Key Provisions of Interest to Dealers
In the New COVID Relief Package
December 22, 2020

On December 21, Congress cleared for the President's signature an additional $900 billion COVID relief bill after months of contentious negotiations. The measure is the latest installment of pandemic-related government support to individuals and incentives for businesses.

A few of the major provisions of interest to dealers are highlighted below. NADA will provide more detailed information within the next few weeks, and, as always, dealers are encouraged to consult with their lawyers and accountants to evaluate specific business planning options under these new provisions.

<u>**Provisions Related to Paycheck Protection Program (PPP) Loans**</u>

- **Clarifies full deductibility of expenses paid for using proceeds from a forgiven PPP loan.** The bill reiterates that forgiven PPP loans will not be included in taxable income. The bill also clarifies that deductions are allowed for expenses paid using the proceeds of a forgiven PPP loan, effective as of the date of enactment of the CARES Act (March 27, 2020) and applicable to all PPP loans. This clarification supersedes previous IRS guidance on the issue.

- **Creates a second round of PPP loans, but restricts eligibility.** Key changes applicable to the new PPP include:
  - Reducing the maximum loan amount that may be applied for from $10 million to $2 million;
  - Lowering the maximum per applicant employee limit from 500 to 300; and
  - Imposing a new requirement to demonstrate at least a 25% reduction in gross receipts in the first, second or third quarter of 2020 relative to same quarter in 2019.

  <u>Additionally, like the first round of PPP loans, any new PPP loan application submitted in the second round will require the applicant to certify that the loan is necessary to support ongoing business operations in light of the uncertainty of current economic conditions</u>. Importantly, the applicant's certification for its prior PPP loan will <u>not</u> apply for the new application. Instead, applicants must make a new certification based on the economic circumstances and market conditions that exist at the time they apply for the new PPP loan, and not those that existed in the spring of 2020. This effectively means making a good faith determination that, but for the new PPP loan, the applicant would be unable to keep staff on payroll. Dealers should consult with their attorneys and accountants prior to applying for a new PPP loan.

- **Extends and expands the Employee Retention Tax Credit (ERTC) to PPP loan recipients.** The bill extends through June 30, 2021 the ERTC which was established in the CARES Act and expands it as follows:
  - Increases the credit rate from 50% to 70%;
  - Raises the limit on per-employee creditable wages from $10,000 for the year to $10,000 for each quarter;
  - Expands eligibility for the credit by reducing the required year-over-year decline in gross receipts from 50% to 20%;

- Modifies the threshold for treatment as a ‘large employer’ by increasing the 100-employee delineation for determining the relevant qualified wage base to employers with 500 or fewer employees; and
- Retroactively to the effective date in Section 2301 of the CARES Act (March 27, 2020), provides that employers who received PPP loans may still qualify for the ERTC for wages not paid with forgiven PPP loan proceeds.

- **Expands PPP eligibility for dealer associations operating as 501(c)(6) nonprofits.** The general criteria for 501(c)(6) PPP eligibility include:
  - 300 or fewer employees;
  - Lobbying activities do not comprise more than 15% of activities:
  - Receipts from lobbying do not exceed 15%; and
  - Lobbying costs do not exceed $1 million during most recent tax year ending prior to February 15, 2020.

Other Provisions Related to COVID

- **Extends paid leave credits in the Families First Coronavirus Response Act (FFCRA).** The bill:
  - Extends through March 31, 2021, the refundable payroll tax credits for paid sick and family leave enacted in FFCRA;
  - Modifies the tax credits so that they apply as if the corresponding employer mandates were extended through March 31, 2021; and
  - Makes technical changes coordinating the definitions of qualified wages within the paid sick leave, paid family and medical leave, and the exclusion of such leave from employer OASDI tax.

  Significantly, the new law does NOT extend the *entitlement* of employees to obtain paid sick and family leave under FFCRA beyond December 31, 2020, but instead appears to empower employers to extend such benefits (and obtain commensurate tax credits) on a voluntary basis. Of course, additional leave mandates may be imposed under state law.

- **Temporarily provides 100% deduction for business meals**. For expenses incurred in 2021 and 2022, the bill increases from 50% to 100% the allowable deduction for business meal food and beverages provided by a restaurant.

Non-COVID Tax Provisions Extended

- **Permanently extends energy efficient commercial buildings deduction**. The bill increases the deduction for buildings that exceed industry standards for energy efficiency in the year placed in service, updates efficiency standards and indexes the deduction for inflation.

- **Extends certain credits related to alternative fuels.** The bill extends until December 31, 2021 the fuel cell motor vehicle credit and the alternative vehicle refueling property credit.

Disclaimer

NADA believes that the foregoing analysis is correct. However, additional implementing guidance is expected from SBA, Treasury, and the DOL on many of the questions raised. Accordingly, this analysis may change over time with new information and developments.

Furthermore, this analysis does not provide, and is not intended to constitute, legal advice. All content is for general informational purposes only. As necessary and appropriate, dealers should consult an attorney familiar with the federal, state and/or local laws at issue and with dealership operations to obtain advice with respect to any specific legal matters.