

## COVID Relief Programs for Healthcare Providers

### *Important Tax Considerations*

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Consolidated Appropriations Act, 2021 (CAA), and American Rescue Plan Act (ARPA) all included provisions providing funding to help businesses and individuals through the economic challenges resulting from the COVID-19 pandemic. Given the importance of continuing to provide adequate medical care, a significant portion of the relief funding was directed towards healthcare providers. Following is a summary of some of the funding sources commonly utilized by healthcare providers, as well as important tax implications that should be considered.

#### *Provider Relief Funds*

The CARES Act enacted in March 2020 established the Provider Relief Fund (PRF) to provide funds to healthcare providers to prevent, prepare for, and respond to coronavirus. The funds were intended to reimburse providers for healthcare related expenditures or lost revenues attributable to COVID-19 or to address specific targeted needs. A total of \$178 billion was allocated to this fund for distribution to healthcare providers.

Entities receiving more than \$10,000 in Provider Relief Funds are required to submit reports to the Health Resources and Services Administration (HRSA) regarding how the funds were utilized. The amounts received are

effectively treated as grants, since they can be forgiven if used in accordance with program requirements. However, any funds that were received in error, exceed lost revenue or expenses due to coronavirus incurred by the provider through June 30, 2021, or otherwise do not meet applicable legal and program requirements must be returned to the Department of Health and Human Services (HHS).

The IRS has indicated that PRF distributions are required to be treated as taxable income by the recipient. However, this creates some challenges. First, the funds were distributed starting in April 2020, and entities had only a 90-day window to decide whether to accept the funds and attest to the required terms and conditions, or reject the funds. Second, the



rules dictating approved uses of funds, particularly with regard to how the lost revenue should be determined, have changed multiple times since the program began. Accordingly, some providers may have accepted funds that ultimately exceed their eligible expenses and lost revenue during the allowed period. However, HHS has not yet provided any guidance regarding how providers should return unused funds, noting only that it will provide directions in the future.

Initially, HHS had established a deadline of February 15, 2021, for entities to report on their use of funds for the period ended December 31, 2020. However, on January 15, 2021, HHS delayed this deadline, but has not provided any further direction other than “in the near future, HRSA will announce the window for submitting the first report on a recipient’s use of funds.”<sup>1</sup> The guidance regarding what constitutes approved uses of funds continues to change, with updates as recently as April 1, 2021. Accordingly, it is difficult for entities to have an accurate understanding of exactly how much of the funds they received will ultimately be used for approved purposes, or how much may have to ultimately be returned. It is important to work with your tax advisor on the specific facts and circumstances to determine how this might impact amounts reported as income in 2020 or whether a portion might be considered a liability as of December 31, 2021 until the ultimate disposition of the funds is known.

### *Advanced Medicare Payments*

In March 2020, the Centers for Medicare and Medicaid Services (CMS) expanded the Accelerated and Advance Payment Program as an avenue to accelerate cash flow to healthcare providers and suppliers impacted by the national emergency. The CARES Act and CAA subsequently modified key provisions relating to repayment terms associated with these advances. Under the revised terms, Medicare payments owed to providers and suppliers will be recouped at a rate of 25% beginning one year from the date the advanced

payment was issued and continuing for 11 months. The Medicare payments will then be recouped at a rate of 50% for another six months, or until the full advance has been repaid. Providers should ensure they have adequate working capital to fund operations during the recoupment period when their cash flow from Medicare claims will be reduced as the advance is repaid. If any remaining balance exists at the end of the fifteen-month automatic recoupment period, CMS will issue a letter requiring the balance to be paid in full within 30 days. Any unpaid amounts will be subject to interest accruing from that point forward.

From a tax perspective, these advance payments are treated as a loan and therefore would not be included in income in 2020 when the funds were received. However, providers will need to record revenue during the recoupment period as amounts are withheld by CMS to repay the advance. For example, if an entity submits claims with an allowable amount of \$10,000 in Month 1 of the recoupment period, the full \$10,000 would be considered revenue to the practice even though CMS will retain \$2,500 (25%) as a loan repayment and remit only \$7,500 to the provider.

### *Paycheck Protection Program*

The Paycheck Protection Program (PPP) was originally created through the CARES Act to provide relief for small businesses, with the intent that the funding would enable them to retain employees during the COVID-19 emergency. The program has since been modified and expanded through subsequent legislation. In this program, qualified entities could apply for loans based on their monthly payroll costs. To the extent the funds received are used for payroll-related expenses (comprising at least 60% of the amount received) or other approved expenses such as rent, mortgage payments, and utilities during the specified covered period, the loan amounts are fully forgivable.

