

# How the Coronavirus and Relief Legislation is Impacting the Real Estate Industry

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## Speaker Introductions



**MODERATOR**  
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## Introduction and Industry Overview



**Daniel Vitulli, CPA**  
Partner-in-charge,  
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Group


## SBA ECONOMIC INJURY DISASTER LOAN PROGRAM




**Dennis Pellecchia, CPA**  
Partner, Tax Services

New England Real Estate Group Leader

## SBA: ECONOMIC INJURY DISASTER LOAN (EIDL) (1)



Eligibility	<ul style="list-style-type: none"> <li>Small businesses and non-profits affected by the disaster</li> </ul>
Criteria	<ul style="list-style-type: none"> <li>Credit History: Acceptable to SBA</li> <li>Eligibility: Suffered working capital damage</li> <li>Can demonstrate the ability to re-pay the loan</li> </ul>
Borrowing Limit	<ul style="list-style-type: none"> <li>Up to \$2 Million</li> </ul>
Interest Rate	<ul style="list-style-type: none"> <li>3.75% - For Profit / 2.75% - Not For Profit</li> </ul>
Use *	<ul style="list-style-type: none"> <li>Fixed debts, payroll, accounts payable, and other bills</li> </ul>
Collateral	<ul style="list-style-type: none"> <li>Required for loans over \$25,000</li> <li>Real Estate may be accepted</li> <li>Personal guarantee required for &gt;\$250,000</li> </ul>




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\* - not for existing debt reduction, replace lost sales or expansion

## SBA: ECONOMIC INJURY DISASTER LOAN (EIDL) (1)




Applying	<ul style="list-style-type: none"> <li>Online or through mail</li> </ul>
Documents	<ul style="list-style-type: none"> <li>Loan Application</li> <li><b><u>IRS Form 4506-T, Income Tax Return, SBA Form 2202, SBA Form 413, SBA Form 1368</u></b></li> </ul>
Payment Terms	<ul style="list-style-type: none"> <li>up to 30 years based on ability to pay; 4 months of payment can be deferred</li> </ul>
Timing (Estimated)	<ul style="list-style-type: none"> <li>Decision: 2 – 3 weeks</li> <li>Disbursement: may be eligible for initial disbursement up to \$10,000 within 3 days</li> <li>\$10,000 does not have to be repaid if you are denied approval for loan. However, it will be deducted from any loan forgiveness amount on PPP loan</li> </ul>
Link	<p style="margin: 0;"><a href="https://disasterloan.sba.gov/ela/Account/Login" style="color: #0070C0; text-decoration: underline;">https://disasterloan.sba.gov/ela/Account/Login</a></p>



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## CARES Act-SBA 7(a) Loans and the Paycheck Protection Program



**Eligibility**

- Small business with fewer than 500 employees
- Small business that meets the SBA's size standard
- 501(c)(3) with fewer than 500 employees
- 501(c)(19) Veterans Organization that meets SBA size standard
- Individual who operates as a sole proprietor, independent contractor or self-employed who regularly carries on any trade or business
- Tribal business concern that meets SBA size standard
- Must have been in operation before 2/15/2020

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## Paycheck Protection Program

1. Loan Amount – 12 month average monthly PR costs X 2.5 (10M max)
2. PR costs – wages, healthcare costs, retirement benefits, certain taxes
  - Exclude >100k, residence o/s US, sick/family leave
3. Payment Terms on Unforgiven: Payments deferred six months following loan disbursement date
  - Interest at 1% for 2 years
4. Uses – PR costs, Interest, Rent, Utilities
5. Other – SBA disaster loans 1/31 – 3/27 – can refinance as 7a(P3)
  - No Fees
  - Cancelled debt – not revenue
  - No collateral, no personal guarantee
  - “No credit elsewhere” waived

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## Paycheck Protection Program (cont.)

