



# Wine Industry: Tax and Financial Planning in the Time of COVID-19 prepared for:

TEXAS WINE & GRAPE  GROWERS ASSOCIATION

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# Objectives

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- COVID-19 Legislation
  - *Families First Coronavirus Response Act (H.R. 6201)*
  - *Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748)*
- Small Business Administration (SBA) Loans
- 2020 Deferred Tax Deadlines
- Impacts for Business Taxpayers
- Impacts for Individual Taxpayers
- How to navigate through financial planning during these challenging times



# COVID-19 Legislation

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# Relief Legislation

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**Coronavirus Preparedness and Response Supplemental Appropriations Act (“Round 1”) – Enacted March 6, 2020**

**Families First Coronavirus Response Act (H.R. 6201) (“Round 2”) – Enacted March 18, 2020**

**Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748) (“Round 3”) – Enacted March 27, 2020**



# Families First Coronavirus Response Act

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Expands FMLA and paid sick leave requirements

- *We recommend you consult with an attorney specializing in employment law to assess the implications of these changes on your business*

The Act offers payroll tax credits to offset costs for impacted employers



# CARES Act

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Includes tax provisions impacting business, individual and trust taxpayers

Includes non-tax provisions, including loans for struggling businesses and aid for state and local governments and certain impacted industries



# Small Business Administration (SBA) Loans

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# SBA Loan – Economic Injury Disaster Loan

Economic Injury Disaster Loans (EIDL) available to businesses in all states:

- **Small Business Definition:** Based on the industry of the businesses, based on revenue and/or number of employees, and aggregation of affiliated business.
- **Up to \$2 million to help meet financial obligations and operating expenses – loan amount will be based on your actual economic injury and needs.**
  - **Immediate advance of up to \$10,000 can be made within 3 days of successful application**





# SBA Loan – Economic Injury Disaster Loan

- Interest rate 3.75%.
- Term not to exceed 30 years and depends on your ability to repay the loan
- One year deferment of payments, however interest will accrue
- To apply, applicants must self-certify they are eligible to receive disaster assistance by completing the COVID-19 Economic Injury Disaster Loan Application available on SBA website





# SBA Loan - Paycheck Protection Program

- Eligible borrowers can obtain loans from participating lenders in an amount equal to 2.5 times the borrowers average monthly payroll costs, and will not qualify for Employee Retention Credit for Employers, discussed later
- Maximum loan size is \$10 Million with interest rates capped at 4% and maximum maturity is 10 years
- Loan proceeds can be used for the following expenses: payroll, healthcare, insurance, rent and utilities
- A portion of the loan for the above expenses may be forgiven, if requirements are met



# SBA Loan - Paycheck Protection Program

- Eligible employers:
  - 500 or fewer employees, or
  - SBA employee-based or revenue-based size standard corresponding to primary industry, or
  - “Alternative size standard”
- Affiliation rules under 13 C.F.R. 121.301(f) apply in determining eligibility
- “Seasonal business” rules
- Lenders are relying on the borrow to determine eligibility – consult with legal counsel to confirm eligibility requirements and ensure completeness and accuracy on application



# SBA Loan - Paycheck Protection Program

- Still uncertainty surrounding this program; guidance is being released regularly
- Consider benefits of this program and potential loan forgiveness against other incentives available
- Work with lender to apply
  - Application can be found on Treasury's website
  - Additional information will be required by lender



# Other SBA Loans & Programs

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## SBA Express Bridge Loans

- Enable small businesses with SBA Express Lender relationship to access up to \$25,000 quickly

## SBA Debt Relief

- Provides financial reprieve (such as SBA making principal payments for SBA loans and microloans) for period of time

Discuss these alternatives with your SBA lender



# Payroll & Excise Tax Provisions

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# Payment of Payroll Taxes Extended

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Deposits of employer portion of Social Security taxes (6.2%) originally due between 3/27/20 and 1/1/21 may be deferred

For self-employed individual, employer portion of Social Security taxes (6.2%) may be deferred, but employee portion still due with 2020 tax return

Amounts deferred repaid over two years:

- 50% due on 12/31/21
- 50% due on 12/31/22







# Considerations

Payroll tax deferral provisions do not apply to employers who have indebtedness forgiven under Section 1106 on a Paycheck Protection Program (PPP) loan

