

The Impact of New Coronavirus Legislation on Business

April 2, 2020

Presenting companies:

CVF Capital Partners

BFBA, LLP

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The new Coronavirus pandemic has motivated lawmakers to legislate new measures to improve public health and provide financial assistance to broad sections of the U.S. economy

Congress has passed in March three important pieces of legislation with wide ranging impact on U.S. society:

1. COVID-19 Coronavirus Act (March 14th)
2. The Families First Coronavirus Response Act (March 18th)
3. CARES Act (March 27th)

Panelists

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The Economic Impact of the Coronavirus will be Severe

- **Marriott CEO:** *“Coronavirus outbreak is worse for business than 9/11 and 2008 financial crises combined”*
- **White House health advisor Dr. Anthony Fauci said the United States** *“can start thinking about getting back to some degree of normality when the country as a whole turns that corner” of reducing the spread of the coronavirus outbreak*

2020 Forecast from December 2019

- Review of a dozen analyst reports and used expert judgement to come up with our own guidance
- Our consensus guidance was **in line** with most of the analyst: slow but steady growth unless there was an **exogeneous shock**
 - **Wells Fargo:** An “exogeneous” shock can lead to an economic contraction. For example, the moonshot in oil prices that occurred in the aftermath of the OPEC oil embargo in late 1973 was the proximate cause of the deep downturn in the U.S. economy in 1974 and 1975. ...

	US GDP	Personal Consum.	Core PCE Deflator	Fed Funds	10-Yr T-Bill	Unemployment	S&P
Median	2.2%	2.3%	1.8%	1.6%	1.8%	3.6%	3,300
Minimum	1.7%	2.3%	1.8%	1.3%	1.6%	3.3%	3,250
Maximum	3.1%	2.6%	1.8%	1.8%	2.3%	3.6%	3,325
CVF Guidance	1.9%	2.4%	1.8%	1.6%	2.0%	3.6%	3,300

That Was Fast...

- GDP forecasts did not start to be modified by most analysts until early March
- 2Q 2020 GDP forecast fell from **2.4%** on February 28 to **(14.7%)** on March 27



Source: Wells Fargo, "Weekly Economic & Financial Commentary."
Available at <https://www.wellsfargo.com/com/insights/economics/weekly-commentary/>

Economic Forecast Update

	US GDP	Personal Consum.	Core PCE Deflator	Fed Funds	10-Yr T-Bill	Unemployment	S&P
Orig. Guidance	1.9%	2.4%	1.8%	1.6%	2.0%	3.6%	3,300
Updated Guidance	< (3.0%)	0.5%	1.6%	0.3%	1.0%	> 10.0%	2,000 – 2,500

- Our GDP forecast and S&P forecast are both below consensus
 - S&P Future contract for December 2020 is 2,619 (as of 3/31/2020)
- We are in line with consensus on the other measures
- **MAJOR** caveat is that we don't yet know the extent of virus and it's impact on the economy

Small Business Sentiment

- SBIA recently surveyed 726 small businesses (median size was 100 employees) on March 19 and 20, 2020
- **80%** have cash flow concerns
 - **100%** in the entertainment and hospitality sectors (22 surveys)
- **40%** do **not** have cash reserves to last past 60 days
- **21%** have already started to lay off employees
 - **64%** that have not laid off employees anticipate they'll need to do so
 - Anticipated layoffs represent **30%** of the employee base (**60%** for entertainment and hospitality)
- Results were not specific to a geography – broad-based consistency

Small Business Investor Alliance, "Survey of Impact of COVID-19 on Small Businesses," March 21, 2020

Accounting and Income Tax Implications



Panelist: Ben Brown

BFBA, LLP



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Income Tax Filing Dates

- Federal and California tax filing and payment deadline moved from 4/15 to 7/15
 - Includes payment of 2019 taxes due, as well as Q1 2020 payments
 - Does not currently extend Q2 deadline of 6/15
 - 37 total states have mirrored the 7/15 deadline, other states with varying dates between 4/30 and 7/31.
 - Extends IRA contribution deadline to 7/15 as well.

Tax Provisions – CARES Act

- Employee Retention Credit – Refundable payroll tax credit of 50% of qualified wages.
 - Eligible to businesses that were fully or partially suspended due to COVID-19 shut-down order OR gross receipts decline 50% YOY
- Delay of Payment of Employer Payroll Taxes
 - Employer portion of Social Security taxes (6.2%) can be deferred.
 - Deferred taxes paid in 2 equal installments on 12/31/21 and 12/31/22.
 - Beware of personal liability for principals

Retro-Active Changes

- Business Interest Expense limitation [163(J)]
 - Increase the limit from 30% to 50% for 2019 and 2020
 - Does not apply to partnership in 2019, but does apply in 2020
- Qualified Improvement Property – Technical Correction
 - QIP placed in service after 12/31/17 is 15 year property and eligible for bonus.
 - Requires amendment of 2018 return to address 2018 improvements
 - Eligible for bonus depreciation – can create NOL in 2018

