

CLIENT ALERT

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\$50 MILLION IN FUNDING AVAILABLE FOR SMALL BUSINESSES IN TENNESSEE THROUGH SUPPLEMENTAL EMPLOYER RECOVERY GRANT PROGRAM

by Kevin DeHart and Ralph Levy

Tennessee Governor Bill Lee recently announced that the Supplemental Employer Recovery Grant ("SERG") program will distribute \$50 million in federal Coronavirus Relief Funds through the Tennessee Department of Revenue ("TDOR") to help Tennessee small businesses cover eligible direct expenses or costs incurred as a result of business interruptions due to the COVID-19 pandemic. The SERG program will distribute funds directly to small businesses that qualify based on a first-come, first-served basis.

Eligibility

For a business to be eligible under the SERG program, the business must:

- as of August 31, 2020, be a Domestic Business in the State of Tennessee or a business formed in another state that primarily operates in Tennessee with at least one physical location in Tennessee;
- not be a subsidiary of a business with consolidated annual revenues (receipts) in excess of \$10 million;
- as of August 31, 2020, were registered with the Tennessee Secretary of State, were registered with the TDOR or, for an unincorporated business such as a sole proprietorship or a disregarded entity for federal tax purposes, have filed a federal Schedule C for that business with the individual owner's IRS Form 1040;
- have been operational since April 1, 2020, with the exception of temporary closures due to COVID-19 and be able to provide documentation that shows the business has been in operation for that time period;
- provide proof of economic hardship due to COVID-19 related interruption of business ("Business Interruption Costs") or have incurred eligible direct business expenses related to COVID-19 ("COVID-Related Expenses");
- have not engaged in any illegal activity in violation of local, state or federal laws or regulations, with federal compliance taking precedence over local or state compliance;
- not exist for the purpose of advancing partisan or other political activities, such as direct lobbying of federal or state officials;
- be a for-profit entity or a not-for-profit entity that operates under either Internal Revenue Code Section 501(c)(3) or 501(c)(19) (Note: for purposes of the SERG program, not-for-profit entities formed under Internal Revenue Code Section 501(c)(3) or 501(c)(19) must calculate annual revenues in accordance with the instructions for IRS Form 990 line 12); and
- have not already received an award under the SERG Program.

The following businesses are not eligible to request or receive business relief assistance:

- Lending and investment institutions;
- Insurance companies;

- Racetracks or gambling facilities;
- Businesses owned by State of Tennessee employees or their family members living within the household;
- Businesses engaged in any illegal activity per local, state or federal regulations, with federal regulations taking precedence over local or state regulations;
- Businesses that did have continuous operations during the last six (6) months;
- As of August 31, 2020, businesses that were not registered with the Tennessee Secretary of State or the TDOR or as to which if unincorporated, their owners did not file a federal Schedule C with their IRS Form 1040; and
- Businesses with no activity in the state of Tennessee.

Losses and Expenses That Are Covered by SERG

Although businesses cannot receive funds for both Business Interruption Costs and COVID-Related Expenses, they can claim the greater of either item up to the maximum allowable amount of \$30,000. COVID-Related Expenses include costs incurred by a business to meet public health requirements or recommendations enacted, adopted, required, or issued by the Tennessee Department of Health, the Centers for Disease Control, state or federal regulatory authorities, and/or local, state or federal executive authorities due to COVID-19, including any costs incurred:

- to create social distancing measures;
- to clean or disinfect areas due to COVID-19;
- for personal protective equipment for employees or customers;
- for contactless equipment ;
- for equipment, items or other expenses to screen employees or customers to ensure they are not positive for COVID-19;
- for equipment or items designed to track employees or customers who have tested positive for COVID-19;
- necessary re-opening expenses; and
- expenses to facilitate teleworking.

In addition, a business may seek recovery of Business Interruption Costs to reduce the financial impact that COVID-19 had on its net income. To be eligible under this category, a business will need to show that its net income for the four-month period of May 1, 2020 through August 31, 2020 was less than its net income for that same period in 2019. To calculate a "loss" and qualifying "business interruption" under this program, the business must establish that it incurred a loss in net income during that period from 2019 to 2020.

