

GELLER ADVISORS LLC

CARES Act – Emerging Opportunities

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Now that a week has passed since the enactment of the “Coronavirus Aid, Relief, and Economic Security Act” or the “CARES Act,” we have summarized several insights, clarifications, and opportunities which may arise:

1. Timing of tax payments

As a key element of the Act was to preserve cash flow, the final 2019 income and any gift tax payments, as well as first quarter 2020 tax payments, have been postponed to July 15th. Although second quarter estimated income tax payments are still due on June 15th, there is a technique which can allow those estimates to be delayed until July 15th. Since all overpayments reflected on 2019 tax returns can be applied to the 2020 tax year and deemed paid on April 15, 2020 (now July 15th), paying a June 15th estimated tax payment in July can be treated as having been paid in April.

2. Charitable Contribution Limitation Increases

Previously, individuals were allowed to donate a combination of cash and securities, up to 50% (and in limited cases 60%) of their Adjusted Gross Income (“AGI”) to public charities, donor advised funds and private foundations. Under the CARES Act, in 2020, individuals will be permitted to make additional cash contributions of up to 100% of their AGI. Individual taxpayers who would like to take advantage of this provision have the opportunity to “stack” their contributions by contributing cash above the typical 50% AGI limitations. The additional contributions must be made in cash and directly to public charities only. Even though the public charities do not have to be associated with the COVID response, identifying one or more charities deemed worthy of enhanced contributions is a personal consideration. There are additional guidelines and elective opportunities worth exploring in specific circumstances. In addition, family offices that are structured as C corporations can also increase their charitable giving to 25% of taxable income from the previous 10% threshold.

3. Employee Retention Provisions

Several aspects of the CARES Act are targeted to support the cash flow needs of small businesses to enable them to retain employees.

- a. **Payroll Protection Program** - Businesses, including family offices, that have sufficient activity and employees to qualify as a trade or business, can take advantage of the Payroll Protection Program. Loans to these businesses will be facilitated by the Small Business Administration (“SBA”) and calculated as 250% of an employer’s average monthly payroll (including wages, vacation and sick pay, health benefits, retirement payments and state and local payments) and capped at \$10 million. You are only allowed to include up to \$100,000 per employee in this monthly payroll calculation. However, proceeds from these loans may be used to cover payroll, health care benefits, insurance, rent, mortgage payments, and certain debt obligations. Loans will be forgiven to the extent spent on payroll and certain operating costs during the 8 weeks after origination. In addition, these loans have the following requirements:
 - i. Loans must be originated with a SBA Lender bank
 - ii. Most institutions are requiring a previous banking relationship in order to facilitate the loan
 - iii. Documentation to be provided includes (but are not limited to):
 1. Payroll reports for the last 12 months
 2. Forms 940 and 941 for 2019
 3. State unemployment filings, and
 4. Proof of insurance premium invoices and retirement contributions

The following two provisions are not available when the Payroll Protection Program has been utilized:

- b. **Employee Retention Credit** - The Act provides a refundable payroll credit of 50% of “qualified wages” incurred between March 12, 2020 and January 1, 2021. This credit is available related to either a complete shutdown or a gross receipts decline of 50% comparable to the same quarter last year. The credit is an amount equal to 50% of

qualified wages (inclusive of health insurance) up to \$10,000 per employee per quarter ending on December 31, 2020. For employers with fewer than 100 employees, this credit is available even if employees are furloughed.

- c. **Delayed Payment of Payroll Taxes** – Under the Act, the payment due date of certain payroll taxes and 50% of self-employment taxes for the period between the enactment of the CARES Act and December 31, 2020 are deferred. Half of those taxes will be due on December 31, 2021 and the other half due on December 31, 2022.

