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Dear Clients and Friends:

I hope that you are continuing to keep yourself, your loved ones, and your community safe from COVID-19 (the Coronavirus). I sent you a newsletter on April 10, 2020, summarizing the provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the gigantic federal economic stimulus package that was enacted on March 27, 2020) and other tax-related developments. I wanted to give you an update on the recent amendments to the CARES Act and other tax developments which may be of benefit to you.

This letter includes information for both individual taxpayers, trusts and estates, and businesses and, in the interests of brevity, cannot cover every development. In addition, keep in mind that both federal and California responses to the COVID-19 crisis continue to rapidly develop. If you have any questions about how the federal and/or California legislation or other government responses might impact or benefit you, please let me know.

As an initial matter, the State of California and Bay Area counties are opening back up, and Shelter-in-Place Orders ("SIP Orders") are being eased. In the Bay Area, counties are easing restrictions at differing paces and with different guidance. If you would like information on the easing of SIP Orders in your location, please let me know.

In addition, please know that even though SIP Orders are easing in the Bay Area, I take my responsibility to protect the health of my clients (especially my elderly or medically-vulnerable clients) very seriously. Accordingly, I will continue to take appropriate COVID-19 precautions in providing legal services, including the use of remote meeting tools (such as phone and video conferences) where possible, and the use of heightened precautions (such as social distancing, face masks and sanitization) where face-to-face meetings are necessary or appropriate. I greatly appreciate your continued understanding and cooperation in working with me to reduce the risk of COVID-19 spread to you and to protect my most-vulnerable clients.

Provisions Impacting Individuals, Trusts and Estates, And/Or Businesses:

Extended Due Dates For Tax Filings, Estimated Tax Payments And Other Tax Deadlines. The IRS previously extended filing deadlines and issued other compliance relief for approximately 250 Tax Code provisions. Most notably, the IRS extended the filing deadlines for federal income tax returns, first and second installments of estimated income tax

Internal Revenue Service Treasury Regulations require that I inform you that, to the extent that this communication or its attachments concern federal tax issues, any advice contained in this communication or any attachment thereto is not intended or written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code.

payments, gift tax returns, estate tax returns, claims for tax refunds, etc., to July 15, 2020. Additional extension relief has been issued for other deadlines to complete specified tax transactions (such as deadlines to complete tasks for a Section 1031 real estate exchange), in most (but not all) cases to July 15, 2020. Although there are rumors that the IRS might extend this July 15, 2020 deadline further, taxpayers should not delay any filing or other action in hopes of further automatic extensions. Of course, a taxpayer may still file for any tax filing extension which might otherwise be available under law, if desired.

Economic Impact Payments (Recovery Rebates). The CARES Act provided for "Economic Impact Payments" (also known as Recovery Rebates), which are refundable tax credits of up to $1,200 payments to eligible taxpayers and $2,400 for married couples filing joints returns, plus an additional $500 additional payment for each qualifying child dependent under age 17. The IRS has now completed direct deposit payments of Economic Impact Payments to those taxpayers who had provided their direct deposit information to the IRS, and the IRS is now in the process of mailing paper checks to pay Economic Impact Payments to those taxpayers who had not provided direct deposit information to the IRS.

Unfortunately, the IRS's payment process for Economic Impact Payments has been riddled with errors, and many taxpayers have found that their Economic Impact Payment was mis-deposited or paid in the wrong amount.

- For example, certain divorced taxpayers have discovered that their Economic Impact Payment was deposited to the ex-spouse's account, and certain taxpayers have found that the $500 payments for qualifying children were not included. A taxpayer can "true up" the Economic Impact Payment due to the taxpayer by claiming a tax credit on the taxpayer's 2020 income tax return, but this claim may trigger an audit if IRS records reflect that the Economic Impact Payment has already been paid. The IRS has created processes for taxpayers to trace a wayward Economic Impact Payment or to notify the IRS of a mis-deposit. Although these processes are unlikely to result in corrected payment of the taxpayer's missing Economic Impact Payment before the 2020 filing season (in Spring, 2021), compliance with these IRS processes is recommended to establish that the taxpayer did not receive their Economic Impact Payment and is entitled to claim the tax credit on their 2020 tax returns.
- In addition, the IRS has sent Economic Impact Payments to taxpayers who died in 2019. The IRS has issued guidance that decedents' estates and/or beneficiaries are required to remit these erroneous payments back to the IRS, and the IRS has issued limited guidance on how to do so. To date, no guidance has been issued on how the IRS intends to enforce collections in cases where the decedent's estate and/or beneficiaries fail to return the erroneous payment or whether the IRS may assess penalties or interest on the unreturned payment.