Expenses that can be taken into account in determining Business Interruption Costs incurred by a business during the eligible four-month period may include:

- mortgage interest;
- payroll expenses;
- rent or lease or payment for real or personal property used for business purposes;
- utility payments for business properties; and
- cost of critical business operations.

Businesses that otherwise meet the SERG program criteria are still eligible under this new program even if they already received a payment from the Tennessee Small Business Relief Program so long as the same expenses during May 1, 2020, through August 31, 2020 have not been reimbursed to the business under any other federal program.

Application Process

Applications for participation in the SERG program opened on October 7, 2020 and are available through an [online application portal](#) that will remain open until December 29, 2020, or until the program's funds are exhausted. Once started, applications cannot be saved and businesses should have the following documents available to complete the application:

- Copy of most recently filed IRS Tax Return (1040 with Sch C, 1120, 1120S, 1065, 990);
- Completed IRS Form W-9 providing identifying information required for payment;
- Bank Statements for the period May 1 to August 31, 2019, and May 1 to August 31, 2020 ("Expense Period");
- Current and prior year Balance Sheet and Income Statement for the Expense Period;
- Supporting documentation for eligible direct expenses and other business interruption expenses as requested (invoices, canceled checks, proof of receipt, etc.);
- Ownership documents (Charter, Articles of Organization, Operating Agreements, Partnership Agreements, etc.); and
- Proof of diversity business enterprise eligibility (disability documentation, long-form birth certificate, etc.) if applicable to the business.

While no documentation is required to apply for the SERG program, once an application has been accepted and the applicant is given access to the online TN CAMS, the applicant will be required to submit all of the documents listed above to support the application as part of the reimbursement process before payment can be processed. According to SERG guidelines, businesses will have from the earlier of ten (10) business days from receipt of notification that access to the TN CAMS system has been granted or until 5 PM CST on December 29, 2020, to submit a Request For Funding ("RFF") with required supporting documentation in order to receive payment. While not explicitly stated, it is presumed that failure to provide the required documentation in the applicable timeframe would necessitate an applicant restarting the application process.

Payments

As stated above, SERG awards are based on Business Interruption Costs or COVID-Related Expenses, whichever are greater, and applicants will be required to submit supporting documentation for costs associated with responses to the COVID-19 emergency or supporting documentation to prove business disruption. While there is \$50 million in available funds, individual awards are capped at \$30,000 and a business can determine the amount to which it is entitled through the [online portal](#) provided by the State of Tennessee. A single exception to the per business payment

cap is that businesses located in low to moderate income census tracts, opportunity zones, or promise zones (which are all more fully defined in the SERG guidelines) will receive an additional \$500 over and above the maximum allowable expenses.

Of the \$50 million in available funds, 10% of the total has been specifically reserved for grants to eligible diversity business enterprises classified as a Minority Business Enterprise, Women Business Enterprise or Service – Disabled Veteran Business Enterprises and Enterprise owned by Disabled Persons (all of which are more fully defined in the SERG guidelines). Both the 90% of the SERG program funds that are available to non-diversity businesses and the remaining 10% of the funds that are specifically reserved for eligible diversity business are available on a first-come, first-served basis until all funds are depleted.

Payments under the SERG program will be made on a reimbursement basis. Once applicants are notified that funds have been allocated, they will receive access to the Tennessee Cares Act Management System ("CAMS") to submit a RFF for the estimated benefit calculated on the application and associated documentation. Upon review and approval of each RFF, checks will be mailed to the recipient's address as submitted on the application.

There are some restrictions on how a recipient business can use the funds received from the SERG program. Any funds received from the SERG Program should be used to respond to the financial disruption resulting from COVID-19 and its effects on the individual business. Funds must not be used for payment of tax liabilities to a government agency and for at least five years, businesses must also keep records regarding how the funds are spent. By accepting funds, businesses acknowledge and agree that they are subject to potential audit or other verification by the State of Tennessee concerning their qualification for and use of these funds. Funds are subject to recapture by the State of Tennessee if the above requirements are not met.

If your business has been negatively impacted by the COVID-19 pandemic and you have questions about the SERG program, Dickinson Wright attorneys are here to help.

For more information, call Ralph Z. Levy Jr., Esq., at 615-620-173, or Kevin W. DeHart, Esq., at 615-780-1115, both of whom practice in the Firm's Nashville, TN office.