

National Savvy. Local Sensibility.

COVID-19  
LEGISLATION  
BENEFITS FOR NHADA  
MEMBERS

# AGENDA

- A brief walk through history
- Expanded Unemployment
- Economic Injury Disaster Loans (EID Loans)
- Paycheck Protection Program Loans (PPP Loans)
- Federal tax update

# THREE DEALER PRIORITIES

- Three key things for dealers to focus on right now:

LIQUIDITY,  
LIQUIDITY,  
LIQUIDITY

# SUMMARY

- PHASE I (COVID-1)
  - Coronavirus Preparedness Response Supplemental and Appropriations Act
  - Enacted March 6, 2020
  - Provides \$8.3 Billion emergency funding
  - Small Business Administration SBA allocated \$7 Billion for disaster assistance / Economic Injury Disaster Loans (EIDL)

# SUMMARY

- Phase II (COVID-2)
  - Families First Coronavirus Response Act
  - Signed into law on March 18, 2020
  - Targets aid to “Families First”
  - Emergency Family Medical Leave Act (FMLA)
  - Emergency Paid Sick Leave (EPSL)
  - Aid to employees and households affected by COVID-19
  - EFFECTIVE DATE **APRIL 1, 2020**

# COVID-2

- THANK YOU!!
  - Peg O'Brien of Devine, Millimet & Branch
  - Jennifer Shea Moeckel of Cook, Little, Rosenblatt & Manson
- 4/1 is here – make sure you reach out to Peg or Jenn if implementation questions

# COVID-2

- Applies to employers with 500 or fewer employees
  - **Combined groups according to DOL rules**
- Emergency Paid Sick Leave
  - Unable to work or telework
    - **1. Employee quarantined or isolated by Federal, State or local order**
    - 2. Employee is advised by health care professional to self-quarantine due to concerns related to COVID-19
    - 3. Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis
    - 4. Employee is caring for an individual subject to quarantine or isolation by Federal, State or local order or by direction of health care professional
    - 5. Employee is caring for child because of school or childcare facility closure
    - 6. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and Secretary of Labor

# COVID-2

- Benefits
  - Up to 80 hours – prorated for part-time employees
  - EPSL is in addition to any other employer provided paid time off
  - Reasons 1 – 3 = Paid at 100% of employee’s regular pay capped at \$511/day or \$5,110 in aggregate
  - Reasons 4 – 6 = Paid at 2/3 of employee’s regular pay capped at \$200/day or \$2,000 in aggregate



# COVID-2

- Emergency Family Medical Leave
  - Unable to work or telework due to care of child <18 years old because of school or childcare facility closure due to public health emergency
  - Benefits
    - Up to 12 weeks – first 2 week are unpaid
    - Paid at 2/3 of employee's regular rate of pay
    - Capped at \$200/day or \$10,000 in aggregate
    - Job restoration at end of EFMLA

# COVID-2

- Tax Credits
  - Initial legislation had the tax credit capped at the employer portion of FICA
  - ARB and a fellow AutoCPA Group member wrote a letter to the Secretary of Treasury
    - Explained the liquidity demands of auto dealers
    - Argued needed stimulus that provides immediate help, not help 1, 2 or 3 months from now
    - Got the credit changed to all taxes reported on 941

# SUMMARY

- Phase III (COVID-3)
  - Coronavirus Aid, Relief, and Economic Security Act – the CARES Act
  - Signed into law on March 28, 2020
  - LARGEST STIMULUS BILL IN U.S. HISTORY - \$2.2 TRILLION
  - Targeting individuals and businesses
  - Key components include:
    - Paycheck Protection Program (PPP) loans
    - Employee Retention Tax Credit
    - Expanded unemployment benefits
    - Favorable business and individual income tax provisions
    - Advance refunds to all individual taxpayers

