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Lum Law Notes

Addressing Coronavirus Issues

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# Lum, Drasco & Positan LLC

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### ADDRESSING CORONAVIRUS ISSUES

The current Coronavirus crisis has given rise to a wide variety of personal, business and legal issues which need to be addressed. Both the impact of new and still anticipated legislation as well as the impact of the Coronavirus outbreak on existing relationships, business arrangements and legal rights cannot be ignored.

As this is being written, the Senate has passed a sweeping bill which changes the landscape for many business now experiencing unprecedented difficulties. That bill has just been made available for public viewing but the changes to existing law are many and complex and will require some time to fully understand. In the interim, here are some of the highlights.

#### Unemployment Insurance

Unemployment insurance benefits have been increased for workers who have lost their jobs because of the virus and the time periods for unemployment insurance have been extended. For the first time, unemployment insurance is extended to independent contractors and the self-employed who can no longer work.

#### Individual Payments

Individual stimulus payments will be made in the amount of \$1,200.00 per adult and \$500.00 per child under 17. There is a phase out over certain income levels and high earners will not receive this payment.

#### Small Business Loans

A significant program is being made available to small businesses which have fewer than 500 employees. Loans which are referred to as “paycheck protection loans” are going to be made available. These are SBA loans but will be administered by local banks. There will be limitations on the amount of the loans based on payroll and overhead costs with a maximum loan amount of \$10 million. These loans will have a maximum maturity of 10 years and an interest rate not to exceed 4%. There may be a deferment of payments on these loans for some period of time, but that has not yet been finally determined.

A separate section of the act calls for a portion of the paycheck protection loans to be forgiven on a tax-free basis. The amount to be forgiven will be the sum of the following payments made by the borrower during the 8-week period beginning on the date of the loan:

- Payroll costs

- Mortgage interest
- Rent
- Certain utility payments

Employers will have to submit to their lender an application that includes documentation of these expenses as well as cancelled checks. However, the amount to be forgiven is reduced if the employer reduces its workforce during the 8-week covered period when compared to the same period in 2019 or reduces salaries by more than 25% during the covered period.

#### Emergency Disaster Loans

Access to economic injury disaster loans under Section 7(b)(2) of the Small Business Act available to businesses with fewer than 500 employees have been expanded. New Jersey is now eligible for the loans as a disaster declaration has been approved. These loans bear interest and usually require collateral. Loans over \$200,000.00 may require personal guarantees. The new bill provides the possibility of a government subsidy whereby the SBA will pay 6 months of principal, interest and fees on the qualifying loans.

#### Qualified Improvement Property

The new bill provides a technical correction to the qualified improvement property benefits of the 2017 Tax Cut Act retroactive to January 1, 2018. You should contact your tax preparer to discuss the possibility of filing an amended return for this period.

#### Charitable Contributions

The bill temporarily lifts the limits on charitable giving for 2020. Contributions will be deductible up to 100% of adjusted gross income with a 5-year carry forward period and businesses will be able to deduct a higher percentage of charitable giving. You should consult your tax advisor for a fuller explanation of this provision.

#### Retirement Funds

If you are affected by Coronavirus, either by being an infected individual, having spouses or dependents who are diagnosed with the disease or having suffered adverse financial consequences as a result of being quarantined, furloughed or laid off, you may be able to withdraw additional retirement funds without the 10% penalty usually incurred. You should consult your tax advisor for more details concerning this provision.

#### Employee Retention Credit

The final version of the bill inserted a 1-year only credit against the employer's 6.2% share of Social Security payroll taxes for any business that is forced to suspend or close its operations due to Coronavirus but that continues to pay its employees during the shutdown. The business must either have been fully or partially suspended during any calendar quarter during 2020 because it was ordered to do so by an appropriate governmental authority or it remained open but gross receipts for that quarter were less than 50% of what they had been for the same quarter in 2019. That business will then be eligible for a temporary credit against its share of Social Security payroll taxes. There are limitations based on the size of the business, the application of family medical leave and whether a payroll protection loan is taken out. This is a complex provision which will require consultation with your tax preparer and tax and legal consultant.

## Delay of Employer Payroll Tax and Self-Employment Tax

A provision in the new bill allows an employer to defer its share of the 6.2% Social Security tax that would otherwise be due from the date of enactment through the end of this year to be paid on December 31, 2021 and December 31, 2022 in equal amounts. Similarly, a self-employed taxpayer can defer paying 50% of his or her self-employment tax, paying half of that at the end of 2021 and half of that at the end of 2022. This deferral is not available to any business that takes out a payroll protection loan, which is forgiven. There are also ramifications on emergency medical leave credit, sick leave credit and new employee retention credits. This is a complex provision which will require detailed advice from your tax preparer and tax and legal consultant.

## Net Operating Loss Changes

The bill changes the 2017 Tax Cut Act by allowing net operating losses to be carried back for up to 5 years. Losses carried to 2019 and 2020 will be permitted to offset 100% of taxable income as opposed to 80%.

## Interest Deductions

There are some complex changes to the ability to deduct interest expense of business which were limited in the 2017 Tax Cut Act. Please consult your tax professional for advice on this issue.

## Existing Documents

The Coronavirus crisis has caused significant disruption to the marketplace. You might have a lease with rent reduction and forgiveness clauses, you might be in the midst of an acquisition or merger with clauses regarding force majeure or modified or exceptional circumstances. All of these will require individualized advice to deal with the complications caused by this novel circumstance.

Lum, Drasco & Positan LLC is a full service law firm located in Roseland, New Jersey and is prepared to answer your questions or discuss these matters with you. For business related questions, please contact Steven Eisenstein at (973) 228-6815 or email him at [seisenstein@lumlaw.com](mailto:seisenstein@lumlaw.com); Jack Baron at (973) 228-6781 or email him at [jbaron@lumlaw.com](mailto:jbaron@lumlaw.com) or Dennis Smith at (973) 228-6755 or email him at [dsmith@lumlaw.com](mailto:dsmith@lumlaw.com). For tax related issues, please contact Kevin Murphy at (973) 228-6777 or email him at [kmurphy@lumlaw.com](mailto:kmurphy@lumlaw.com). For labor and employment related issues, please contact Christina Silva at (973) 228-6763 or email her at [csilva@lumlaw.com](mailto:csilva@lumlaw.com) or Wayne J. Positan at (973) 228-6730 or email him at [wpositan@lumlaw.com](mailto:wpositan@lumlaw.com).

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