7. PR excludes – wages, healthcare costs, retirement benefits, certain taxes
  - Exclude >100k, residence o/s US, sick/family leave
8. Payment Terms – Term of loan: 2 years; Interest Rate: 0.5%
9. Uses – PR costs, Interest, Rent, Utilities
10. Other – SBA disaster loans 1/31 – 3/27 – can refinance as 7a(P3)
  7. No Fees
  8. Express Loans Max 1M
  9. Cancelled debt – not revenue
  10. No collateral, no personal guarantee
  11. “No credit elsewhere” waived

## Paycheck Protection Program (cont.)

- Loan forgiveness – cost during 8 week period beginning on loan date
  - PR Cost (must be 75% of the costs)
  - Interest
  - Rent
  - Utilities
- Forgiveness reduction
  - FTE eliminated 8 week before loan funded
  - Total wage reduction > 25% (Ees < 100k)
  - If rehired, not reduced by above
- Need proper documentation for loan forgiveness

## Employee Retention Credit for Employer Subject to Closure due to COVID-19

### Eligibility

- Operation's commerce, travel or group meeting limited by governmental authority due to Covid-19
- Full time employees for 2019 was <100
- If you take the SBA 7(a) PPP loan you cannot take the credit

### Credit Applied

- Allowed a credit against employment taxes for each calendar quarter equal to 50% of qualified wages
- Wages limited to \$10k for each employee for all calendar quarters (\$5k credit max)

### Qualified Wages

- Wages + expenses to provide a group health plan

## THE CARES ACT: IMPACT TO BUSINESS ENTITIES



**Kurt Koegl, CPA**  
Partner, Tax & Business Services

## IRS provides extension to 7/15 for the filing and payment of taxes due 4/15

- IRS issues Notice 2020-18 which extends the filing date for income tax returns due 4/15, including the first estimated tax payment to 7/15/2020 and provides for an extension of time to pay tax due (including the first estimate) without any dollar amount limits.
- April 9<sup>th</sup>, 2020 – Notice 2020-23 increases filings to which the July 15<sup>th</sup> extension is applicable to any federal tax payment obligation or federal tax. Basically any income tax or informational filing or payment due on or after April 1, 2020 and before July 15, 2020 is extended to July 15, 2020. Payroll tax filing does not appear to be extended.
- IRS has confirmed that the taxpayer can receive an additional extension on July 15<sup>th</sup> by filing a request for extension of time to file Form 4868 or 7004.

## State Conformity to IRS Extension

- Most states have conformed to the 7/15 extension for individuals and corporations
  - New York-Deadline extended to 7/15
    - New York City-will waive penalties. Interest is not waived. Extension not automatic.
  - New Jersey- Verbal announcements that deadline will be extended to 7/15 – but not written guidance yet.
  - Connecticut-Deadline extended to 7/15
- Some states have extended their due dates to different days
  - Idaho – June 15
  - Mississippi – May 15
  - Virginia – June 1 – interest still applies
- Some state will still charge interest
  - Minnesota, North Carolina, Virginia
- Still waiting on some states due to various reasons
- The due date extension for other types of state taxes vary greatly

## IRS People First Initiative

- **IRS People First Initiative**
  - **Installment Agreements:** Payments due between 4/1 and 7/15 are suspended and can be paid on 7/15. IRS will not invalidate installment agreement
  - **Offers in Compromise:** Payments can be deferred until 7/15/2020 and OIC additional information not due until that date. Delinquent 2018 return will not default an OIC if filed by 7/15,
  - Automated liens and levies are suspended
  - New delinquent accounts will not be sent to private collection periods
  - **Field, Office and Correspondence Audit:** New audits will generally not be started (unless there is a statute of limitations issue); IRS will continue working on existing cases or consider taxpayer wishes (where there is available staffing or concern over lost documentation). Taxpayers should respond to requests for additional information

## House Bill H.R. 6201 Families First Coronavirus Response Act (FFCRA) – Sick Pay

- **Emergency Paid Sick Leave Act** – employers with fewer than 500 employees and government employers to provide covered employees with two weeks of paid leave where the employee who:
  1. Is subject to a Federal, State or local quarantine or isolation order related to COVID 19;
  2. Has been advised by a health care provider to self-quarantine;
  3. Is experiencing COVID-19 symptoms and seeks medical diagnosis
  4. Is caring for an individual subject to an order described in (1) and (2)
  5. Is caring for a child whose school is closed (or child care provider is unavailable) for reasons related to COVID-19; or
  6. Is experiencing any other substantially similar condition specified by Secretary of HHS, along with Secretaries of Labor and Treasury
- Full-time employees are entitled to 2 weeks (80 hours) and part-time employees are entitled to the typical number of hours that they work in a typical two-week period.
- The emergency sick pay is funded through a refundable credit against payroll taxes.



