ATTORNEYS ERICA REIB, JOE NEWBOLD, AND GRANT KILLORAN FEATURED IN WISCONSIN LAWYER

An article by Attorneys Grant Killoran, Joe Newbold, and Erica Reib entitled “The New Wave of Litigation: An Early Report on COVID-19 Claims” is featured as the cover story in the June edition of the State Bar of Wisconsin publication *Wisconsin Lawyer*. In their article they analyze the claims being filed relating to the ongoing COVID-19 pandemic in the United States.

Read the full article here.

TAX AND WEALTH ADVISOR ALERT: REMINDER – IRS ESTIMATED TAX PAYMENTS DEADLINE POSTPONED TO JULY 15 – HOW THIS AFFECTS YOU

The Internal Revenue Service reminds taxpayers that estimated tax payments for tax year 2020, originally due April 15 and June 15, are now due July 15 due to the COVID-19 outbreak. Therefore, any individual or corporation that has a quarterly estimated tax payment due has until July 15 to make that payment without penalty. This relief applies to federal income tax returns and tax payments (including tax on self-employment income) otherwise due April 15, 2020. This relief does not apply to state tax payments, deposits, or payments of any other type of federal tax.

Who needs to make estimated tax payments?

Individuals, including sole proprietors, partners, and S corporation shareholders, generally have to make estimated tax payments if they expect to owe tax of $1,000 or more when their return is filed. Similarly, investors, retirees, and others often need to make these payments. That is because a substantial portion of their income is not subject to withholding. Other income generally not subject to withholding includes interest, dividends, capital gains, alimony, and rental income.

Corporations generally have to make estimated tax payments if they expect to owe tax of

$500 or more when their return is filed. Special rules apply to some groups of taxpayers, such as farmers, fishermen, casualty and disaster victims, those who recently became disabled, recent retirees, and those who receive income unevenly during the year.

Who does not need to make estimated tax payments?

Taxpayers that receive salaries and wages can avoid having to pay estimated tax by asking their employer to withhold more tax from their earnings. To do this, taxpayers can file a new Form W-4 with their employer. There is a special line on Form W-4 for you to enter the additional amount you want your employer to withhold. If you receive a paycheck, the IRS's Tax Withholding Estimator will help you make sure you have the right amount of tax withheld from your paycheck.

Additionally, you do not have to pay estimated tax for the current year if you **meet all three** of the following conditions:

- You had no tax liability for the prior year
- You were a U.S. citizen or resident for the whole year
- Your prior tax year covered a 12-month period

You had no tax liability for the prior year if your total tax was zero or you did not have to file an income tax return.

How do I figure out my estimated tax payments?

Individuals, including sole proprietors, partners, and S corporation shareholders, can compute their estimated taxes by following the instructions on Form 1040-ES, Estimated Tax for Individuals. To compute your estimated tax, you must figure out your expected adjusted gross income, taxable income, taxes, deductions, and credits for the year. Corporations generally use Form 1120-W to compute estimated tax.

When and how should I pay Federal estimated taxes?

For estimated tax purposes, the year is divided into four payment periods. Estimated tax payments are typically due as follows:

- January 1 to March 31 – April 15
- April 1 to May 31 – June 15
- June 1 to August 31 – September 15
- September 1 to December 31 – January 15 of the following year

Note: As mentioned, due to the COVID-19 outbreak, 2020 estimated tax payments that otherwise would have been due April 15 and June 15, 2020, are postponed to July 15, 2020.

You may send estimated tax payments with Form 1040-ES by mail, or you can pay online, by phone or from your mobile device using the IRS2Go app. Visit IRS.gov/payments to view all the options. Using the Electronic Federal Tax Payment System (EFTPS) is the easiest way for individuals as well as businesses (who must use EFTP) to pay federal taxes. Using EFTPS, allows you to set up direct payments in advance and access a history of your payments, so you know how much and when you made your estimated tax payments.

Are there penalties for underpayment of estimated tax?

If you did not pay enough tax throughout the year, either through withholding or by making estimated tax payments, you may have to pay a penalty for underpayment of estimated tax. Generally, most taxpayers will avoid this penalty if they owe less than $1,000 in tax after subtracting their withholdings and credits, or if they paid at least 90% of the tax for the current year, or 100% of the tax shown on the return for the prior year, whichever is smaller.

