

COVID-19 Help for Small Businesses

May 6, 2020

1. IRS Notice of Non-Deductibility of Certain Payments with PPP Loan Proceeds

Last week the IRS issued Notice 2020-32 to provide guidance regarding the deductibility of business expenses paid with PPP loan proceeds.

In the notice the IRS announced that even though expenses may ordinarily be deductible, to the extent they give rise to loan forgiveness they are non-deductible for federal income tax purposes.

Under the PPP loan program, subject to a variety of special rules and limitations, a loan is forgivable to the extent it is used to pay payroll costs, rent, utilities and certain mortgage interest. These would typically be deductible as ordinary and necessary trade or business expenses.

The notice states that even though otherwise deductible, these expenses are not deductible to the extent they trigger forgiveness of the PPP loan. The notice references Internal Revenue Code Section 265(a)(1) and related Treasury Regulations which state that no deduction is allowed for amounts otherwise deductible if allocable to tax-exempt income. The notice also discusses a number of tax cases that have applied this rule.

The purpose of Code Section 265(a)(1) and the denial of a tax deduction is to avoid a double tax benefit. Since the CARES Act provides that forgiveness of a PPP loan does not trigger cancellation of debt income, to allow a tax deduction for an expense that also triggers loan forgiveness would result in a double tax benefit. Therefore, deductibility is denied to the extent it triggers loan forgiveness.

2. Additional Categories of Resumed Activities under the Stay at Home Order

Executive Order 2020-70 is the newest version of the Michigan's Stay at Home Order, which, in addition to allowing certain activities by critical infrastructure workers and workers necessary for conducting basic minimum operations, further expands the categories of resumed activities covered by Executive Order 2020-59 by adding three categories of workers allowed to resume their activities starting May 7, 2020 (subject to social distancing and other safeguards):

- Workers who perform work that is traditionally and primarily performed outdoors;
- Workers in the construction industry, including workers in the building trades; and
- Workers in the real-estate industry, including agents, appraisers, brokers, inspectors and surveyors.

3. New Executive Orders Governing Health Care

A pair of Executive Orders signed by Governor Whitmer last week aim to strengthen protection of the public from the effects of the Coronavirus. The first order, Executive Order 2020-64, prohibits health care providers from discriminating against Coronavirus patients on the basis of age, color, criminal history, disability, ethnicity, familial status, gender identity, height, homelessness, immigration status, marital status, mental illness, national origin, poverty, race, religion, sex, sexual orientation, socio-economic status, substance abuse disorder, use of government resources, veteran status, or weight. The Order requires hospitals and entities used as surge capacity by one or more hospitals to develop publicly available protocols that “guide decision-making for medical care” when demand exceeds the hospital capacity and “enable clinical decision-making based on the best available objective medical evidence....”

The second order, Executive Order 2020-72, prevents visitors from entering health care, residential care (nursing homes, adult foster homes, hospice facilities, substance abuse facilities, independent living and assisted living facilities), congregate care, and juvenile justice facilities unless such visitor is necessary for medical care, supporting daily living activities, or exercising powers of attorney or guardianship. Parents, foster parents, and guardians of people under 21 years may visit those residents. The facilities subject to the order are directed to perform health evaluations of all individuals visiting prior to entry and to deny entry to anyone who does not meet the evaluation criteria, which includes fever, cough, or shortness of breath and contact within 14 days of a confirmed COVID-19-positive person. Most of the provisions of this Order are the same as those of Executive Order 2020-37, but adds a requirement for all staff members and visitors of residential care, congregate care, or juvenile justice facility to wear a covering over their nose and mouth when indoors or within six feet of another person.

Copies of these and other Michigan Executive Orders are available here:

https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-521682--,00.html

GMH’s Coronavirus Task Force is here to answer your questions. While GMH is complying with Governor Whitmer’s Order, we are working remotely and available to assist you. Please contact any of the below lawyers for more Coronavirus support.

THE LOCAL, STATE AND FEDERAL GOVERNMENT REQUIREMENTS RELATED TO COVID-19 MAY CHANGE, AND ADDITIONAL GUIDANCE, RULES, LAWS AND REGULATIONS MAY BE ISSUED OR AMENDED, AT ANY TIME. ACCORDINGLY, OUR GUIDANCE OR POSITION ON THESE TOPICS MAY ALSO CHANGE, WITH OR WITHOUT NOTICE, AND THE ABOVE INFORMATION IS FOR EDUCATIONAL PURPOSES ONLY AND SHOULD NOT BE INTERPRETED OR RELIED UPON AS LEGAL ADVICE. EACH SITUATION IS UNIQUE AND SHOULD BE REVIEWED WITH THE ASSISTANCE OF COMPETENT PROFESSIONALS.



Elizabeth “Liza” A. Favaro
(Employment, Insurance, Supply Chain)

(248) 457-7181
efavaro@gmhlaw.com



Bruce W. Haffey
(Corporate, M&A, Supply Chain)

(248) 457-7140
bhaffey@gmhlaw.com



Alexander Lebedinski
(Health Care, Immigration)

(248) 457-7058
alebedinski@gmhlaw.com



James Y. Rayis
(International)

(248) 457-7173
jrayis@gmhlaw.com



Nina M. Jankowski
(Employment)

(248) 457-7183
njankowski@gmhlaw.com