## House Bill H.R. 6201 FCCRA Emergency Family and Medical Leave

- Employers with fewer than 500 employees and government employers must provide Emergency Family and Medical Leave Pay of up to 12 paid weeks of job-protected leave,
  - The sole reason for which Emergency FML Pay is allowed is for leave to care for a son or daughter under 18 if their school or place of care has been closed or the child care provider is unavailable due to a public health emergency.
  - Paid leave is calculated for the employee at an amount not less than 2/3 of the employee's regular rate of pay (under the Fair Labor Standards Act of 1938) times the number of hours the employee would normally be scheduled to work. This subject to a cap of \$200 per day and \$10,000 in total for the employee
- The Emergency FML Pay is also funded through a refundable credit provided to the employer against payroll taxes.
- The Employer must provide a notice of right to emergency family and medical leave.

## House Bill H.R. 6201 FCCRA Documentation and Getting the Credit

- Documentation: Employer must get some documentation in support of the reason for leave: including employee name, qualifying reason for requesting leave, statement that employee is unable to work (including telework), dates for which leave is requested
  - If the leave is the result of a medical provider advice, the name of the medical provider.
  - Employer may need to support the right to the credit on audit.
- Taking the credit: IRS and DOL provides
  - Employer can reduce the amount of federal payroll taxes and employee income tax withholding in anticipation of the credit due for the quarter,
  - If the reduction does not cover the amount paid, a refund for the balance is to be filed.
- Self-employed taxpayers are eligible for an equivalent payment as a credit against income taxes.

## CARES Bill: Business Tax Provisions

- **Employee Retention Credit** for Employer Subject to Closure due to COVID-19. Eligible employers are allowed a refundable credit against employment taxes for each calendar quarter equal to 50% of qualified wages for each employee taken into account for such calendar quarter
  - Eligible employer is one who has a trade or business with respect to any quarter for which:
    - (i) operation is fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel or group meeting due to COVID-19; or
    - (ii) for which there has been a significant decline in gross receipts (i.e., less than 50% gross receipts for the same quarter in the prior year) and ending with the calendar quarter for which gross receipts are greater than 80% than the same calendar quarter in prior year
  - Limited for any employee to first \$10,000 of wages for any calendar quarter
  - Tax exempts can also take advantage of this credit
  - Loan recipients under the SBA payroll protection program are not eligible

## CARES Bill: Business Tax Provisions

- **Deferral of Employer Share of Payroll Taxes (or SECA for Self-Employed)** for the period beginning on date of enactment to 1/1/2021.
- **More Business Interest Expense allowed.** Under the TCJA, net business interest is limited to 30% of Adjusted Taxable Income (unless certain exceptions apply). For 2019 and 2020 this is increased to 50%
- **Bonus Depreciation is Allowed on Qualified Improvement Property (QIP) costs.** The legislative error in the TCJA is fixed and QIP now is eligible for immediate write-off. This provision is retroactive to enactment of the TCJA, December 2017.

## CARES Bill: QIP Bonus Depreciation discussion

- Qualified improvement property, which means any improvement to a nonresidential building's interior. However, improvements do not qualify if they are attributable to:
  - the enlargement of the building,
  - any elevator or escalator or
  - the internal structural framework of the building.
  
- Roofs, HVAC, fire protection systems, alarm systems and security systems are qualified improvement property if placed in service after the date that the nonresidential real property was placed in service.
  
- MACRS life decreased from 39 years to 15 years (40 yr ADS down to 20 year ADS) and eligible for 100% bonus depreciation.

## CARES Bill: QIP Bonus Depreciation discussion

- **Considerations:**
  - Any unfiled 2019 tax returns - review depreciation calculations for additional depreciation deductions
  - Ask additional questions about building and tenant improvements to determine if additions are QIP
  - If an election was made out of 163(j) business interest expense limitations as a real property trade or business, ADS depreciation is required on QIP and 100% bonus is not available. Many accounting/tax lobbies have raised the issue of how the IRS will address taxpayers who have made the irrevocable election in light of the correction now available for QIP bonus depreciation. No answer yet.

