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Relief for restaurants on order

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Restaurants are set to receive a major dose of pandemic stimulus under the new American Rescue Plan Act (the “Act”) signed by President Biden on March 11, 2021. The law provides for \$28.6 billion in grant money for the hard hit restaurant industry.

The COVID-19 crisis has severely impacted the restaurant industry—tens of thousands of locations have closed permanently in the U.S. and many more have suffered lost revenue as the result of lockdown restrictions. Food and beverage providers have benefited from the provisions of various local, state, and federal support efforts, including the Paycheck Protection Program (“PPP”), but those efforts have left significant gaps for restaurants nationwide.

The details of the Restaurant Revitalization Fund (“RRF”), which will be administered by the Small Business Administration (“SBA”), are still being worked out. However, we do know a few important things about the program, so businesses can start preparing to apply.

Who can receive funds?

Under the Act, entities eligible to receive RRF grants include, among others, restaurants, bars, tasting rooms, tap rooms, inns, brewpubs, food trucks, and other businesses with the primary purpose of serving the public food and drink.

However, some businesses are specifically excluded from receiving funds, including state and local government-operated businesses, entities that own or operate more than 20 locations, publicly traded entities, or entities that have a pending application or have received funds under the Shuttered Venue Operators program.

When grant applications open, the Act provides for a 21-day period to prioritize grants to eligible entities that are small businesses owned and controlled by women, small businesses owned or controlled by veterans, and socially and economically disadvantaged small businesses under the Small Business Act. These applications will require a self-certification of eligibility.

What expenses are eligible?

The RRF grants must be used for expenses incurred within the covered period—from February 15, 2020, to December 31, 2021. The Act specifies what expenses are eligible, including:

- Payroll costs (excluding employee compensation exceeding \$100,000/year);
- Paid sick leave;
- Mortgage and rent;
- Utilities;
- Supplies, including cleaning materials and protective equipment;
- Food and beverage expenses within the scope of normal business practices;
- Operational expenses; and
- Maintenance (including outdoor seating construction).

The SBA Administrator may modify the list of eligible expenses, like it did with PPP loans.

How much will restaurants receive?

The grant amount an entity can receive will be determined based on pandemic-related revenue loss. Pandemic-related revenue loss is calculated by taking the entity's 2019 revenue and subtracting 2020 revenues.

Notably, if an eligible entity was not in operation for the entirety of 2019, then the pandemic-related revenue loss is calculated by taking the sum obtained by multiplying the average monthly gross receipts of the entity in 2019 by 12 and subtracting the sum obtained by multiplying the average monthly gross receipts in 2020 by 12.

If an entity opened after January 1, 2020, the pandemic-related revenue loss would be the eligible expenses incurred by the entity minus gross receipts received.

An entity that has not yet opened, but has incurred expenses, can seek funds for those expenses.

The maximum grant amount is \$10 million for an eligible entity and any affiliated businesses—such as a restaurant group. In addition, a maximum of \$5 million per physical location of an eligible entity applies.

Importantly, the grant amount will also be reduced by the amount of any PPP funds the entity already received.

How will taxes be treated?

The Act provides that the grant amounts “shall not be included in the gross income of the person that receives such amounts.”

Get prepared!

As we have seen in other federal stimulus efforts, applicants need to be prepared for the challenges of applying for relief funds from a brand new program such as through the RRF. The Act is an important step to speed the recovery of the food and beverage industry. Nixon Peabody will be monitoring any changes to the Act and the details of its implementation and is here to help navigate businesses through the process of this government program.

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