Tax legislation enacted at the end of 2019, as well as new tax laws enacted in 2020 in response to the coronavirus pandemic (COVID-19), will most assuredly affect your business's 2020 income tax return. The plethora of legislation contains many new provisions which are likely to minimize your business's 2020 tax liability. As a result, there are actions you may need to take before year end to ensure you take full advantage of all the opportunities introduced by these pieces of legislation. Additionally, amended returns, which could generate significant refunds to you, may be in order.

In December of 2019, the Further Consolidated Appropriations Act, 2020, was signed into law. Included in that new law was the **SECURE Act of 2019**, which not only extended certain expiring tax credits, such as the employer credit for paid family and medical leave, it also made favorable changes to certain provisions relating to employer-provided retirement plans.

In 2020, the first piece of COVID-19 legislation signed into law was the **Families First Coronavirus Response Act** (Families First Act), which responded to the coronavirus outbreak by providing, among other things, payroll tax credits for leave required to be paid under the newly enacted **Emergency Paid Sick Leave Act** (EPSLA) and **Emergency Family and Medical Leave Expansion Act** (EFMLEA). The Families First Act was followed by the biggest piece of legislation for the year - the **Coronavirus Aid, Relief, and Economic Security Act** (CARES Act). Included in the CARES Act was the **Paycheck Protection Program** (PPP), a program authorized by the Small Business Administration (SBA) to guarantee $349 billion in new loans to eligible businesses and nonprofits affected by coronavirus/COVID-19. Such loans may also qualify for loan forgiveness. We need to evaluate the changes made by the CARES Act, as well as subsequent coronavirus-related legislation, to determine their impact on your business's tax liability. The following are some of the considerations we need to review when deciding what year-end actions may be appropriate to reap the most benefit to you and your business's bottom line.

## Depreciation Deductions

Among the many changes made by the CARES Act, the one which may have the most impact is the correction of a technical error made in the Tax Cuts and Jobs Act of 2017 (TCJA). That error resulted in the 15-year recovery period that applied to qualified leasehold improvements, qualified restaurant property, and qualified retail improvement property being eliminated for such property placed in service after 2017. After the TCJA, the depreciation period for such property, now referred to as "qualified improvement property," was 39 years and, as a result, did not meet the requirements for additional first-year depreciation (i.e., bonus depreciation). Under the CARES Act, qualified improvement property is now depreciated over a 15-year life and meets the criteria for taking bonus depreciation. The change is effective as if it were included in the TCJA. Thus, if your business is affected by this change, we can file amended returns to claim refunds for the deductions that should have been available to you had the technical error not happened.

## Retirement Plans and Other Employee Benefits

You can reap substantial tax benefits, as well as non-tax benefits, by offering a retirement plan and/or other fringe benefits to employees. Businesses that offer such benefits have a better chance of attracting and retaining talented workers. This, in turn, reduces the costs of searching for and training new employees. Contributions made to retirement plans on behalf of employees are deductible and you may be eligible for a tax credit for setting up a qualified plan. In addition, business owners can take advantage of the retirement plan themselves, as can their spouse. Where a spouse is not currently on the payroll of a business, consideration should be given to adding the spouse as an employee and paying a salary up to the maximum amount that can be deferred into a retirement plan. So, for example, if your spouse is 50 years old or over and receives a salary of $25,000, all of it could go into a 401(k), leaving him or her with a retirement account but no taxable income.

To help employees with medical expenses, your business might consider setting up a high deductible health plan paired with a health savings account (HSA). The benefits to a business include savings on health insurance premiums that would otherwise be paid to traditional health insurance companies and having employee wage contributions to the plan not being counted as wages and thus neither the employer nor the employee is subject to FICA taxes on the payroll contributions. As for employees, they can reap a tax deduction for funds contributed to the HSA, which they can invest the funds for future medical costs because there is no use-it-or-lose-it limit like there is for most flexible spending accounts; thus the funds can grow tax free and be used in retirement.

In addition, the SECURE Act made substantial changes to retirement plan-related provisions from which your business may benefit. For one, it increased the credit available for small employer pension plan startup costs. The credit is available for qualified startup costs of an eligible small employer that adopts a new qualified retirement plan, SIMPLE IRA plan, or SEP, provided that the plan covers at least one non-highly compensated employee. Qualified startup costs are expenses connected with the establishment or administration of the plan or retirement-related education for employees with respect to the plan. The credit, which applies for up to three years, was increased to the lesser of (1) a flat dollar amount of $500 per year, or (2) 50 percent of the qualified startup costs.