The CARES Act stipulated that PPP amounts

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<sup>1</sup> U.S. Department of Health & Human Services, *Cares Act Provider Relief Fund Frequently Asked Questions, Last*

*Updated: 4/1/2021. Applicable question last modified 1/15/2021.*



that are forgiven are not includible in gross income for purposes of federal income taxes. The CAA affirmed this tax treatment, and also clarified that businesses could still claim normal tax deductions for expenses paid with PPP funds.

For entities that submitted a loan forgiveness application for PPP funds received and utilized in 2020 and have received forgiveness, the forgiven amount should be reported as non-taxable income in 2020. However, there is not yet clear guidance from the IRS on what to do if a business has not yet received forgiveness. Given that the Small Business Association has been focused on processing applications for new PPP loans in recent weeks, there is a significant backlog in processing applications for forgiveness of first round PPP loans. Also, entities that may have their 2020 losses limited due to basis limitations should take extra care in considering the appropriate treatment of the PPP loan forgiveness and the associated tax implications. Accordingly, you should work with your tax advisor regarding your specific circumstances to ensure that the PPP loan activity is addressed appropriately based on the latest IRS guidance.

### *Employee Retention Credit*

Another program implemented to aid small businesses in retaining employees and continuing to pay wages during the challenging economic climate was the Employee Retention Credit (ERC). This was enacted in the CARES Act and subsequently amended by the CAA, with certain amended provisions retroactive to 2020. Under this program, qualifying employers who experienced an eligible suspension of operations may receive a credit of 50% of qualified wages up to \$10,000 per employee for 2020, for a maximum 2020 credit of \$5,000 per employee. This credit reduces the amount of payroll taxes that the employer would otherwise owe.

The CAA reversed earlier rules stating that a business receiving PPP funds was ineligible for the ERC, allowing entities to utilize both

programs. However, it is important to note that if an entity received PPP funds, any payroll expenses included in the determination of the forgiveness amount may not be included as qualified wages for the purpose of applying the ERC.

The ERC is claimed on an entity's quarterly payroll tax return (Form 941). If a business determines it was eligible for the credit but did not claim it on the originally filed returns, they must file amended returns for each affected quarter to claim the credit.

### *Deferred Payroll Tax*

The CARES Act allowed employers to delay payment of the employer portion of Social Security payroll taxes on wages paid from March 27, 2020 to December 31, 2020. 50% of the delayed amount must be paid by December 31, 2021, with the remaining amount due by December 31, 2022.

The accrued deferred payroll tax is not a cash basis expense, and therefore would not be tax-deductible in 2020. It will be a deductible expense in the years in which the deferred taxes are paid.

### *FFCRA*

The Families First Coronavirus Response Act (FFCRA) enacted in March 2020 included provisions for emergency paid sick leave and expanded the existing family and medical leave program. Employers receive a credit against payroll taxes in an amount equal to 100% of qualified wages paid in connection with these leave provisions. Amounts applied to the credit are not deductible for income tax purposes.

This credit is claimed on an entity's quarterly payroll tax return (form 941) for corporations and s-corporations. For sole proprietors and LLC owners, the credit is taken on Form 1040. Ensure you communicate with your tax advisor regarding wages and compensation paid for qualified FFCRA leave so the full amount of the credit you are entitled to can be claimed.



### *Final Thoughts...*

The various funding avenues made available to healthcare providers from the legislation passed in 2020 and 2021 was crucial to ensuring uninterrupted medical care during the coronavirus emergency. However, many of the programs have been modified multiple times since their inception, sometimes with retroactive implications. In some cases, there is still not clear guidance from the IRS regarding how they should be treated for federal income tax purposes. Every situation is different and an in-depth understanding of the specific facts and circumstances pertaining to the entity should be obtained to make sure the tax issues are handled appropriately.

JTaylor continues to closely monitor the evolving guidance. We recommend that you consult with your JTaylor tax advisor to discuss all of the relief programs that you utilized, whether in 2020 or 2021, so that these can be addressed appropriately in any tax filings. Many of these programs have continued in 2021, and others have been added. Our team can advise you on additional avenues that may be available to you if your business continues to experience challenges associated with COVID.

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*Because the facts and circumstances of each situation are unique, particularly as applied to these new, complex provisions of federal legislation and associated interpretive guidance, we recommend seeking professional guidance before undertaking actionable steps in regard to these provisions.*