For self-employed individuals, it appears that SE tax deferral may apply even with PPP loan forgiveness





## Considerations (cont.)

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May want to forego payroll tax deferral during period in which employer is pursuing PPP loan (uncertainty in later forgiveness)

Pending guidance on interplay of payroll tax deferral with payroll tax credit provisions for new FMLA/sick leave credits and employee retention credit



# Employee Retention Credit

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For a qualifying employer, credit equal to 50% of wages paid to employee, in each qualifying quarter, up to a total of \$10,000 of wages per employee for all quarters

Maximum credit per employee is \$5,000

Credit offsets FICA taxes due – any excess is refundable



# Employee Retention Credit

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Qualifying businesses must have experienced either:

- 1) Partial or full suspension of operations due to governmental orders that limited commerce, travel, or group meetings due to COVID-19
- 2) A significant decline in gross receipts (GR), which begins with the quarter in which GR are less than 50% of the GR of the same prior calendar year quarter and ends with the quarter where GR are at least 80% of the GR for the same prior calendar quarter



# Employee Retention Credit

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Eligible wages include regular wages paid plus health plan expenses allocable to the qualified wages under an employer-sponsored plan

- **Businesses with 100 or less employees? Credit is allowed on all eligible wages paid to employees regardless of whether they are performing services**
- **Businesses with greater than 100 employees? Credit is based solely on eligible wages paid to employees who are not providing services due to COVID-19**





# Considerations

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Tax-exempt employers are eligible for the credit

IRS has released draft Form 7200 to be used to file for COVID-19 related credit claims



## Considerations (cont.)

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The same wages cannot be used to calculate both the employee retention credit and the work opportunity tax credit (WOTC)

Retention credit cannot be used in conjunction with the SBA loans or paid sick & family leave credits





# Paid Sick Leave Credit

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Credit for paid sick and family leave provided under Families First Coronavirus Response Act

Available for small and mid-size employers

Employer reimbursement for employers who are required to comply with new rules



# Paid Sick Leave Credit

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Credit is available to employers with 500 or less full-time and part-time employees who are required to comply with the new rules

- *Employers should consult with a employment law attorney to confirm eligibility*

Applies to wages paid for employees who need to take a paid leave as a result of COVID-19 beginning April 1, 2020, through December 31, 2020

Credit may be used against employers social security taxes equal to 100% of the qualified wages paid; excess credit may be refunded





# Paid Sick Leave Credit

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**Employees who must self-isolate, obtain a diagnosis or comply with a self-isolation recommendation with respect to COVID-19**

- Qualified sick wages are paid at 100% rate of normal pay and are capped at \$511 per day for up to an aggregate total of 10 days or \$5,110 in wages

**Employees who have to care for a family member or child whose school or place of care has been closed**

- Qualified sick wages are paid at 2/3 rate of normal pay and are capped at \$200 per day for up to an aggregate total of 10 days or \$2,000 in wages



# Paid Family Leave Credit

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In addition to the paid sick leave credit, employers may take an additional credit for employees who have to care for a family member or child whose school or place of care has been closed

- Qualified wages are paid at 2/3 rate of normal pay and are capped at \$200 per day and up to an aggregate total of an additional 10 weeks or \$10,000 in wages



# Considerations

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Employers should document as much as possible. This includes, but is not limited to, approach for determination of qualification, eligible employees, payroll paid, etc.

IRS has released draft Form 7200 to be used to file for COVID-19 related credit claims



# 2020 Deferred Tax Deadlines

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# Deferral of Tax Filing & Payments

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**Federal deferral from April 15, 2020 to July 15, 2020 includes:**

- Income tax returns and income payments due (corporate and individual)
- 1<sup>st</sup> quarter 2020 income tax payments (corporate and individual)
- Gift and generation-skipping transfer (GST) tax returns and payments
- Interest and penalties will not accrue until July 15, 2020
  
- At this time, 2<sup>nd</sup> quarter 2020 payments are still due June 15, 2020





# Extensions

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Extension request for deferral to July 15<sup>th</sup> is not required

Extensions for deferral to October 15<sup>th</sup> deadline are due on July 15<sup>th</sup>