The SECURE Act also extended through 2020 an employer credit for paid family and medical leave. The credit allows eligible employers to claim a general business credit equal to an applicable percent of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave, provided that the rate of payment under the program is at least 50 percent of the wages normally paid to an employee.

The SECURE Act also extended the work opportunity credit through 2020. Under this provision, an employer can take a 40 percent credit for qualified first-year wages paid or incurred with respect to employees who are members of a targeted group of employees.

## Qualified Business Income Deduction

If you participate in a business as sole proprietor, a partner in a partnership, a member in an LLC taxed as a partnership, or as a shareholder in an S corporation, you may be eligible for the qualified business income (QBI) deduction. The QBI deduction is generally 20 percent of qualifying business income from a qualified trade or business. A W-2 wage limitation amount may apply to limit the amount of the deduction. The W-2 wage limitation amount must be calculated for taxpayers with a taxable income that exceeds a statutorily defined amount (i.e., the threshold amount). For any tax year beginning in 2020, the threshold amount is $326,600 for married filing joint returns, $163,300 for married filing separate returns, and $163,300 for all other returns.

The QBI deduction reduces taxable income and is not used in computing adjusted gross income. Thus, it does not affect limitations based on adjusted gross income. The QBI deduction does not apply to a "specified service trade or business," which is defined as any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, including investing and investment management, trading, or dealing in securities, partnership interests, or commodities, and any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees. Engineering and architecture services are specifically excluded from the definition of a specified service trade or business.

Some of the categories and fields listed as a specified service trade or business are clear in their meaning. Others - such as "consulting" and "any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees" - are vaguer. If your business could be considered a specified service trade or business, we will need to document why it should not be considered such a business and is thus eligible for the QBI deduction.

**Employee Payroll Tax Deferrals**

In a Payroll Tax Memorandum issued in August, President Trump directed Treasury Secretary Mnuchin to use his authority to defer the withholding, deposit, and payment of employee social security taxes, as well as taxes imposed under the Railroad Retirement Tax Act (RRTA) on railroad employees, for the period of September 1, 2020, through December 31, 2020. Because these taxes are not forgiven, and must be repaid at the end of the year, such a deferral could result in numerous practical challenges, such as what happens if an employee leaves before, he or she repays the payroll taxes. If you have deferred an employee's payroll taxes under this Presidential directive, we need to discuss your options.

**Extension of Time to Pay Employment Taxes**

Under the CARES Act, a business can delay payment of applicable employment taxes for the period beginning on March 27, 2020, and ending before January 1, 2021 (i.e., the payroll tax deferral period). Generally, under this provision, the business is treated as having timely made all deposits of applicable employment taxes that would otherwise be required during the payroll tax deferral period if all such deposits are made not later than the "applicable date," which is (1) December 31, 2021, with respect to 50 percent of the amounts due, and (2) December 31, 2022, with respect to the remaining amounts. For self-employed taxpayers, the payment for 50 percent of the self-employment taxes for the payroll tax deferral period is not due before the applicable date. For purposes of applying the penalty for underpayment of estimated income taxes to any tax year which includes any part of the payroll tax deferral period, 50 percent of the self-employment taxes for the payroll tax deferral period are not treated as taxes to which that penalty applies.

## **PPP Loan**

When Congress passed the Paycheck Protection Program, their objective was to make it tax free for the recipients. Unfortunately, when the IRS interpreted it, they created a back-door tax. That is, if your PPP loan is/will be forgiven, you will not have to include the proceeds as income, **BUT** you must reduce the amount of expenses that the PPP funds covered. So, for example, assume you received a PPP loan in the amount of $80,000. Of that, you paid $52,000 in Wages and $28,000 in Rent. Since more than 60% of your loan was used to pay for payroll related expenses, it is expected to be forgiven. When it is/is expected to be forgiven, a credit will be made to Wages for $52,0000 and Rent for $28,000, effectively reducing the expenses. Since your expenses have been reduced, your net income will be higher and therefore your taxes will be higher as well. Right now, the AICPA, the BAR associations, and Congress is urging the IRS to reverse their position. The IRS has not budged, and it is assumed that Congress will have to intervene to force this change. Because it is unclear what, if any, tax legislation may be coming next year, we will need to prepare your tax return based on existing law. This may require returns to be amended in the future.