PKF O'CONNOR DAVIES
ACCOUNTANTS AND ADVISORS

CARES Act and Other Support for Private Clubs

April 14, 2020

KNOW GREATER VALUE

Agenda

- Economic Injury Disaster Loans (EIDLs)
- Paycheck Protection Program (PPP)
- Payroll tax credit and payroll deferral
- Expanded benefits to employees
- Other considerations
  - Food to Go
  - Qualified Improvement Property and NOL's
  - Creative ideas for now and your future reopening
  - Employment trends within the industry
  - Tax deadline deferral
- Q&A

Both the EIDL and PPP are administered by the Small Business Administration (SBA). Private clubs can qualify to obtain an SBA loan if it has fewer than 500 employees or meets the annual receipts thresholds as set forth in the SBA size standards.

Economic Injury Disaster Loans (EIDLs)

[Emergency Loans]

- CARES Act expands emergency loans for private nonprofit organizations (of any size) enabling them to receive advances for $10,000 within 3 days of applying for the loan.
- EIDLs are loans of up to $2 million that carry interest rates of 2.75% for nonprofits (3.75% for taxable clubs), as well as principal and interest deferment. In essence, this advance is a grant and is not required to be repaid, even if the application is denied; however, the amount of the advance must be deducted from any loan forgiveness amounts under a PPP loan (discussed above).
- The loans may be used for broader purposes, including expenses that could have been met had the disaster not occurred, such as for payroll and other costs, as well as to cover increased costs due to supply chain interruption, to pay obligations that cannot be met due to revenue loss, and for other uses.
- Eligible grant recipients must have been in operation on January 31, 2020.

KNOW GREATER VALUE

(cont.) Economic Injury Disaster Loans (EIDLs) [Emergency Loans]

- A private club that receives an EIDL between January 31, 2020 and June 30, 2020, as a result of a COVID-19 disaster declaration, is eligible to apply for a Paycheck Protection Program loan, or the private club may refinance their EIDL into a Paycheck Protection Program loan. In either case, the emergency EIDL grant award of up to $10,000 would be subtracted from the amount forgiven in the PPP. Note: This provision eliminates creditworthiness requirements for all applicants, including nonprofit organizations.
- ***PKFOD Observation:*** A tax-exempt private club should consider applying for an EIDL loan immediately. These loans may be refinanced into a PPP loan if the next phase of the bill is expanded to allow tax-exempt private clubs to take advantage of the PPP.

PKF O'CONNOR DAVIES
ACCOUNTANTS AND ADVISORS
ESTABLISHED IN 1891

Paycheck Protection Program (PPP) Loans
[Emergency SBA 7(a) Loans]

- Provides special emergency loans of up to $10 million to eligible nonprofits and small businesses. Applicants can receive loan proceeds to be used for the following:
  - Payment of eligible payroll costs (the sum of payments to any one employee in an amount not more than $100,000 for one year prorated for the covered period) which includes salary, commissions, payment for vacation, parental, family, medical, and/or sick leave
  - Allowance for dismissal or separation
  - Payment required for the provisions of group health care benefits (including insurance premiums)
  - Payment of any retirement benefit
  - Payment of any state or local tax assessed on the compensation of employees
  - Interest on debt obligations
  - Rent or mortgage payments
  - Utilities expenses

The SBA began accepting applications on April 3rd.

Paycheck Protection Program (PPP) Loans

[Emergency SBA 7(a) Loans]

Potential Forgiveness of Debt and Accrued Interest

To be eligible for forgiveness loan proceeds can only be used for qualified uses. The amount forgiven is determined as follows:

- Ratio of the # of employees employed during the period February 15, 2020 to June 30, 2020 to the # of employees during either
  - a) the period February 15, 2019 to June 30, 2019, or
  - b) the period January 1, 2020 to February 29, 2020.
- The amount of forgiveness is also reduced by the amount that total salary or wages of any employee reduced by more than 25 percent

Paycheck Protection Program (PPP) Loans
[Emergency SBA 7(a) Loans]

- ***PKFOD Observation***
  - Currently, the PPP is only available to non-profit organizations described in 501(c)(3) and 501(c)(19) sections of the Internal Revenue Code.
  - Tax-exempt private clubs are not listed in the CARES Act as being able to take advantage of this; however, it could change in the near future, and we are following this closely.
  - At this moment, we do believe that this does apply to taxable private clubs, and we encourage those to reach out to their SBA lender immediately as the program is rolling out now.
  - Upon receiving further information from the SBA,
    we will update you accordingly.

Payroll Tax Credit (Employee Retention Credit)

- Private clubs are eligible for a 50 percent refundable payroll tax credit on wages paid up to $10,000 per employee during the crisis.
- This credit is available to all private taxable and non-taxable clubs whose operations were disrupted due to virus-related shutdowns (fully or partially closed.)
- The credit is available for employees retained but not currently working due to the pandemic, for private clubs with more than 100 employees, and for all employees of private clubs with 100 or fewer employees.