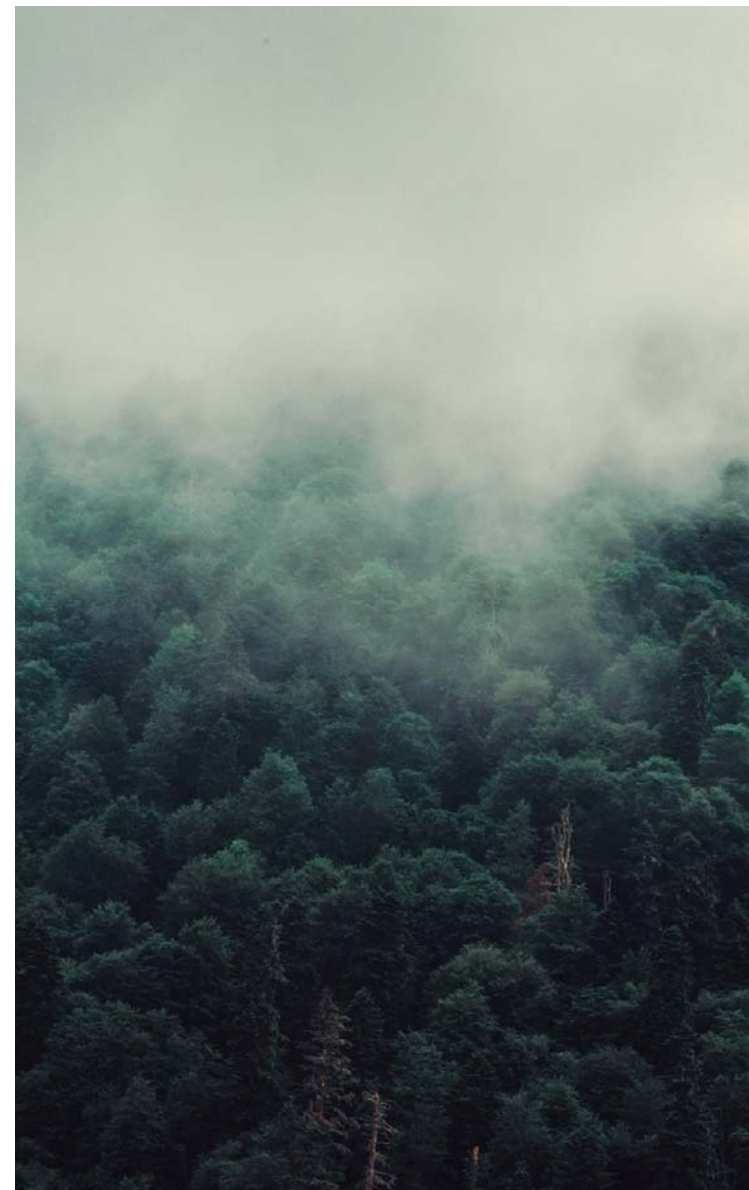


# State Deadlines?

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Most, but not all, states have conformed to federal due date deferral, particularly for individuals

Several states have not extended 1<sup>st</sup> quarter payment deadline, which remains at April 15<sup>th</sup>



# Business Income Tax Provisions

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# NOL Modifications for Corporations

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## NOLs allowed to be carried back up to 5 years

- For NOLs arising in years beginning after December 31, 2017, and before January 1, 2021
- Special rules for Section 965(a) income inclusion years

## NOL 80% of income limitation rule deferred

- Rule suspended until years beginning after December 31, 2020
- 100% utilization of NOLs to offset CY income is now allowed

## Special rules for REITs and life insurance companies





# Considerations

The changes are intended to allow companies to utilize current losses, amend prior year returns, and apply for tax refunds with the goal of increasing cash flow

Increased benefits can be obtained by carrying back losses to a tax year with a higher corporate tax rate



# Considerations (cont.)

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Consider interplay with other provisions, including tax credits, international tax (GILTI), short tax years, and states (among others)

Technical correction for TCJA drafting error impacts fiscal year-end taxpayers with an NOL in tax year beginning in 2017 , ending in 2018 – tentative refund claim for allowed carryback within 120 days of enactment of CARES Act



# Considerations

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Couple the changes to the excess business loss limitation rules with the changes in the net operating loss rules