Retro-Active Changes (Cont'd)

- Modification of NOL rules
 - NOLs arising in 2018, 2019, and 2020 can be carried back 5 years.
 - Eliminates 80% limitation on use of NOLs until 2021 tax years
- Repeal of the Overall Loss Limitation (461I)
 - Retroactive to 2018 through 2020, business losses can offset non-business income without limitation (previously limited to \$250K on individual returns/\$500K joint)
- Remaining Corporate AMT Credits can be refunded
 - Claim must be submitted by 12/31/2020

Financial Reporting

- Going Concern Considerations:
 - Covenant Compliance at 3/31
 - Management's plans and expectations
 - CARE Act tools/funding
- Subsequent Event Disclosure:
 - Management has evaluated subsequent events through [DATE], the date the financial statements were available to be issued. The COVID-19 outbreak in the United States has caused economic uncertainties that could negatively impact operations. The extent of the impact of COVID-19 on the Company's operational and financial performance will depend on variety of developments and factors that cannot be predicted at this time. As a result, the related financial impact and duration cannot be reasonably estimated at this time.

Accounting for Paycheck Protection Program Loans and Forgiveness

Financial Reporting:

- Balance Sheet transaction at loan inception.
 - Record the Cash received and associated Note Payable on balance sheet.
- Upon approval of loan forgiveness, recognize the gain on forgiveness in the Income Statement, with a related reduction to the Note Payable.
 - Recommend presentation as “Other Income”

Tax Reporting:

- Forgiveness is Non-Taxable - M-1 adjustment to reduce taxable income

Additional Legal Matters

Panelists:

Chris Chediak

Jim Clarke



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Contractual and Financing Terms

- A Material Adverse Change (“MAC”) clause is a contractual term providing that, if a material adverse event occurs with respect to the company, one or both parties to the contractual arrangement have the right to take certain protective actions, such as accelerating or terminating the contract, accelerating a loan, or refusing to close the transaction. Any MAC clause contained in a contract should be carefully evaluated with respect to the unknown impact of the COVID-19 pandemic.
- . A Force Majeure clause allows the termination, suspension or delay of a contract or performance under the contract if an event beyond the control of the parties occurs that prevents or interferes with performance. Examples of such events can include natural disaster, acts of war, terrorism or pandemic. Force Majeure clauses can be drafted with a wide variety of differing triggering and other terms and should be carefully reviewed.
- . Specific disclosures regarding the unknown impact of the COVID-19 pandemic should be included in pending investment, financing and other transactions. Examples of these types of disclosures as used by public companies and some private companies are available on line.

Permitted Layoffs

- California WARN Act has been suspended in part.
- allows mass layoffs with notice, but without 60 day prior notice requirement.

Employment Law Webinar Monday, 4/6 10:00 am: bit.ly/WT-COVID19-Employers

Unemployment

- Pandemic Unemployment Assistance Program
- Fully funded by the federal government
- 1/27/2020 through 12/31/2020
- Maximum of 39 weeks assistance for anyone unemployed due to COVID-19 diagnosis, caring for someone with COVID-19 diagnosis, caring for children home from school, or unable to reach workplace because of a stay at home order
- Expands UI coverage to gig workers, independent contractors and self-employed individuals

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Sick Leave

- Families First Coronavirus Response Act (FFCRA)
- Provides paid sick time and expands FMLA to provide an extended period of partially paid leave (Emergency Family and Medical Leave Expansion Act (E-FMLA))
- 4/2/2020 through 12/31/2020
- E-FMLA leave available if EE unable to work due to need to care for child under 18 if the child's school is closed due to COVID-19
- Initial 10 days unpaid, thereafter paid leave at 66% of salary for three months
- Employer must make reasonable efforts to restore the employee to a comparable position and pay
- Maximum of \$200 per day and \$10,000 in the aggregate per EE

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Emergency Paid Sick Leave

- Emergency Paid Sick Leave Act (E-PSLA)
- 4/2/2020 through 12/31/2020
- Requires employers to provide paid sick leave to employees if they are not able to work because they are subject to a stay at home order, has COVID-19 symptoms, is caring for someone with COVID-19 symptoms, has a child whose school is closed due to COVID-19 precautions
- 80 hours of paid sick time
- No restrictions based upon period of employment
- Cannot make the EE use existing sick time first
- Maximum \$511 per day, \$5110 in the aggregate per EE

Employment Law Webinar Monday, 4/6 10:00 am: bit.ly/WT-COVID19-Employers

Tax Credits And Deposit Offsets

- Payroll Tax Credits
- Employers who pay qualifying EE's under either the E-FMLA or the E-PSLA
- Cost of paid leave is offset by tax credit on Employers share of Social Security and Medicare taxes for ALL employees (not just those on leave)
- Employer may retain existing Employers share of employment tax deposits up to the amount of the qualifying leave paid
- If existing deposits not sufficient to pay the qualifying leave, the employer is to file a request for an accelerated credit for the remaining amount of qualifying leave