# EXPANDED UNEMPLOYMENT

- COVID-3 includes quicker turnaround time for approval and expanded benefit time
- \$600 federal bonus or \$15/hour was not intended
- Senate leaders on the Sunday talk shows said they want it closed
- Unsure how that will impact employees if that happens

# EID LOANS

- SBA EID Loans
  - Originates with SBA
  - COVID-3 changes qualifications to 500 or fewer employees
    - **IRS principles of consolidation apply**
  - Stringent underwriting and application process made easier
    - Requirement proving unable to get credit elsewhere is waived
    - Requirement that applicant be in business for one-year waived
      - Must be in business as of January 1, 2020
    - Personal guarantees no longer required if loan is less than \$200,000
    - No longer supposed to require prior year tax returns
      - COVID-3 allows approval based solely on credit score and “alternative appropriate methods
  - Maximum Loan Amount = \$2,000,000
  - Term loan
    - 30 year amortization period
    - 3.75% interest rate
  - Deferred payments
    - COVID-3 = all principal and interest is deferred through 2020

# EID LOANS / EID LOAN GRANTS

- Uncertain whether can have BOTH an EID Loan and a PPP loan and use for COVID-19 purposes
  - COVID-3 does say you can use a PPP loan to refinance a EID Loan
  - If existing application in process, let it go
  - If considering applying - wait
- EID Loan Grants
  - Generally EID Loans are not forgivable
  - \$10,000 grant (tax-free) delivered within 3-days
    - Loan not approved, then keep \$10,000
  - Website changes to accommodate loan grant on application
    - Can still apply for the loan
    - If apply today, will have to reapply for Covid-3 grant
  - See loan application – NHADA has for distribution

# PPP LOANS

- PPP Loans
  - Originate with authorized SBA Bank
    - Normal SBA channels
    - Expanded SBA channels for this loan
  - Contact your bank...YESTERDAY!
    - Already contacted? Contact them again!
    - SBA webinar today
    - Up to 30-days to implement
  - No personal guarantees or collateral
  - Maximum interest rate is 4% per annum

# PPP LOANS

- Eligibility – 500 or fewer employees as of date of loan
  - Definition of employee = anyone
  - Dealer groups with more than 500 combined employees
    - **SBA rules for consolidation**
      - Franchise carve out
      - Separate EINs
- Payroll costs DO include:
  - Salary, wage, commission or similar compensation
  - Cash tips or equivalent
  - Vacation, parental, family, medical or sick leave
  - Allowance for dismissal or separation
  - Group health care benefits, including insurance premiums
  - Payment of any retirement benefit



# PPP LOANS

- Payment of state or local tax assessed on compensation of employees
- Sole proprietors/Independent Contractors = Sum of payments of any compensation to or income that is a wage, commission, net earnings from self-employment, or similar compensation
  - limited to \$100,000/year as prorated for the covered period
- Payroll costs do NOT include:
  - Compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period
  - FICA and withholding taxes
  - Compensation for employees living outside the U.S.
  - No double dipping on EFMLA or EPSL wages under COVID-2

# PPP LOANS

- PPP Maximum Loan Calculation
  - Average monthly payroll costs for the 12 month period ending on the day the PPP loan is originated
  - X 2.5
  - Not to exceed \$10,000,000
  - EIDL loans related to COVID-19 between January 31, 2020 and the date at which the PPP becomes available, you would be able to refinance the EIDL into the PPP for loan forgiveness purposes. Remaining portions of the EIDL, for purposes other than those laid out in loan forgiveness terms for a PPP loan, would remain a loan. If you took advantage of an Emergency EIDL grant award of up to \$10,000, that amount would be subtracted from the amount forgiven under PPP.