(cont.) Payroll Tax Credit (Employee Retention Credit)

- ***PKFOD Observation:***
  - This is a payroll tax credit, therefore private clubs who utilize a payroll service should proactively reach out to their payroll providers to learn more about receiving and calculating this credit.
  - In general, private clubs have very little credits that they are able to take advantage of since they don't pay much in the way of income taxes. Since the credit in the CARES Act applies to payroll taxes, this is a great opportunity for private clubs to benefit as well.
  - This credit is not available to any private club who receives a loan under the Paycheck Protection Program.
  - Since tax-exempt private clubs are not currently eligible for the PPP loan, they are able to take advantage of this credit.

Payroll Tax Deferral

- The CARES Act delays the timing of required federal tax deposits for certain employer payroll taxes and self-employment taxes incurred between March 27, 2020 and December 31, 2020.
  - All employers and self-employed individuals (including partners in partnerships) may avail themselves of the payroll tax deposit deferral. There is no need-based eligibility. Generally, the deferral relates to the employer's 6.2% Social Security tax.
  - Amounts will be considered timely paid if 50% of the deferred amount is paid by December 31, 2021, and the remainder by December 31, 2022. There is no dollar cap on the wages that are counted in calculating the taxes that may be deferred.
  - The payroll tax deferral is available to a taxpayer that obtains a Small Business Act (SBA) loan under the Paycheck Protection Program, however you can only defer until the date your receive forgiveness, and the deferred amounts stay deferred until the normal payment dates (end of '21 and '22).

Expanded Benefits to Employees

- Government-provided relief also provides benefits to employees who are on leave due to issues surrounding the virus.

- **Emergency Paid Sick Leave Act** – Provides for up to 80 hours of paid sick leave if the employee cannot work *or telework* because the employee:
  - Is subject to federal, state or local quarantine or isolation order related to COVID-19;
  - Has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
  - Is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  - Is caring for an individual who is subject to a quarantine or isolation order or who has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
  - Is caring for a son or daughter whose school or daycare has been closed, or when a child care provider is unavailable, due to COVID-19 precautions; or
  - Is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services.

Expanded Benefits to Employees

- **Emergency Family and Medical Leave** – FMLA benefits have been expanded so that Emergency FMLA (EFMLA) leave is now available to an employee unable to work (or telework) due to a need for leave to care for a child under age 18 if the school or place of care has been closed, or the childcare provider of such son or daughter is unavailable due to a public health emergency.

- **Some EFMLA stipulations:**
  - Applies to all employers with less than 500 employees, even those employers with less than 50 employees who are not traditionally subject to FMLA; and
  - The first 10 days of EFMLA are unpaid. For the remaining portion of any FMLA leave, employees receive up to two-thirds of their pay, with such payments capped at a maximum of $200 a day.

Paid Sick Leave Refundable Credit

- Employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and employers share of Medicare tax, paid for the leave between April 1, 2020 and December 31, 2020

- The Employer is not subject to the employer portion of social security tax imposed on the qualified pay

- Eligible Employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer's share of Medicare tax imposed on those wages, rather than depositing them with the IRS.

- If employer's employment tax deposits are not sufficient to cover the credit, the employer may receive are fund from the IRS by submitting Form 7200, Advance payment of Employer Credits Due to Covid-19.

Tax-Free Financial Assistance to Employees

- The President declared a national emergency on 3/13 and invoked the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Declaration) in response to COVID-19. This Declaration allows employers to provide tax-favored financial assistance to employees who are impacted, directly or indirectly, by the coronavirus.

- Employers may now provide assistance, whether in cash or services, to employees affected by COVID-19 and that assistance shall be treated as tax-free to the recipients, exempt from federal income and employment taxes.

- In addition, because there are no mandatory administrative requirements under this provision and it does not require itemized receipts from employees, employers can react promptly to provide financial support and help alleviate the immediate needs of their employees.

(cont.) Tax-Free Financial

- Some examples of financial assistance include:
  - Medical expenses related to COVID-19 not compensated for by insurance;
  - Other health-related expenses including over-the-counter medication or hand sanitizer;
  - Funeral expenses of the employee's family as a result of COVID-19;
  - Child care for workers whose normal source of child care is unavailable due to COVID-19;
  - Tutoring expenses for employees' children; and
  - Increased telecommuting costs, such as computers, printers, or supplies.

The payments may be made to all of the company's employees, regardless of how long they have worked there, and there is no cap on the amounts that can be paid to any individual employee or to all employees in the aggregate. **These payments cannot be a replacement of wages.**

Other Considerations

- Food to Go
- Qualified Improvement Property
- NOL's
- Creative Ideas for Now and Your Future Reopening
- Employment trends within the industry

Food to Go

- Tax-exempt private clubs traditionally would record food-to-go as unrelated business taxable income (subject to gross receipt limitations) since it falls into the non-traditional revenue category.
- To provide amenities to members, private clubs are now providing food-to-go. Typically, nontraditional revenue, such as carryout, must be limited to a de Minimis amount – this means, small, insignificant, and non-recurring. However, private clubs are now delivering food and/or offering carryout in order to continue providing amenities to their members.