Waiver Of Required Distribution Rules. The CARES Act waives all required minimum distributions ("RMDs") that otherwise would have to be made in 2020 from defined contribution plans (such as 401(k) plans) and IRAs. Waived distributions include RMDs which would have been required by April 1, 2020, due to the account owner's having turned age 70 1/2 in 2019. The IRS had previously issued guidance for taxpayers who took their 2020 RMD on or after February 1, 2020 and before May 1, 2020 to allow the taxpayers to

roll the RMD back into their retirement account. The IRS has now issued guidance to allow all taxpayers who took an RMD at any time in 2020 to contribute the RMD distribution back into an IRA (or to convert the distributed funds to a Roth IRA) by August 31, 2020. Specifically, the IRS is treating the RMD as a retirement account distribution which is eligible for rollover treatment, but with an extended deadline in lieu of the normal 60-day deadline. If the rollover (or Roth IRA conversion) is not completed by August 31, 2020, the RMD will be fully taxable.

The IRS's guidance to treat 2020 RMDs as retirement account distributions which are eligible for rollover treatment raises some ancillary questions. In general, a taxpayer is only permitted to rollover one retirement account distribution (not including trustee-to-trustee direct transfers) in a 12-month period. Further clarification is needed from the IRS on whether a taxpayer may aggregate and recontribute their 2020 RMDs (i) if the 2020 RMDs were made in multiple stages (e.g., in monthly distributions or from multiple retirement accounts), or (ii) if the taxpayer had already made a qualifying rollover in the prior 12 months.

In addition, if you took your 2020 RMDs and directed your plan administrator to withhold income taxes, there is no mechanism for a return of the withheld taxes. In this event, you can make up for the withheld taxes by contributing other funds back to the IRA (and get a refund of the over-withheld taxes when you file your 2020 tax return).

Coronavirus Distributions and Loans. As previously reported in my April 10, 2020 newsletter, the CARES Act has created special rules for distributions from IRAs and defined contribution plans (such as 401(k) plans) made between January 1 and December 31, 2020, to (i) a person who (or whose spouse or dependent) is infected with the coronavirus (documented by either a positive coronavirus test or formal diagnosis by physician), or (ii) a person who is economically harmed by the coronavirus. First, the 10% early withdrawal penalty is waived for qualifying coronavirus-related distributions (or "CRDs"). Penalty-free CRDs are limited to $100,000, and may (subject to guidelines) be re-contributed to the individual's retirement plan or IRA. In addition, the taxable income arising from CRDs will be spread out over three years (thereby enabling the taxpayer to defer income taxes and possibly take advantage of lower tax brackets), unless the taxpayer elects to opt out of the three-year rule. The taxpayer may elect to recontribute (or rollover) CRDs during a three-year window to avoid income tax on the recontributed CRDs. Additionally, defined contribution plans are permitted additional flexibility in the amount and repayment terms of loans to employees who are qualified individuals. Employers may need to amend defined contribution plans to provide for these distributions, and antidotal reports are coming in that employers do not appear interested in making these plan amendments.

The IRS has now issued guidelines on how this legislation will be implemented, including safe harbors for employer plans and IRA custodians and information on how individuals may opt out of spreading the income attributable to CRDs over three years. In particular, the IRS guidelines provides that an individual without a qualifying positive COVID-19 test or diagnosis is still qualified to take CRDs due to economic harm arising from COVID-19 if (i) the individual, the individual's spouse or other member of the individual's household has a job offer rescinded or start date for a job delayed due to COVID-19, or (ii) the individual's income is affected by COVID-19 because the individual, the individual's spouse or other

member of the individual's household experiences a reduction in income due to COVID-19. The individual must certify that they are eligible to take the CRD, and retirement plans and IRA custodians are entitled to rely on this certification (unless the retirement plan administrator or IRA custodian has actual knowledge that the individual does not qualify). The guidelines also make it clear that (i) the election to opt out of spreading the income attributable to CRDs over three tax years is made on a timely filed income tax return for the 2020 tax year and (once filed) is irrevocable, (ii) if the taxpayer dies, the ability to recontribute or rollover any CRD within the three year window may only be exercised by the taxpayer's estate or the taxpayer's spouse (assuming he or she is the beneficiary of the retirement account or IRA), and (iii) if the taxpayer dies, the remaining untaxed portion of the CRD (which was not rolled over) must be included in gross income for the taxable year that includes the taxpayer's death.

Provisions Impacting Businesses (Including Self-Employed Persons) Only:

Loans Under The SBA Payroll Protection Program. The CARES Act modified and expanded the federally guaranteed Small Business Administration 7(a) Loan Program to authorize loans up to $10,000,000 to qualifying small businesses (businesses with under 500 employees, after applying aggregation rules for most affiliated businesses, other than businesses in the hospitality industry), sole proprietors, paid independent contractors and other self-employed individuals. The expanded SBA loan program (known as the SBA Paycheck Protection Program, or "PPP") offers loans of up to two months of the applicant's average monthly payroll costs from the prior year, plus an additional 25% of that amount, subject to a $10,000,000 cap.