# PPP LOANS

- Application
  - COVID-3 indicates supposed to be streamlined
    - Were you in business as of February 15, 2020
    - Have employees to whom you paid wages and on behalf of whom you've paid payroll taxes
    - If no employees, paid independent contractors
    - Loan is necessary to support ongoing operations and will use funds for permitted loan use
  - So far, lenders that are trying to get a jump on the applications are asking for much more information.
    - Hopefully, this will be cleared up with the SBA

# PPP LOANS

- Good Faith Certification
  - Uncertainty of current economic conditions
  - Retaining workers and maintaining payroll, making mortgage payments, lease payments, and utility payments
  - No applications already pending for a loan under this subsection for the same purpose
  - From February 15, 2020 through December 31, 2020 won't receive duplicative amounts

# PPP LOANS

- Allowable uses of loan proceeds
  - Payroll costs
  - Group health care benefits
  - Employee salaries, commissions or similar compensation
    - Redundant!
  - Payments of interest on any mortgage obligation
  - Rent (including rent under a lease agreement)
  - Utilities
  - Interest on any other debt obligations that were incurred before February 15, 2020

# PPP LOANS

- Loan Forgiveness
  - Amounts expended on the following items during the 8-week period following loan origination are eligible for forgiveness (not to exceed the original principal balance of the loan):
    - Payroll costs
    - Interest on mortgages that existed as of February 15, 2020
    - Rent for leases that existed as of February 15, 2020
    - Utilities that existed as of February 15, 2020

# PPP LOANS

- Reductions to amounts forgiven
  - Headcount
    - Divide the average number of full-time equivalent employees (FTE) per month during the 8-week period – by –
    - The average FTE employees per month between February 15, 2019 and June 30, 2019 – or –
    - The average FTE employees per month between January 1, 2020 and February 29, 2020 – whichever is more beneficial
  - Salary reduction
    - Salary reduction of more than 25% for any employee making less than \$100,000 (annualized) for the most recent full quarter (presumably the quarter ending March 31, 2020) compared to the 8-week period
      - Assume make \$52,000 per year, \$1,000 per week.
      - Most recent full qtr =  $\$12,000 \times 75\% = \$9,000$
      - 8-week period = \$8,000
      - Lose \$1,000
    - Poorly written law. We're hoping for clarification in the Regulations.

# PPP LOANS

- Re-hire provisions
  - Headcount
    - Reduction in average headcount for the period February 15, 2020 through April 27, 2020 (30-days from enactment of the CARES Act)
      - Dealers acted quickly and laid off / furloughed people
    - By June 30, 2020 you re-hire employees so your headcount is equal to what it was on February 15, 2020.
  - Compensation
    - Reduction in compensation for a given employee for the period February 15, 2020 through April 27, 2020
    - By June 30, 2020 you have eliminated the reduction in salary compared to February 15, 2020



# PPP LOANS

- Application for forgiveness
  - Submitted to lender servicing the loan
    - Payroll filings substantiating FTE equivalents and pay rates for the periods outlined in the reduction section
      - 8 week period
      - February 15, 2019 to June 30, 2019
      - January 1, 2020 to February 29, 2020
    - Canceled checks, payment verifications or other documentation supporting payments of mortgage interest, rent and utilities
    - Certification that the documents are true and accurate
  - Lender decision within 60-days of receipt of application

# PPP LOANS

- Taxation of amounts forgiven

**TAX-FREE**

# PPP LOANS

- Remaining balances on loan
  - Continues to be guaranteed
  - Maximum amortization period of 10 years
  - Interest at market rates not to exceed 4%
  - No prepayment penalties
- Deferral of payments
  - Principal and Interest
  - 6 – 12 months from origination
- Express Loans
  - Maximum amount of \$1,000,000

# PPP LOANS

- Documents to accumulate NOW:
  - Narrative explaining, in detail, why the loan request is necessary to support your ongoing operations.
  - Copies of payroll tax reports file with the IRS (including Forms 941, 940, state income and unemployment tax filing reports) for the entire year of 2019 and first quarter of 2020 (if available) should be presented.
  - Copies of payroll reports for each pay period for the preceding 12 months. Such reports should include gross wages including PTO (which might include vacation, sick, and other PTO). This includes payroll reports through the pay period preceding the origination of the SBA loan.
  - Documentation reflecting the health insurance premiums paid by the company under a group health plan including owners of the company for the immediately preceding 12 months prior to the date of the SBA loan origination. Copies of the monthly invoices should suffice.
  - Documentation of all retirement plan funding by the employer for the immediately preceding 12 months.
  - Copies of workpapers, schedules and remittances to the retirement plan administrator should be sufficient.