PKFOD Observation: While the IRS has not released guidance, experts agree that due to the current situation, it is not likely to become an issue in relation to nontraditional activities (UBI). When the stay-at-home orders are lifted, tax-exempt private clubs should go back to maintaining their food-to-go limitations to a de minimis amount.

Qualified Improvement Property – Applies to Taxable Private Clubs Only

- The CARES Act included a fix of the qualified improvement property drafting error in the Tax Cuts and Jobs Act (TCJA) .
- Private clubs can now take a full deduction for qualified improvement property by using bonus depreciation.
- Under this correction, the useful life for property under the qualified improvement category would change to 15 years, versus the original 39 years.
- Taxable private clubs with large renovations may want to go back and amend their 2018 tax return for the additional deduction.

NOL's – Applies to Taxable Private Clubs Only

- Net operating losses (NOLs) incurred in 2018, 2019, and 2020 can be carried back five years and fully offset taxable income. [The Tax Cuts and Jobs Act (TCJA) passed in 2017 limited NOL usage to 80% of taxable income and prevented carrybacks.]

Bring the Club to Your Members

- Daily recipe suggestions (or videos) emailed to members from the Chef
- Video chat lessons/tips from the Golf Pro (free of charge)
- Phone calls every few days to “check in” with to older or high-risk members
- Update the Member Directory to help members stay connected
- Invite members to submit stories of their favorite club memories and send out a weekly “feel-good” newsletter
- Circulate ideas for games and activities to do with children at home

Cash Flow Forecasting

- Review current cash position
- Explore options to access to cash
- Review your fixed costs
- Revisit current commitments and determine what can be put on hold
- Consider the volatility of monthly dues.
- Work with your bank
- Contact insurance brokers/providers
- Reschedule outings until later in the year

Preparing for Reopening

- Use down time to get creative and plan for a more enjoyable club experience when members and employees return.
- Build programs, skills and morale
  - Train employees to enhance member relationships and other hospitality skills
  - Strengthening club leadership skills
  - Brainstorm ideas on how to make the club a better place for returning members
  - Review current policies and procedures and update, as necessary
- Start surveying members to see what activities and amenities they'd be interested in. Consider:
  - Budgeting and planning for the rest of the season
  - Activities – social activities, pool or limit the remainder of the season to golf
  - If social distancing is still required how will it affect any club activities?

Employment Trends Within the Industry

- Most employees who have no direct impact of the day to day operations within the club are no longer going to work everyday.
- Clubs have the following options for employees who cannot work:
  - Layoffs where they may collect unemployment
  - Furlough – similar to above, however employees will maintain their benefits
  - Work share program (check with your state department of labor) – employees are on a reduced schedule, maintain benefits and may collect unemployment for the percentage of time they are not working.
  - Some clubs choose to keep employees on payroll to retain that employee for when the club is able to re-open.

PKFOD Observation: Various state unemployment benefits will differ, however some employees may become whole from unemployment benefits, making it difficult to get those employees to return to work earlier than necessary. Some clubs may consider offering sign on bonuses to entice employees to come back.

This may be an ideal time to truly evaluate and analyze your club operations to determine if you may be overstaffed in any areas.

Tax Deadline Deferral

- Tax returns and payments for tax-exempt organizations and fiscal year businesses due between April and June are postponed until July 15,2020.
  - This applies to all taxpayers who have a filing or payment deadline falling on or after April 1, 2020, and before July 15, 2020.
  - This relief does cover exempt organizations business income tax and other payments and return filings on Form 990-T, Exempt Organization Business Income Tax Return and related quarterly estimated income tax payments calculated on or submitted with Form 990-W, Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.
  - The deferral notice (2020-23) does not explicitly state that relief is provided to exempt organizations required to file a Form 990, Return of Organization Exempt from Income Tax, during the covered period, presumably, filing relief has been extended to exempt organizations pursuant to Revenue Procedure 2018-58. We expect the Treasury will publish official guidance or provide additional clarification with respect to relief applicable to the Form 990.
  - If a taxpayer needs additional time beyond July 15th (if available) they will have to file an extension under the normal process.

Disclaimer

The CARE Act program details discussed in this presentation are current as of 5:00 pm, April 13, 2020. Due to the current environment, the CARE Act and its interpretations are subject to change without notice. Please connect to our COVID-19 Resource Center for the most up to date information at a point in time.

Contact Us

Ned McCrory, CPA
Partner
401.709.3032
nmccrory@pkfod.com

Geoffrey Benedict, CPA, CGMA
Partner
240.534.2802
gbenedict@pkfod.com

Kerri Rawcliffe, CPA
Senior Manager
401.709.3050
krawcliffe@pkfod.com

Patrick Halloran, CPA
Partner
914.341.7014
phalloran@pkfod.com

Garrett Higgins, CPA
Partner-in-Charge, Exempt Organization Tax and Advisory Services Group
914.421.5655
ghiggins@pkfod.com

Common Questions