan, as discussed above, then they would not be eligible for these payroll tax credits.

Delay of Payment of Payroll Taxes. Section 2302 of the CARES Act provides that employers may defer payment of the employer portion of the Social Security tax on wages paid between March 27, 2020 and December 31, 2020. These deferred taxes would be paid over the following two years: (i) half by December 31, 2021 and (ii) half by December 31, 2022. Generally, if a nonprofit receives loan forgiveness under the PPA, then they will not be eligible for this provision.

CARES Act Giving Incentives. The CARES Act also created giving incentives for donors. Section 2204 of the Act includes a new above-the-line deduction for taxpayers not itemizing, for cash contributions of up to $300 to certain charities, which applies to 2020 contributions. Section 2205 of the Act increases the limitation on annual cash contributions to certain charities from 60 percent of AGI to 100 percent. Contributions to charities that generally would not qualify for these rules would be supporting organizations, donor advised funds and most private foundations. For corporations, the annual limit is raised from 10 percent to 25 percent of taxable income for cash contributions to charities other than supporting organizations, donor advised funds and most private foundations. Food donations can be claimed up to 25 percent of taxable income, which is an increase from 15 percent, for donations made in 2020.

SPSK has served businesses and the community in New Jersey for more than 110 years. Our practice groups uniquely focus on the Nonprofit sector. Please feel free to contact us with any questions relating to Coronavirus issues, employee issues, tax, nonprofit or these new loan programs.