Taxpayers who filed 2018 returns may be eligible to amend and request refunds

Technical amendments to statute were also made that will be important when the rules return in 2021



# Qualified Improvement Property (QIP)

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QIP is any improvement made by a taxpayer to interior nonresidential real property after building is placed in service, with the exception of:

- Enlargement to building
- Any elevator or escalator
- Improvement to internal structural framework of the building

**Tax reform technical correction restores Congressional intent**

**Now, QIP placed in service starting in 2018 eligible for 15-year life and bonus depreciation (ADS life is 20 years, no bonus)**





# Considerations

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May require an amended return or an accounting method change via Form 3115

Implications for taxpayers that made real property trade or business election under Section 163(j)

QIP classifications since 2018 may require closer scrutiny to confirm requirements are met



# Section 163(j) Business Interest Limitation

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**Limitation on deduction increased to 50% of adjusted taxable income (up from 30%)**

- Tax years beginning in 2019 and 2020 (for partnerships, 2020 only)

**Taxpayers may elect to use 30% instead**

**Taxpayer can elect to use 2019 adjusted taxable income (ATI) for 2020 limitation computation**

- Potentially favorable if ATI in 2019 exceeds ATI in 2020



# Partnership Impacts

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Partnerships must continue to use 30% for tax years beginning in 2019, but can use 50% for 2020

Excess business interest expense in 2019:

- Partners able to deduct 50% in 2020
- Remaining 50% is subject to Section 163(j) deductibility rules







# Considerations

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*S* corporations that filed for 2019 may want to amend return

With an increased limitation in 2019/2020, consider whether real property trade or business election is appropriate given technical correction to QIP



# TTB Updates

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# TTB Updates

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- All filing & payment due dates between March 1 – July 1 are automatically extended 90 days without penalty
- Special guidance allowing for returns of products purchased for events canceled due to COVID-19
- TTB compliance lab in CA closed; no Sulfite Waiver Analysis available until re-opened



# Individual Income Tax Provisions

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# “Recovery Rebates” For Individuals

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**\$1,200 tax credit – paid in advance – for each qualifying individual (\$2,400 for married couples)**

- Does not include nonresident aliens, individuals that can be claimed as a dependent by another taxpayer, and estates/trusts

**Additional \$500 tax credit for each qualifying child**

- To qualify, child must qualify for the child tax credit (generally, those under age 17)





# Adjusted Gross Income Limitations

Applies to the combined credit for the taxpayer(s) and any qualifying children, subject to phase out

<b>Filing Type</b>	<b>AGI Threshold</b>
Single Filers	\$75,000
Married Filing Joint	\$150,000
Head of Household Filers	\$112,500



# Credit Phase Out

The credit is phased out by 5% for every dollar over AGI threshold

Examples:

<b>Taxpayer</b>	<b># of Children</b>	<b>Credit Phased-out if AGI Exceeds:</b>
Single Taxpayer	0	\$99,000
Single Taxpayer	1	\$109,000
MFJ Taxpayer	0	\$198,000
MFJ Taxpayer	2	\$218,000
HOH Taxpayer	1	\$146,500
HOH Taxpayer	2	\$156,500





# “Recovery Rebates” = Advance Refund

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IRS will automatically pay out the applicable credit

Calculation based on 2019 tax return (if filed) or 2018 tax return

- If neither filed, based on amounts reported on Form SSA-1099 and Form RRB-1099

Refund received via direct deposit (if reported on latest tax return) or by mailed check

Credit will be recalculated on 2020 return using 2020 AGI. Any excess rebate received will not need to be repaid though additional amounts due may be claimed.



# Charitable Contributions

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**\$300 above the line deduction available in 2020 for taxpayers who do not itemize in 2020**

**Charitable contribution deduction limitation raised to 100% of AGI for cash contributions made in 2020**

**Contributions must:**

- Not be made to a Section 509(a)(3) supporting organization or donor advised fund



# Retirement Funds Provisions

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## Maximum \$100,000 distribution available through 12/31/20

- For coronavirus related distributions
  - Yourself, spouse or dependent diagnosed with Covid-19 or experiencing adverse financial consequences from reduced work hours, laid off or furloughed.
- 10% early withdrawal penalty waived, but still may be included in income
  - Income inclusion of distribution can be spread over 3 years
  - Income inclusion waived if distributed amount re-contributed within 3 years

## Maximum loan amount raised to \$100,000, repayment rules extended one year

## Required minimum distributions are not required for 2020



# Considerations

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If 2019 income exceeds 2018, consider filing 2019 return later if you are eligible for recovery rebates

Consider skipping the required minimum distribution payout for 2020 to the extent it isn't needed for finances, which could help you qualify for the tax credit if you didn't already qualify.