Use Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts (or Form 2220, Underpayment of Estimated Tax by Corporations), to see if you owe a penalty for underpaying your estimated tax or qualify for a penalty waiver. Please refer to the Form 1040 and 1040-SR Instructions or Form 1120 Instructions, for where to report the estimated tax penalty on your return.

What about Wisconsin estimated tax payments?

Federal extensions provided by the IRS may be used for Wisconsin income and franchise tax and pass-through withholding tax purposes. Estimated payments due on or after April 1, 2020 and before July 15, 2020 are extended to July 15, 2020. For information on the new Wisconsin filing and payment due dates, see the article Wisconsin Tax Return Due Dates and Payments.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and will continue to monitor federal and state law tax changes. For questions or further information relating to estimated tax payments, please contact Attorney Britany E. Morrison.

TAX AND WEALTH ADVISOR ALERT: THE IMPORTANCE OF A DURABLE FINANCIAL POWER OF ATTORNEY

A proper estate plan covers not only what should happen upon your death, but also what

should happen if you lose your decision-making skills. While planning for incapacity may be as unpleasant as planning for death, it is an important step in the estate planning process. Planning for incapacity ensures that someone you specifically choose and trust can act on your behalf while you are unable to do so for yourself. One key document to help you plan for incapacity is the Durable Financial Power of Attorney.

A Durable Financial Power of Attorney allows you to appoint someone, your “agent” or “attorney-in-fact,” to manage your financial affairs in the event you are unable to so for yourself. The word “durable” simply means that the power of attorney remains in effect after you become incapacitated or incompetent. These documents are fairly flexible, allowing you to give your agent broad or limited power. Further, you can choose to either give your agent immediate power or to make your agent’s power effective only once you’ve been determined to be incapacitated.

Some examples of tasks your agent can perform include paying your bills, managing your assets, filing an insurance claim, and even hiring a lawyer. It is easy to believe that a Durable Financial Power of Attorney is unnecessary if you don’t own many assets or if you own assets jointly with someone else. However, some of these actions require your agent to have specific legal authority to act on your behalf, and the Durable Financial Power of Attorney would provide your agent with that authority.

If you do not get a power of attorney and you were to become incapacitated or incompetent, then your family would need to ask the court to appoint someone to act on your behalf. Not only could the court appoint a stranger to manage your financial affairs, but also this process can be expensive, public, and time consuming. Having a proper estate plan that covers what should happen if you become incapacitated or incompetent will save you and your loved ones time and money.

Keep in mind, though, that a Durable Financial Power of Attorney would not allow your agent to continue managing your financial affairs after your death. For this reason, these documents are often drafted as part of a larger estate plan.

The attorneys at O’Neil Cannon have experience in drafting various estate plans, both simple and complex, and would be happy to discuss the estate planning process with you. If you are interested in learning more about estate planning, please contact attorney Kelly M. Spott.

NEW ACT PROVIDES MORE FLEXIBILITY TO PPP

BORROWERS

Today President Trump signed the Paycheck Protection Program Flexibility Act of 2020 (the "Act") to amend certain provisions of the CARES Act related to the forgiveness of loans under the Paycheck Protection Program ("PPP") and for a number of other purposes.

Here are some of the key takeaways:

- **Deadline to Use the Loan Proceeds**: Borrowers can now use their PPP loan over a period of 24 weeks, tripling the current covered period of eight weeks.[1]
- **Forgivable Uses of the Loan Proceeds**: Borrowers must use at least 60% of their PPP loan on payroll costs, amending the previous rule that required borrowers to use 75% of their PPP loan for payroll costs. The remaining 40% may be used for allowable non-payroll expenses.
- **Extension of Time for Rehiring Workers**: The period to rehire employees has been extended from June 30, 2020 to December 31, 2020.
- **New Exemptions from Rehiring Workers**: Two exemptions were added to the PPP's loan forgiveness reduction penalties.

    1. The forgiveness amount will not be reduced due to a reduced full time employee count if the borrower can document that it attempted, but was unable, to rehire individuals who had been employees on February 15, 2020.
    2. The forgiveness will not be reduced due to a reduced full time employee count if the borrower, in good faith, can document an inability to return to the "same level of business activity" as prior to February 15, 2020 due to sanitation, social distancing, and worker or customer safety requirements.