# PPP LOANS

- Documents to accumulate when asking for forgiveness:
  - Copies of payroll tax reports file with the IRS (including Forms 941, 940, state income and unemployment tax filing reports) for the 8-week period following the origination of the loan.
  - Copies of payroll reports for each pay period for the 8-week period following the origination of the loan. Gross wages including PTO (which might include vacation, sick, and other PTO) should be reflected.
  - Documentation reflecting the health insurance premiums paid by the company under a group health plan including owners of the company for the 8-week period following the origination of the loan should be provided. Copies of the monthly invoices should suffice.
  - Documentation of all retirement plan funding by the employer for the 8-weeks following the origination of loan should be sufficient. Copies of workpapers, schedules and remittances to the retirement plan administrator should be available.
  - Copies of all lease agreements for real estate and tangible personal property should be presented along with proof of payment during the 8-week period following the loan origination date.
  - Copies of all statement of interest paid on debt obligations incurred prior to February 15, 2020 indicating payment amounts and proof of payment for the 8-week period following the loan origination date.
  - Copies of cancelled checks, statements or other evidence of utilities paid during the "covered period" for the 8-week period following the loan origination date.

# PPP LOANS EXAMPLE

\\Ad2por\data\Corona\NHADA\SBA Loan - CARES  
Act Example.pdf

# EMPLOYEE RETENTION CREDIT

- **NOTE: NOT AVAILABLE IF EMPLOYER RECEIVED A PPP LOAN**
- 50% credit on up to \$10,000 in wages per employee (\$5,000 total credit)
  - Including group health insurance costs
- Available for wages paid between March 1, 2020 and January 1, 2021
- Credit applied quarterly against the federal employer social security taxes (7.65%)
- Refundable if exceeds tax liability for quarter

# EMPLOYEE RETENTION CREDIT

- Eligible employers
  - Carrying on a trade or business in 2020 – AND –
  - Operations of business were partially or totally suspended during the quarter due to orders from an appropriate government authority due to COVID-19
  - – OR –
  - In a calendar quarter after December 31, 2019, gross receipts are less than 50% of gross receipts of same quarter in prior year
    - Once you become eligible under this provision, you remain eligible until your gross receipts for a quarter exceed 80% of gross receipts for the same quarter in the prior year



# EMPLOYEE RETENTION CREDIT

- Under 100 Employees (aggregated with affiliated companies)
  - Qualified wages – all wages paid during shutdown as well as entire quarter that had gross receipts drop referenced above for eligible employers
- Over 100 Employees (aggregated with affiliated companies)
  - Qualified wages – all wages paid during shutdown to those employees no longer working and cannot exceed what employee made in the 30-days immediately preceding the shutdown

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# TAX INCENTIVES

# Tax Incentives - Individuals

- 2020 Recovery Rebates (H.R. 748, Title II, B. 2201)
  - Creates new IRC Section 6248 aimed at providing recovery rebates for individuals
  - IRC 6248 provides for a credit against income tax in the amount of \$1,200 for single filers and \$2,400 for joint filers.
  - The credit is increased \$500 for each qualifying child of the Taxpayer
  - Eligibility for advanced payments of the credit will be issued as rapidly as possible based on Taxpayers 2019 or 2018 income tax returns or Social Security Benefit Statements
  - The Treasury may certify and disburse refund electronically to any account in which a Taxpayer has authorized on or after January 1, 2018 (direct deposit of a tax refund or SS Benefits), otherwise checks will be mailed to Taxpayers.