If IRA distributions are needed to cover financial needs, consider repaying them over 3 years to avoid income inclusion



# Excess Business Losses

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**Excess business loss (EBL) rules for non-corporate taxpayers are postponed until years beginning after 2020**

- Since 2018, no excess business loss over \$250,000 (single) or \$500,000 (joint taxpayers) was allowed. The excess converted to an NOL and was carried forward.
- This rule has been suspended until 2021, retroactive to 2018. Look for opportunities to file amended returns.



# NOL Carryback Restored, Limitation Rule Deferred

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## NOLs allowed to be carried back up to 5 years

- For NOLs arising in years beginning in 2018, 2019, or 2020
- Special rules for Section 965(a) income inclusion years

## Tax reform-enacted rule limiting NOL carryovers to 80% of income deferred

- Does not apply until years beginning after December 31, 2020
- Until then, 100% utilization of NOL carryovers to offset CY income is allowed



# Other Business-Related Provisions

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Partners who are allocated excess business interest expense (EBIE) for 2019 can deduct 50% of the amount in 2020. Remaining 50% follows normal 163(j) rules

Business interest limitation has generally been increased from 30% to 50% of adjusted taxable income for 2019 and 2020 (partnerships, only for 2020).







# Considerations

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Look for net operating losses generated in 2018 that may now be carried back

Look for opportunity to amend 2018 returns for excess business loss limitations that are no longer limited

Consider timing of 2019 tax return filing to maximize recovery rebate check (i.e. comparison of 2018 v. 2019 taxable income)



# Operating in Uncertain Times

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# Navigating Through Financial Planning

While we understand that any loans from the EIDL SBA Program or the SBA Loan Program under the CARES Act may take some time to fund, the following are some immediate actions that you can put in place to assist with your cash flow needs:

- Prepare weekly cash flow budgets for the next 90 days.
- Recast financial projections for 2020.
- Review head count and consider the need for salary reductions, layoffs or furloughs.
- Talk to your landlords about reduction or abatements in lease payments. Reductions could be added to the back end of the lease or amortized.





# Navigating Through Financial Planning

- Work with your lender to possibly defer payments such as interest, term loan payments and increased availability on credit facilities such as short term over advance facilities.
- Eliminate all discretionary spending that you deem appropriate.
- Make sure all bank accounts are reconciled daily.
- Prepare daily factor availability reconciliations and bank borrowing base calculations.
- Review business interruption or other insurance in place.
- Talk to your lenders re your financial covenants and also potentially delaying the delivery of your 2019 audit report, if needed.





# Operating in Uncertain Times

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- Consider offering deep discounts on your e-commerce distribution channel to attract more consumers, this may be your only source of revenue for some time.
- Talk to your influencers, to the extent that you can, to help drive business to your website now more than ever.
- Review the supply chain and negotiate extended payment terms.
- Proactively work with your supply chain to cancel or delay orders where appropriate.







# Plan for the Future

- Tone at the Top
- Agility is necessary – lots of “wait and see”
- Shifting consumer demands & volatility
- Long-term shifts in business model considerations
- “What if” analyses
- Balance sheet management
- Continuity planning



# We are here to help

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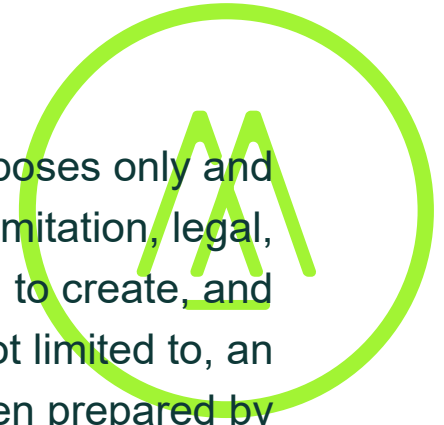
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