PPP loans include a loan forgiveness feature, but the SBA's initial guidance for qualifying for loan forgiveness was inconsistent and confusing. In addition, many business advocates complained that the strict repayment rules and loan forgiveness features were not adequate to provide the intended economic support for small businesses. In response to these complaints, the Paycheck Protection Program Flexibility Act (the "PPP Flexibility Act") was enacted on June 5, 2020. The PPP Flexibility Act is intended to provide businesses with more flexibility in how they spend funds borrowed through the Paycheck Protection Program (PPP). Here are the main changes:

- The PPP Flexibility Act alters the loan forgiveness requirements to give businesses more flexibility on how, and when, to use the loan proceeds and still qualify for loan forgiveness. Instead of requiring that businesses use their PPP loans for approved expenses ("forgiveness-eligible expenses") within 8 weeks after loan disbursement in order to qualify for loan forgiveness, businesses can pay forgiveness-eligible expenses out over 24 weeks after loan disbursement, or December 31, 2020 (whichever is later). In addition, instead of the original requirement that the business use 75% of its PPP loan for payroll costs to qualify for loan forgiveness, a business now needs to use only 60% of its PPP loan for payroll costs to qualify for loan forgiveness. The remaining 40% can be spent on other forgiveness-eligible expenses (rent, mortgage payments, utilities, etc.).

- The CARES Act imposed a requirement that the business re-hire employees to return to a "pre-COVID level" of payroll (i.e., payroll measured as of February 15, 2020) by June 30, 2020, in order to qualify for loan forgiveness. The PPP Flexibility Act relaxes

the timing of this requirement by extending the re-hiring period from June 30, 2020 to December 31, 2020. More important, the PPP Flexibility Act created an exception to the original requirement that the business return to its pre-COVID level payroll by the stated deadline in order to qualify for loan forgiveness. Instead, the PPP Flexibility Act provides that a business is still eligible for loan forgiveness, even if payroll stays below pre-COVID-19 levels, as long as the business can document (i) the business's inability to rehire employees and to hire similarly qualified employees for unfilled positions; or (ii) the business's inability to return to the same level of business activity the business was operating at prior to February 15, 2020, due to the business's compliance with governmental guidance and requirements for sanitation, social distancing, or other safety measures related to COVID-19. Additionally, a business's loan forgiveness amount will not be reduced when an employee is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period.

- The PPP Flexibility Act extends the repayment period for the unforgiven portion of the PPP loan from 2 years to 5 years.

- Initially, the CARES Act provided for the deferral of PPP loan payments for a minimum of six months, but not to exceed one year. Subsequent regulatory guidance left open the possibility that a business's deferral period could expire before the borrower's loan forgiveness determination had been made. The PPP Flexibility Act replaces these periods with deferral timeframes tied to forgiveness of the loan. Under the PPP Flexibility Act, loan re-payments are deferred until the date on which the amount of forgiveness is determined (and the determination communicated to the processing lender). If a business fails to seek forgiveness within 10 months after the last day of its covered period, then payments will begin on the date that is 10 months after the last day of the covered period.

- The CARES Act allows taxpayers (including self-employed taxpayers) to defer paying the employer portion of certain payroll taxes through the end of 2020, with half of the amount due by December 31, 2021 and the other half due by December 31, 2022. Taxes that can be deferred include the 6.2% employer portion of the Social Security (OASDI) payroll tax and the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer 6.2% Social Security (OASDI) rate). For self-employed taxpayers, the deferral applies to 50% of the Self-Employment Contributions Act tax liability (including any related estimated tax liability). Originally, the CARES Act provided that taxpayers who have PPP loans which are subsequently forgiven were specifically prohibited from taking advantage of this deferral. The PPP Flexibility Act retroactively eliminates this prohibition. Taxpayers who have PPP loan proceeds forgiven are now allowed to use this payroll tax deferral. Notwithstanding the retroactive nature of this provision, the act does not address if or how a PPP borrower could obtain a refund for any payroll taxes already paid. Subsequent guidance will need to be issued to address this question.

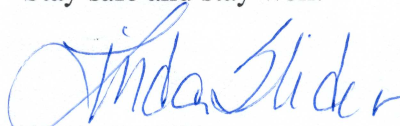
- The CARES Act provides that the amount of the forgiven loan will not be considered taxable income. On April 30, 2020, the IRS issued guidance that no tax deduction is allowed for an expense that would otherwise deductible if the payment of the expense

results in forgiveness of a covered loan pursuant to the CARES Act. Although legislation was introduced in Congress to override this IRS guidance, no further action has been taken. Taxpayers should continue to watch this area for further developments, and a taxpayer should exercise caution in preparation of income tax returns if the taxpayer seeks or qualifies for any loan forgiveness of a PPP loan.

- The PPP Flexibility Act confirms that the last day on which PPP loan applications may be approved is June 30, 2020.

I will be pleased to hear from you at any time with questions about the above information or any other matters (whether related to COVID-19 or not). In the meantime, I wish you the very best in a difficult time.

Stay safe and stay well.



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