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# Tax Incentives - Individuals

- 2020 Recovery Rebates (continued)
  - Rebates subject to limitation based on AGI (Adjusted Gross Income). Credit is reduced 5% if AGI exceeds amounts below.
    - Phase-outs begin when AGI exceeds
      - \$ 75,000 single filer
      - \$ 150,000 joint filers
      - \$ 112,500 head of household files
  - Since the payment is an advanced credit of the 2020 tax return, it could be possible to have to pay back a portion of the credit if a Taxpayer's 2020 AGI is different their 2019 or 2018, which is how the Treasury is basing the advanced refund payment now.

# Tax Incentives - Individuals

- 2020 Recovery Rebates Phase-Out Table

Qualifying Children	Single Filers	Joint Filers	Head of Household
0	\$75,000 - \$99,000	\$150,000 - \$198,000	\$112,500 - \$136,500
1	\$75,000 - \$109,000	\$150,000 - \$208,000	\$112,500 - \$146,500
2	\$75,000 - \$119,000	\$150,000 - \$218,000	\$112,500 - \$156,500
3	\$75,000 - \$129,000	\$150,000 - \$228,000	\$112,500 - \$166,500
4	\$75,000 - \$139,000	\$150,000 - \$238,000	\$112,500 - \$176,500

# Tax Incentives - Individuals

- Retirement Funds (H.R. 748, Title II, B. 2202)
  - Taxpayers may withdraw up to \$100,000 from their retirement funds and the 10% early withdrawal penalty pursuant to IRC Section 72(t) will not apply.
  - A Taxpayer who receives a coronavirus-related distribution under this section may repay the distribution anytime during a 3-year period beginning on the date after the date of the distribution was received, and have it be treated as if it was a trustee transfer within 60 days.
  - If a Taxpayer does not want to repay the funds within 3 years, the Taxpayer would ratably include the distribution as income over 3 taxable years.

# Tax Incentives - Individuals

- Retirement Funds (Continued)
  - These rules are effectively allowing Taxpayers to use their retirement funds as a 0% loan for up to three years.
  - The Act also increases the limit on loans from retirement accounts from \$50,000 to \$100,000 and delays payment on the loan for 1 year.
- H.R. 748, Title II, B 2203, provides a temporary waiver of minimum required distributions that would otherwise be required to be made in calendar year 2020 from certain plans.



# Tax Incentives - Individuals

- Charitable Contributions
  - H.R. 748, Title II, B. 2204 – The Act allows for a charitable donation up to \$300 to be considered an above the line deduction for computing AGI
    - This will provide a small tax benefit for Taxpayers who currently utilize the standard deduction.
  - H.R. 748, Title II, B. 2205 – The Act temporarily suspends the limitation on certain cash contributions. Therefore deductions for charitable contributions cannot exceed Adjusted Gross Income.
    - Prior to this modification, the limitation for cash contribution was 60% of adjusted gross income.

# Tax Incentives - Individuals

- Exclusion of Certain Employer Payments of Student Loans (H.R. 748, Title II, B. 2206)
  - The Act expands the definition of education assistance to include payments made before January 1, 2021 by an employer, whether paid to the employee or to a lender of principal or interest on qualified education loans.
  - By expansion of the definition, employees may exclude from their income up to \$5,250 of education assistance provided by an employer.

# Tax Incentives – Business Provisions

- Net Operating Losses (H.R. 748, Title II, B. 2303)
  - The Act temporarily repeals the taxable income limitation for net operating losses and provides guidance for modification of rules relating to net operating loss carrybacks.
  - Specifically, The Act updates the deduction allowed for Net Operating Deduction under IRC Section 172(a) to apply to tax years beginning before January 1, 2021 and the deduction is equal to the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year, removing the 80% limitation language for those periods.