## CARES Bill: QIP Bonus Depreciation discussion

### ▪ Considerations for Partnerships:

- How to claim additional depreciation on QIP – partnership audit rules and Rev Proc 2020-23
- If the partnership is subject to the new centralized partnership audit regime under section 6221, amended partnership returns for tax years beginning in 2018 are filed using form 8082 Administrative Adjustment Request and the difference between the original and amended K1 is taken into taxable income in the year the amended K1 is received, not the year of original filing. This would make most amended returns filed under the new QIP CARES Act provision a 2020 tax year item.
- Rev Proc 2020-23 allows partnerships subject to the centralized audit regime the option to file an amended 1065 instead which allows the partners to receive amended K1s rather than include the change in the 2020 (or later) tax year.
- This should be considered along with the interaction with NOL carryback provisions and, for taxpayers subject to 163(j) interest limitations, the impact to interest deductions.

## CARES Bill: Business Tax Provisions

- **Net Operating Losses subject to a 5 year carryback and not limited by 80% of Taxable Income Rule.** This applies to NOLs from 2018, 2019 or 2020.
  - Consider/remember rate differentials for prior years (Corp 35% vs 21%, Individual 39% vs 37%)
- **Immediate Refund of the Corporate AMT Credit.** Instead of a 4-year period (2018-2021), the credits can be taken over 2018 and 2019. An election can be made to recover the credits entirely in 2018.
- **Corporation Charitable Deduction Limit** is increased from 10% of Taxable Income to 25% of Taxable Income for 2020.

## THE CARES ACT: HOW IT AFFECTS DEVELOPERS AND THEIR PERSONAL TAX RETURNS



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Mid- Atlantic regional partner-in-charge of  
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### Individual Recovery Rebate/Credit

- Under the CARES Act, an eligible individual is allowed an income tax credit for 2020 equal to the sum of: (1) \$1,200 (\$2,400 for eligible individuals filing a joint return) plus (2) \$500 for each qualifying child of the taxpayer
  - The term "qualifying child" means a qualifying child of the taxpayer, as defined for purposes of the dependency exemption who hasn't attained age 17.
  - Individuals who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs such as SSI benefits, are eligible for the credit and the advance rebate.
  - Children who are (or can be) claimed as dependents by their parents aren't eligible individuals, even if they have enough income to have to file a return. It makes no difference if the parent chooses not to claim the child as a dependent, because the dependency deduction is still "allowable" to the parent.
  - *Phaseout of credit.* The amount of the credit is reduced (but not below zero) by 5% of the taxpayer's adjusted gross income (AGI) in excess of: (1) \$150,000 for a joint return, (2) \$112,500 for a head of household, and (3) \$75,000 for all other taxpayers.

## No 10% Additional Tax for Coronavirus-Related Retirement Plan Distributions

- **Background.** A distribution from a qualified retirement plan is subject to a 10% additional tax unless the distribution meets an exception under [Code Sec. 72\(t\)](#).
- **New law.** The CARES Act provides that the [Code Sec. 72\(t\)](#) 10% additional tax does not apply to for anyone under 59 1/2 if taken for COVID-19 related hardships up to \$100,000.
- These amounts drawn out of the plan can be repaid within three years of the distribution (with no tax implication) or,
- if not repaid, you may spread the income as taxable over three years.
- The Loan limit from qualified plans has also increased to \$100,000 from \$50,000

## RMD Requirement Waived for 2020

- **Background.** A retirement plan or IRA owner to take required minimum distributions (RMDs) annually once the owner reaches age 72.
- **New law.** The 4/1/2020 Benefits Available to Individuals Under COVID-19 distribution requirement is waived if:
  - you are 70 1/2 or older, and
  - your required minimum distributions (RMD) from your plan are not in effect for 2020 for current or new RMD's;
  - and if your first RMD from the plan was scheduled for April 1, 2020
- This impacts the following retirement plans:
  - 401(k) or 403(b)
  - 457 deferred compensation plan held by a state or state subdivision
  - Individual Retirement Plans (IRAs).

## Modification of Limitations on Individual Cash Charitable Contributions During 2020

- **Background.** Individuals are allowed a deduction for cash contributions to certain charitable organizations (such as churches, educational organizations, hospitals, and medical research organizations) up to 60% of their contribution base (generally, adjusted gross income (AGI)). Any amount over the 60% will be carried forward for the next 5 years
- **New law.** The CARES Act provides for no AGI limitations for Cash Contributions for tax year 2020.
- \$300 Above-the-Line Charitable Deduction in 2020 for individuals who do not itemize.

