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Your Nonprofit and COVID-19: Adapting Practices, Qualifying for Credits and Embracing Extensions

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Whether they are altering operations, adopting new policies or applying for relief programs, industries across the world are being affected by the outbreak of COVID-19. Unfortunately, nonprofits are no exception. The professionals leading Friedman's nonprofit group have compiled an overview of the issues, legislative statutes and practical considerations you should be aware of as your organization adapts in the face of this global pandemic.

CARES Act (S. 748) – There are important provisions of this Act that require careful consideration. Eligibility for emergency small business loans may offer the greatest benefit to nonprofit organizations with fewer than 500 employees. Friedman LLP has published an initial summary of some of the CARES Act's key points here, and will be circulating additional guidance on the Act soon.

Sick and Family Leave and Associated Payroll Tax Credits – The Families First Coronavirus Response Act, signed by the President on March 18, introduces a few notable changes to sick and family medical leave programs. Organizations of 500 or fewer employees are required to provide employees receiving care or in quarantine with up to two weeks of paid sick leave at their regular pay rate. Other employees caring for family members or children are entitled to time off at 2/3 of their hourly rate. Additionally, Emergency Family and Medical Leave ("FMLA") provisions are expanded for employees who have been employed for at least 30 days and are unable to work in order to care for a child whose school or child care provider is closed due to COVID-19. Up to 10 weeks of paid leave is to be provided at 2/3 of the employee's regular pay rate. The Secretary of Labor has the authority to exempt employers with less than 60 employees from this provision if such action would jeopardize the continuation of the business. The first ten days of the expanded FMLA can be unpaid, followed by the required paid leave.

Payroll tax credits will be available for companies to offset the costs of implementing these leave policies. Employers will be eligible to claim a refundable tax credit equal to 100% of sick leave wages each quarter. This credit can be taken against the employer's portion of payroll taxes. There is a limit of $511 per day for an employee who is diagnosed with or isolated due to COVID-19 (up to $5,110 overall limit). For each employee caring for a family member who is sick or quarantined or a minor child at home as a result of closures, the employer can be credited up to $200 per day (up to an overall limit of $2,000). The balance of credit can be refunded if an employer's credits exceed their liability.

A 100% refundable tax credit for qualified family leave is also available to be used against an employer's payroll taxes. Credits are limited to $200 per day, with a cap at $10,000, and these too can be refunded if an employer's credit exceeds their liability. Note that these credits are not available if the organization applies for and receives an emergency small business loan under the CARES Act (see above).

Tax Filing Extensions – The Internal Revenue Service issued Notice 2020-18 on March 23, 2020, postponing certain tax payment and filing deadlines. If you have a Form 990T that is due April 15th, the tax and filing due date is extended 90 days to July 15th. If you have another Form with an extended due date of April 15th, that filing due date is also extended 90 days to July 15th. Business and other entities that have filing due dates on May 15th or June 15th, or any other date besides April 15th have not been granted relief at this time.

Administrative Relief for Recipients of Federal Financial Assistance – Memorandums OMB M-20-11 and M-20-17 provide relief for short term administrative, financial management and audit requirements including:

- Extension of Single Audit submission to 6 months beyond the normal due date (the earlier of 30 days of issuance of the audit or 9 months after the year-end). Recipients can still qualify as a "low-risk auditee" for year-ends through June 30, 2020. Note that those participating should maintain documentation of the reason for the delayed filing.
- Expenses:
    - Salaries may be allowed even if program services or activities have been suspended.
    - Other costs may be allowed if necessary to resume activities
    - Costs incurred relating to the cancellation of events (programs supported by federal awards, not fundraising), travel or other activities necessary and reasonable for the performance of the award, or the pausing and restarting of grant funded activities due to the public health emergency.
- Awardees will need to substantiate the charging of any salaries or costs related to the interruption of operations or services.

Limits on Charitable Contributions – Nonprofits should be aware that the CARES Act introduces significant changes to limits on contributions, notably that:

- For individuals, the 50% Adjusted Gross Income limitation will be suspended for 2020. This allows for an unlimited charitable contribution deduction in 2020.
- For corporations, the 10% limitation is increased to 25% of taxable income allowing for a larger charitable contribution deduction.

Handling Event Cancellations – Nonprofits with events scheduled for early- to mid-year have been forced to delay or cancel them, and many are left wondering how best to move forward. Often, they have already received contributions relating to these events in the form of cash or pledged commitments. Accounting guidance suggests that the revenue recognition for the ticket sale (which typically has an exchange portion - for example, the cost of a meal - as well as a contribution portion) is deferred until the event takes place unless the donor explicitly waives the condition of the event taking place for the contribution portion. If a donor is willing to waive that condition, your nonprofit can recognize the contribution portion of the revenue now. However, because the exchange portion of revenue must be deferred until the event takes place, if there is an outright cancellation without a rescheduling, you may need to ask donors to consider turning their proceeds into a contribution. Ideally, they will be open to doing so without donor restrictions. If donors are not open to either deferring the contribution until a rescheduled event takes place or turning it into a contribution, either with or without donor restrictions, then donors would be entitled to receive such funds back, offsetting the original contribution so that the donor would not be entitled to a deduction. Donors that itemize deductions should be made aware that the CARES Act waives any limitation on contribution deductions as a percentage of Adjusted Gross Income.

How the Coronavirus May Affect Financial Reporting – Due to the rapidly developing situation and uncertainties associated with COVID-19, management should consider including the following additional disclosures within their financial statements:

- Subsequent Events – These disclosures consider evidence of conditions that either existed at the date of the financial statements or that arose after the date of the financial statements. With the emergence of COVID-19, uncertainties in the valuation of assets or the future of the organization's programs may be impacted. The full extent of disruption caused by the outbreak is uncertain but may have a material adverse impact on the organization's financial position, operations and cash flows. Possible areas that may be affected include, but are not limited to, disruption to the organization's consumers and revenue, labor workforce, unavailability of products and supplies used in operations, and the decline in the value of assets held by the organization, including property, equipment and marketable securities. This should be incorporated in subsequent events disclosures and adjustments made, when appropriate.
- Liquidity – Along with the adoption of the new financial reporting standards for not-for-profit entities came the addition of the liquidity footnote. More than ever, organizations need to consider how they manage their liquidity. For example, does the current policy need to be updated or does it take into account the need for emergency funds? Also, what other sources of funding does the organization have available, if needed? A good first step would be to evaluate how much of the investments held are liquid and available for use. Furthermore, what is the current status of cash reserves and are these reserves available for unrestricted use? Is there a need to ask donors for permission to use restricted funds for general operations? Is there a line of credit to draw upon, or is receiving a loan from the bank viable?
- Going Concern – If the organization determines that liquidity problems exist and is suffering cash shortfalls, the organization needs to consider if there is substantial doubt that the organization will be able to meet its obligations and sustain operations for one year from the date that the financial statements are issued. In addition to a liquidity management policy, the organization should have a plan documenting new initiatives, cost-saving measures or other means of cash savings, and conduct an analysis of the feasibility of this plan. A cash-flow projection is extremely helpful in making these determinations.

Finally, be sure to include those charged with governance in financial discussions and decision making. Your board of directors and committee members can be great resources as well.

If you have questions about the COVID-19-related relief programs that your nonprofit may be eligible to benefit from, or the impact of extensions on your organization's tax schedule, contact a Friedman advisor today.