- **Payroll Tax Deferral**: The payroll tax deferral is now available to a borrower that has its loan forgiven. Previously, the deferral was available only to borrowers that did not have their loan forgiven.
- **Loan Deferral Period**: The loan deferral period has been changed to (i) whenever the amount of loan forgiveness is remitted to the lender, or (ii) 10 months after the applicable forgiveness covered period if a borrower does not apply for forgiveness during that 10 month period. Previously, a borrower's deferral period was to be between six and 12 months.
- **Loan Maturity Date**: The maturity date for the payment of the unforgiven portion of the PPP loan has been extended from two years to five years.[2]

Borrowers are now able to spend their PPP loan proceeds in a more flexible manner than previously permitted. As with the initial rollout of the PPP, it will be up to the Department of the Treasury and the Small Business Administration to provide regulations with respect to the Act.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and ready to help you. For questions or further information relating to the Paycheck Protection Program, please speak to

your regular OCHDL contact, or the authors of this article, attorneys Jason Scoby and Pete Faust.

[1] If the borrower would like, it can still elect to have the eight week period apply.

[2] This provision of the Act only affects borrowers whose PPP loan is disbursed after its enactment. With respect to an already existing PPP loan, the Act states specifically that nothing in the Act will "prohibit lenders and borrowers from mutually agreeing to modify the maturity terms of a covered loan."

GRANT KILLORAN PARTICIPATE IN 14TH ANNUAL STATE BAR OF TEXAS BILL OF RIGHTS CONFERENCE

Attorney Grant Killoran, a shareholder in O'Neil, Cannon, Hollman, DeJong and Laing's Litigation Practice Group, recently co-presented a speech entitled "The Tenth Amendment:

The Sword and the Shield of the States" at the 14th Annual State Bar of Texas Bill of Rights: Cutting Edge Controversies in Constitutional Law Conference. Grant also co-presented another speech at the seminar entitled "The Free Exercise and Establishment Clauses: Is Anything We Learned in Law School Still the Law."

The State Bar of Texas Annual Bill of Rights Conference brings together attorneys and law professors from around the country each year to speak on emerging issues in constitutional law.

ATTORNEY JIM DEJONG FEATURED ON WISN AM 1130

Attorney Jim DeJong will be featured on *Money Sense* presented by Ellenbecker Investment Group on **WISN AM 1130**. On the show, Jim provides an overview of the implications of the COVID-19 pandemic on the M&A market. He discusses what a business owner planning to sell

a business should be doing now to prepare the business to attract qualified buyers and to obtain the best price. Jim also discusses the importance of business succession planning.

Tune in to hear the show in its entirety on **Saturday, June 6th at 2:00 pm**.

The recording can be accessed here.

TAX AND WEALTH ADVISOR ALERT: PLANNING FOR SUCCESS WITH A BUSINESS SUCCESSION PLAN (PART I)

Many closely held businesses involve family members. The owner of such a business may wish to sell the business to some third party on or prior to death, or, more likely, may desire to transfer the business to the owner's children. Although some business owners may believe little or no planning is required for this type of transaction to take place, the opposite is true. To successfully transfer a family business to the next generation, the owner should commence planning for succession as soon as the owner has a good indication of which family members may be interested in succeeding to the ownership of the business, and more importantly, which of them will best be able to lead the business into the future.

In order for a transition to proceed as the owner desires, an effective business succession plan must be in place. When commencing the planning, the business owner should remember four key factors:

1. Succession planning is a process, not an event. Accordingly, the plan should be reviewed as time passes to see if changes to the plan are necessary.
2. Communicating with family members and key employees regarding the plan and involving them in the succession plan may help foster the future good and unity of both the family and the business.
3. While estate tax planning issues must be kept in mind when considering a succession plan, the plan must first fulfill the needs of the owner and the family, as well as those of the business.
4. The retirement income needs of the owner must also be reviewed and considered in determining the proper structure for the succession plan.

In developing a succession plan for the owner and the business, the owner should work with an experienced planner. Together, they will have much "homework" to do, including reviewing a wide variety of information, starting with the historical and proforma financial statements of the business and the personal financial statements of the owner. In addition, a

number of legal documents, including existing wills, trust agreements, buy/sell agreements, employment contracts, leases, corporate documents, partnership or limited liability company agreements, and any pre-nuptial agreements, must be reviewed. Further, they should consider information regarding the business's capital structure, debt and cash flow, the owner's present retirement income needs, the owner's desires as to when and to whom the business should be transferred, and what other assets are available for family members not active in the business.