## Modification of Limitation on Losses for Non-Corporate Taxpayers

- **Old law.** [Sec. 461](#) provides for limitation of Excess Business Losses (“EBL”) for Non-Corporate taxpayers for tax years beginning after Dec. 31, 2017 and ending before Jan. 1, 2026. EBL is:
  - The excess of the
    - taxpayer's aggregate trade or business deductions for the tax year over
    - the sum of the taxpayer's aggregate trade or business gross income or gain plus \$250,000 (as adjusted for inflation) (\$500,000 MFJ).
- **New law.** The CARES Act temporarily modifies the loss limitation for noncorporate taxpayers
  - Excess business losses arising in 2018, 2019, and 2020 can be deducted without the 461 Limitation.
    - The provision clarifies that EBLs do not include any deduction under Charity or Qualified Business Income (“QBI”) or any deductions related to performing services as an employee.
    - Capital Losses are not included in EBL calculations
    - Amount of capital gain taken into account in calculating the EBL limitation cannot exceed the lesser of capital gain net income from a trade or business or capital gain net income
    - Net Operating Losses in years 2018, 2019, and 2020 arising from EBLs can be carried back carried back five years with no limitation on their usage (Such as the 80% NOL limitation created by the TCJA)

## This just in! What is pushed back to July 15, 2020?

- Second quarter estimates are now due 7/15/2020
- This relief includes not just the filing of Specified Forms, but also all schedules, returns, and other forms that are filed as attachments to Specified Forms or are required to be filed by the due date of Specified Forms, including, for example, Schedule H and Schedule SE, as well as Forms 3520, 5471, 5472, 8621, 8858, 8865, and 8938
- Filing a petition with the Tax Court, or a review of a decision rendered by the Tax Court.
- Filing a claim for credit or refund of any tax
- Bringing suit upon a claim for credit or refund of any tax;
  - Specifically noted, involves those looking to invest in a Qualified Opportunity Zone Fund (within the 180 day investment period). This is also considered a time-sensitive act which can be deferred until July 15, 2020.
  - Certain actions related to section 1031 exchanges or section 1033 involuntary conversion
  - Date for requesting consent for a non-automatic change of accounting method.
  - Section 1045 rollover of gain on sale of qualified small business stock
  - Filing of Form 8832 Entity Classification Election
  - Making a number of S corporation related elections

## Notice 2020-26

- This Notice provides some guidance on the ability to use forms 1045 or 1139 to claim (instead of using Forms 1040X or 1120X) for claim NOL carrybacks. These forms are generally due within 12 months of the close of the tax year in which the NOL arose. For calendar year 2018 returns, this would be December 31, 2019, which has already passed.
- The Service grants a six-month extension of time to file Form 1045 or 1139, as applicable, to taxpayer taxpayers with a tax year beginning in 2028 and ending before June 30, 2019. This applies only for carrybacks of an NOL (see discussion below regarding corporate AMT credits). For a calendar year taxpayer, NOL carrybacks can be filed for the 2018 tax year by June 30, 2020.



## Things to Consider

- Things to consider individually:
  1. Can I amend and carry back from 2018?
    - a. Make decision soon so you can report on 1045
  2. Will my 2019 return cause an NOL?
    - a. Should I carry back or carry forward?
  3. How much do I have in retirement funds?
    - a. Should I withdrawal if over 59 ½?
    - b. Should I take a distribution and pay back?
    - c. Should I convert to Roth?
  4. What should I do with any 2019 gains?
    - a. Opportunity Zone?

## Marcum LLP COVID-19 Tax Resources

**External Website** [www.marcumllp.com/coronavirus](http://www.marcumllp.com/coronavirus)



### CORONAVIRUS UPDATE

As your trusted advisors, Marcum is committed to sharing the best information available concerning coronavirus (COVID-19) to our clients and friends during this time. Below please find up-to-the-minute thought leadership from our Marcum partners for you and your business.

[CORONAVIRUS AND BUSINESS](#) [WEAVERS](#) [INDUSTRY INSIGHTS](#) [ADDITIONAL RESOURCES](#)