# Tax Incentives – Business Provisions

- Net Operating Losses (continued)
  - For tax years beginning after December 31, 2020 the deduction is equal the sum of
    - (a) the aggregate amount of the net operating losses arising in taxable year beginning before Jan 1, 2018, plus
    - (b) the lesser of
      - (1) the aggregate amount of net operating losses arising in taxable years beginning after December 31, 2017, carried to such taxable year, or
      - (2) 80% of the excess (if any) of taxable income computed without regards to an NOL deduction or deductions such as under 199A, over the amount calculated in (1) above.
  - Simply, the existing 80% limitation of NOL applies for tax years 2021 going forward.

# Tax Incentives – Business Provisions

- Net Operating Losses (continued)
  - Carryback Modifications
    - For losses arising in 2018, 2019 and 2020, such loss shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of the such loss.
- Excess Business Loss Modification (H.R. 748, Title II, B. 2304)
  - The excess business loss limitations pursuant to IRC Section 461(l)(1) shall not apply to taxpayers other than corporations for taxable year beginning after 2017 and before 2021.
  - To the extent that a taxpayer other than a corporation was subject to an excess business loss limitation for 2018 and 2019, they may amend tax returns for those periods.

# Tax Incentives – Business Provisions

- Minimum Tax Modification (H.R. 748, Title II, B. 2305)
  - The Act temporary accelerates the refund ability of alternative minimum tax credits for Corporations under IRC 53(e).
  - Corporate Taxpayers may make an election to take the entire refundable credit amount in 2018 and file Form 1139 Application For Tentative Refund pursuant to IRC Section 53(e)(5).

# Tax Incentives – Business Provisions

- Business Interest Modification (H.R. 748, Title II, B. 2306)
  - The Act modifies the calculation of the limitation on business interest under IRC Section 163(j), by changing the limitation from 30% of adjusted taxable income to 50% of adjusted taxable income for taxable years beginning in 2019 or 2020.
  - This provision would allow dealerships or their real estate entities to deduct more business interest.
  - As a reminder the 163(j) interplays with 168(k) and the ability to take bonus depreciation. If dealerships are able to account for their floor plan interest as regular business interest expense, and no limitation is calculated, then dealerships are allowed to take advantage of bonus depreciation.

# Tax Incentives – Business Provisions

- Business Interest Modification (Continued)
  - There are special rules for partnerships in which the modification does not apply to taxable years beginning in 2019
    - unless in the case of excess business interest of the partnership for 2019,
      - 50% of the excess business interest shall be treated as business interest which is paid or accrued by the partner in the partner's first taxable year beginning in 2020 and which is not subject to limits, and
      - 50% of such excess business interest shall be subject to the limitations in the same manner as any other excess business interest.



# Tax Incentives – Business Provisions

- Business Interest Modification (Continued)
  - The Act also provides that an election may be made to use 2019 Adjusted Taxable Income for taxable years beginning in 2020.
  - For taxable years beginning in 2020, a Taxpayer may elect to substitute their 2020 adjusted taxable income for the adjusted taxable income for the last taxable year beginning in 2019. For a partnership, the election shall be made at the partnership level.
  - Taxpayers may elect out of the modification of the limitation on business interest if so desired.

# Tax Incentives – Business Provisions

- Qualified Improvement Property (H.R. 748, Title II, B. 2307)
  - The Act amended IRS Section 168 by including qualified improvement property in the definition of 15-Year Property under IRC 168(e)(3)(E) that is eligible for bonus depreciation.
  - This amendment is a technical correction where the Tax Cuts and Job Act stated that qualified improvement property was 39-year property and therefore not eligible for bonus depreciation.
  - The amendment shall have an effective date as if it was included in section 13204 of Public Law 115-97 (The Tax Cuts and Jobs Act) and Taxpayers would be able to amend their 2018 and 2019 income tax returns to reflect this amendment.

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# QUESTIONS?

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