

Potential Measures Responding to COVID-19 – Phase 4 Legislation

Proper CARES Act Implementation

** If necessary based on forthcoming agency guidance

Treasury/Fed Business Loan Accessibility**

- **Details:** Ensure businesses with non-investment grade credit ratings are able to access the new Treasury/Fed loan/loan guarantee program adopted under the CARES Act to provide vital credit assistance to distressed businesses.

Clarification of SBA Loan Availability to Size-eligible Entities

- **Details:** Through the CARES Act, Congress significantly expanded the Small Business Administration's ability to offer loans to size-eligible businesses impacted by the pandemic. While Congress clearly intended these loans to be broadly available to legal businesses, SBA has taken the position that their previous regulations (13 CFR § 120.110) prevent them from extending assistance to businesses that derive more than 1/3 of their revenue from legal gambling activities. Congress should further clarify its intent that SBA loan programs be generally available to all legal businesses that meet size-eligibility requirements. Additionally, Congress should expand affiliation exemptions for entities described under NAICS code 71 (CARES Act exempted NAICS 72) and should broaden eligibility for operations to be treated separately so that those with 500 or fewer employees are not considered affiliated with the other larger businesses for the purposes of qualifying for small business loans.

Financial Stabilization and Protection Measures

Liability Protection for Businesses Impacted by COVID 19

- **Details:** Businesses that have already been subjected to significant economic harm as a result of the pandemic could face additional financial challenges in the form of a potential wave of COVID-related lawsuits from customers and others alleging the business failed to take adequate steps to protect them from the virus. Congress should clarify that businesses that acted responsibly and complied with government closure orders and/or elected to close voluntarily should not be subject to nuisance lawsuits that cannot prove gross negligence, willful misconduct, or fraud. Liability protection will also be important to allow the industry to reopen expeditiously once given government clearance, by removing the prospect of lawsuits claiming the industry reopened before it was safe.

Clarification of Business Interruption Insurance

- **Details:** Would clarify that business interruption insurance can be triggered by declarations of state of emergency and business closure orders by government agencies. The Federal Government needs to be proactive to help ensure businesses that act in the interest of public safety and comply with government orders will be protected by insurance, and avoid protracted legal battles that will significantly delay much-needed financial assistance.

COVID-19 Business and Employee Continuity and Recovery Fund and Employee Retention Credit Update

- **Details:** The COVID-19 Business and Employee Continuity and Recovery Fund (the "Recovery Fund") would create a streamlined and tailored federal fund to provide rapid liquidity to small businesses, nonprofits, veterans' organizations, and tribal businesses (500 or fewer employees) as well as businesses of any size that can demonstrate impairment by COVID-19. The requested relief is targeted to help businesses most

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impacted by the pandemic retain and rehire employees, maintain worker benefits, and resume or continue economic activity. The fund includes strong anti-abuse provisions, including audits and a Special Inspector General oversight, and would be leveraged through private sector servicers. In recognition that COVID-19 social distancing requirements and government-imposed restrictions on certain types of business operations are extending longer than anticipated when the CARES Act was developed, the maximum amount of qualified wages that can be included for each employee for the purposes of the Employee Retention Credit should be raised from \$10,000 to \$20,000.

Authorize Businesses to Purchase Net Operating Loss (NOL) Credits

- **Details:** The CARES Act temporarily allows taxpayers to carry back net operating losses (NOLs) from the 2018-2020 period to the previous five years and to fully offset up to 100 percent of taxable income in those prior years. This provision permits losses from current and recent years to be carried back to earlier years when the business had income to offset income, generating tax refunds that can help with current business cash flow. Given the plummeting state of the economy, businesses are expected to suffer huge losses in 2020 that for some businesses could eclipse their income in these prior carryback years. Accordingly, these distressed businesses should be able to monetize their unused current losses by transferring such losses to other businesses in exchange for a cash payment, further helping the distressed business with its cash flow problems. Additionally, rules around claiming NOL should be modified to provide flexibility for the business to elect to carryback the NOL to the year within the five year period that would have the most benefit.

Industry Recovery Measures

Entertainment and Meal Business Expense Deduction

- **Details:** Restore the full entertainment and meal business expense deduction, allowing businesses to fully deduct the cost of ordinary and necessary business expenses at restaurant, hospitality, and entertainment facilities, if such expenses are directly related to the active conduct of a trade or business. The deduction would be worth 100% of eligible expenses and will restore an important incentive for businesses to support the industry segments that have been most heavily impacted as a result of the pandemic and could take years to fully recover.

Repeal Federal Excise Tax on Sports Betting

- **Details:** The Internal Revenue Code, 26 U.S.C §4401 imposes a federal excise tax of 0.25% on the amount of any legal sports wager. §4411 of the IRC imposes an additional \$50 annual head tax for every employee engaged in receiving wagers for or on behalf of any legal sports betting operator. The excise tax was originally established at 10% of the wager amount in 1951 as a tool to suppress illegal, organized gambling activities. While Congress subsequently reduced the tax to .25% for legal sports betting operators, the tax does not advance any specific policy goals, and continues to make it more difficult for legal operations to compete with illegal bookmakers. The \$50 tax on ticket writers produces de minimis revenue to the government, while imposing significant administrative burdens on legal operators for and serving as an impediment to hiring at a time when providing jobs is essential. Cancellation of sporting events as a result of the COVID-19 outbreak has crushed the nascent legal sports betting industry, which is currently authorized in 21 states and the District of Columbia and generating much needed revenue for states. Instead of requiring operators in the nascent sports wagering industry to pay this unnecessary tax which inhibits their ability to compete with the illegal

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market, the amount that operators pay in excise tax should serve as a credit to federal payroll taxes to allow operators to more easily retain their employees during this challenging time for the industry. After two years, the federal excise tax for wagers authorized by the state should be repealed altogether.

Hiring Incentive Tax Credit

- ***Details:*** As more and more furloughs begin to occur due to COVID-19, a federal cash incentive is necessary to encourage re-hire of these furloughed employees. A federal tax credit modeled after the WOTC and refundable against payroll taxes would create an immediate cash incentive for businesses to expedite the re-hiring of furloughed workers.

Capital Modernization Fund

- ***Details:*** This would develop a \$1 for \$1 capex spend reimbursement fund for precautionary measures, public safety, sanitation, temperature reading/screening, social distancing modifications, protective gear, etc.