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Pension Plan Related Relief

- IRA penalty free withdrawal if under 59 ½ of up to \$100,000
- Taxed over three years, or may be repaid over three years
- IRA/401K no required mandatory distribution in 2020

Real Estate Protective Measures

- California authorizes local governments to halt evictions, slow foreclosures and protect against utility shutdowns.
- Moratoriums vary by jurisdiction
- Moratoriums preclude evictions and impose a temporary rent deferral for those who can demonstrate their payment inability is caused by COVID-19
- Waiver of interest and late fees on unpaid rent
- Extended period (3-6 months) to repay the rent after the end of the Pandemic
- Moratoriums are rent deferrals, not rent forgiveness

Updates on Legislation to Help Businesses



www.CVFCapitalPartners.com

Panelist: Brian Hoblit
CVF Capital Partners

Federal Relief Programs

- SBA CARES Act (“PPP”)
- SBA Economic Injury Disaster Loans

CARES Act (1 of 4)

- \$349Bn “Paycheck Protection Program” (PPP)
 - Funding >> EIDL program
 - Largest economic rescue package in U.S. history
- For small businesses (less than 500 employees) that need **funds to cover expenses caused by current economic disruption** and not already covered under COVID-19 relief law and was in business on February 15, 2020
 - No double dipping with SBA EIDL or other programs
- Loan forgiveness available under some stipulations; unforgiven portion due in ten years (with option to defer)
- Application available March 31; **applications can be submitted on April 3**

CARES Act (2 of 4)

- “Substantially Affected by COVID-19” includes business that have been affected by ...
 - Supply chain disruptions
 - Quantity and lead time
 - Quality including shortages for quality reasons
 - Technology, including compromised payment networks
 - Staffing challenges
 - Decrease in sales and/or customers
 - Shuttered businesses

CARES Act (3 of 4)

- **Loans up to \$10MM** to cover payroll and other working capital
 - Loan limit is 2.5x average monthly total payroll (excluding comp over \$100K but including vacation time, health insurance, retirement benefits, etc.) plus unrealized share of 7(a) program
 - Loans made through current SBA 7(a) lenders and **other designated institutions**
 - **No collateral or personal guarantees required**; other indebtedness is allowed
- Six months of no payments
- Rate is fixed at 4.0% and unforgiveable portion will be amortize over ten years

CARES Act (4 of 4)

- Net Operating Loss modifications
 - NOLs in tax year beginning in 2018, 2019 and 2020 can be **carried back five years**
 - **Temporarily removes limitations and allows an NOL to fully offset income**
 - Check with your CPA and attorney
- Business Interest modification
 - Temporarily **increases business interest** that can deducted from **30% to 50% of taxable income**
 - For tax years 2019 and 2020
 - Check with your CPA and attorney

CARES Act: Loan Forgiveness

- If money is used within eight weeks of getting the loan, the **loan will be forgiven** if used for qualifying expenses for eight weeks after loan origination
 - Payroll
 - Payroll taxes
 - Health insurance
 - Rent
 - Mortgage
 - Utilities
 - Commercial insurance

CARES Act: Timeline and Details

APPLICATION

- Applications will be accepted starting April 3
- Max loan size is \$10MM or 2.5x your monthly payroll from last year with other add-backs
- Reduced employee count from LY will reduce total available amount

FORGIVENESS

- After loan approval, you will be able to apply for forgiveness on payroll and other qualifying expenses for eight weeks from loan approval
- Unforgiven amount remaining will convert to term loan on June 30
 - 10-year amortization starting January 1, 2021
 - 4% maximum interest

SBA Economic Injury Disaster Loans

- As a business of any size, you **may borrow up to \$2.0MM for physical damage**
- As a “small business,” small agricultural cooperative, small business engaged in aquaculture, or private non-profit organization **you may borrow up to \$2.0MM for Economic Injury**
- As a “small business,” you may apply for a **maximum business loan (physical and EIDL) of \$2.0MM**

SBA EIDL (con't)

- Available immediately at <https://disasterloan.sba.gov/ela>
- Collateral is required on loans over \$25,000
- As of March 24, there have been 95,000 applications with **an approval rate of 90%**
- **\$10,000 advance** available to all applicants regardless of approval status

State and Local Programs

- There are a variety of additional resources specific to your municipality and are too numerous to list here

Conclusions and Next Steps

1. Raise as much liquidity as possible (Cost Savings, Bank facility, Merchant Credit, etc.)
2. Apply for a PPP Loan. First Come First Serve.
3. Educate yourself and consult your advisors
 - BFBA, <https://bfba.com/insights/covid-19-federal-tax-updates-changes/>
 - Weintraub Tobin, <https://www.weintraub.com/category/covid-19>
 - SBA, <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>

Conclusions and Next Steps (pt 2)

4. Assess your company new obligations under the CARES Act and state law (i.e. Sick Pay, etc.)
5. Communicate a clear plan to all stakeholders (i.e. employees, customers, banks, insurers, etc.)

Questions?

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