All of this information is important in determining the "right" succession plan for the owner and the business. Once these and other pertinent facts are analyzed by the owner and the planner, they must then take all of these pieces and combine them to create a customized succession plan or "picture" of what the owner would like to see occur in the future upon the transition of the family business to future generations.

TAX AND WEALTH ADVISOR ALERT: HOW A TRUST CAN PROVIDE ASSET PROTECTION FOR YOUR CHILDREN

Do you want to leave your children with an inheritance, but are worried about creditors taking part of that inheritance? If so, you are not alone. Fortunately, a properly established protective trust can help safeguard the money you leave behind for your children from their creditors, including in a divorce.

Creditors can more easily reach your children's inheritances if it is given to them directly, outside of a trust. However, creditors would have more hurdles to jump through to reach your children's inheritance if it is held in a protective trust. Therefore, many parents add extra protections for their children by directing their children's inheritances to be held in a protective trust.

The trust, acting as its own separate entity, would own the assets on behalf of your children, the beneficiaries of the trust. This way, your children would not technically own the assets which makes it much more difficult for creditors to reach their inheritances. Importantly, your children would still have access to the trust assets and benefit from them. A protective trust would allow your children to be the beneficiaries and receive distributions for their health, support, and maintenance. Also, in some circumstances your children could be the Trustee of their own trust, meaning they could manage the trust assets on their own.

Not only would a protective trust safeguard your children's inheritances from obvious

creditors, it would also safeguard their inheritances if they were to get a divorce. If you were to give your children their inheritances directly, they would need to take extra steps and precautions to ensure their inheritance is not comingled with marital property to prevent the inheritance from transmuting into a marital property asset. However, if the inheritance is protected in a trust, then the trust assets would remain classified as individual property under Wisconsin marital property law.

With a proper estate plan in place, you can have peace of mind knowing the money you leave behind for your children will be protected from the many threats your children may come across. If you would like to learn more about asset protection and discuss your estate planning options, please contact attorney Kelly M. Spott.

SBA PUBLISHES PPP LOAN FORGIVENESS APPLICATION

On Friday, the SBA published its Paycheck Protection Program Loan Forgiveness Application, which includes instructions for completing the application. The application can be found here. Of note, the application contains further information with respect to the timing of paying and incurring payroll costs as that relates to calculating the amount eligible for forgiveness. Additionally, the application provides certain borrowers (those with biweekly or more frequent payroll periods) flexibility in terms of when the eight-week "covered period" begins.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and ready to help you. For questions or further information relating to the Paycheck Protection Program, please speak to your regular OCHDL contact, or the authors of this article, attorneys Jason Scoby and Pete Faust.

SBA ISSUES FURTHER GUIDANCE ON PPP LOAN REPAYMENT SAFE HARBOR; ALL LOANS UNDER $2 MILLION DEEMED TO HAVE BEEN RECEIVED

IN GOOD FAITH

This morning, the SBA issued much anticipated additional guidance with respect to the Paycheck Protection Program's repayment safe harbor. The new guidance provides significant clarity with respect to how the SBA will evaluate whether a borrower made the following certification in good faith when submitting its loan application:

"Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

With the new guidance, the SBA makes clear that all borrowers receiving a loan of less than $2 million will be deemed to have made the certification in good faith. Loans to borrowers and their affiliates will be combined for purposes of calculating this $2 million threshold.

Moreover, borrowers (including their affiliates) receiving more than $2 million will still have the opportunity to demonstrate that they made the certification in good faith, and if the SBA determines that they are not able to do so, the SBA will then permit those borrowers to repay the loan without any further penalties.

The SBA's FAQ #46 states in full:

46. Question: How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?

Answer: When submitting a PPP application, all borrowers must certify in good faith that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA's review of PPP loans with respect to this issue: Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.

Importantly, borrowers with loans greater than $2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on

their individual circumstances in light of the language of the certification and SBA guidance. SBA has previously stated that all PPP loans in excess of $2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request. SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and ready to help you. For questions or further information relating to the Paycheck Protection Program, please speak to your regular OCHDL contact, or the authors of this article, attorneys Jason Scoby and Pete Faust.