4. Mechanics of Increased 2018-2020 Business Losses Allowable

If the business loss limitation of \$250,000 (\$500,000 for joint filers) applied in 2018, the Act requires that return be amended, normally resulting in a refund. However, due to interactions among other tax provisions, including the Qualified Business Income deduction and foreign tax credits, the benefit could be less than anticipated. If the amendment, or losses in 2019 or 2020 which are similarly not limited, results in a net operating loss (“NOL”), there is an option to carry back that loss to the prior five years or elect to carry that loss forward. It is important to know that most states have not yet announced consistent treatment.

5. Increased Limitation of Business Interest Expense

Before this Act, the limitation of allowable interest expense was limited to a formula based on 30% of taxable income per entity. The Act increased that limitation to 50% for 2019 and 2020. In addition, a business can elect to use its 2019 taxable income in computing its 2020 limitations if that would produce a greater interest deduction. In the case of a partnership, that election would be made by the partnership itself.

6. Retirement Opportunities

- a. **Roth IRAs** – While investment portfolios are depressed in value, it may make sense to convert an IRA to a Roth IRA, with the hope that a stock market recovery will occur in the Roth IRA and therefore never be taxed. Conversion to a Roth IRA requires that tax be paid at ordinary income rates, at the time of the conversion, so it may make sense to hedge by converting portions of the IRA over time. Roth IRA conversions are available for both regular IRAs and IRAs which have been inherited from a spouse, but not inherited from other family members. Prior to the 2017 TCJA,

any conversions to a Roth IRA during the year could be changed back before filing a tax return. However, this is no longer the case.

b. Accelerating Retirement Contributions

- i. Although IRA contributions in 2020 are permitted to be made up until July 15th, based on the current decline in the stock market, it may make sense to accelerate a 2020 IRA contribution. This would apply when there is a belief in a stock market recovery and there are no liquidity constraints.
- ii. While contributions to Simplified Employee Pension (“SEP”) plans are not required to be made until October 15th (assuming the return is on extension), it might similarly make sense to fund them sooner. As a reminder, the amount that can be contributed to SEP retirement plans is calculated as a formula based on self-employment income.

- c. **Postponing Withdrawals** – The Cares Act has suspended all required minimum distributions from retirement plans for the 2020 tax year for those individuals otherwise required to take a distribution. In most cases, this would probably be advantageous, and if a distribution had already been taken this year, it is possible to recontribute it within 60 days.

7. Amending 2018 Returns for Qualified Improvement Property

An immediate refund is available for real estate owners who capitalized certain types of property additions (leasehold improvements) in 2018, as the Act has clarified that these assets are eligible for Bonus Depreciation. This provision applies to assets classified as 15-year property improvements such as fixtures and electrical equipment, other than those which expanded the existing property or major renovations like elevators. For these assets placed in service in 2019 and 2020, the opportunity continues by electing bonus depreciation. This additional depreciation, coupled with the removal of the \$500,000 business loss limitation, could result in significant refund opportunities. It is important to note that an asset-by-asset analysis of the additions is required and care must be taken as most states have not announced whether they will follow this provision.

8. Additional Planning Considerations

- a. **Estate Planning** - The combination of depressed asset values, near zero interest rates, as well as the additional unified credit amount available until 2026, provides an

optimal combination for wealth transfer. GRATs, sales to defective grantor trusts and intra-family loans are transactions which can meaningfully reduce future estate tax exposure. In addition, there are other complex wealth transfer planning strategies that can be explored based on particular facts and circumstances.

- b. **Wash Sales** - While stock prices are depressed, it may also make sense to sell certain securities to realize a loss and repurchase them after 30 days to avoid the wash sale rule which would deny the loss. Alternatively, reinvesting in a company that is in the same industry but not considered “substantially identical,” would not invoke the wash sale rule.
- c. **Looking Forward** - There has been a fair amount in the media recently about the possibility of additional governmental relief including the possible lifting of the \$10,000 limitation on deductibility of state and local taxes. We will keep an eye out for new provisions and guidance and will provide updates accordingly.

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