PPP Forgiveness & EIDL Loan Updates & COVID-19 Tax Reform

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AGENDA

• Small Business Administration (SBA) Loan Programs
  • Paycheck Protection Program (PPP)
    • Loan Recap
    • Forgiveness Application – Released May 15, 2020
    • Income Tax Impacts of PPP Forgiveness & Future Changes
  • Economic Injury Disaster Loan Program (EIDL)

• CARES Act Income & Payroll Tax Provisions
  • Qualified Improvement Property (QIP) Technical Correction
  • Adjustments to Net Operating Losses (NOL’s) & Other Business Losses
  • Business Interest Expense Limitation
  • Payroll Tax Credits Available

• Updated Tax Due Dates

CARES Act – Coronavirus Aid, Relief, and Economic Security Act
SBA Loan Programs
Paycheck Protection Program (PPP)

Original Loan Information

• [https://www.sba.gov/funding-programs/loans/paycheck-protection-program](https://www.sba.gov/funding-programs/loans/paycheck-protection-program)
• Several rounds of funding from Congress
• Must be originated by your local banker
  • Nebraska was a strong force in applying for the PPP loan
• Maximum loan amount, lesser of:
  • $10 million
  • 2.5 times monthly payroll cost
    • 1-year period before date of loan
    • Excludes compensation over $100,000 per year
Paycheck Protection Program (PPP)

Original Loan information

• Interest rate of 1%
  • Starts accruing when loan proceeds received, but interest is included with forgiveness

• 2 year loan period for non-forgiven portion
  • 6 month payment deferral
  • No prepayment penalties

• Loan proceeds can be used for:
  • Payroll
  • Rent*
    • Self-Rental Applies
  • Utilities (Potentially Includes Fuel)*
  • Mortgage interest payments*

*Must be from contracts in place before February 15, 2020
Paycheck Protection Program (PPP)

Updated Information

• Provided additional guidance for Schedule C’s and Schedule F’s to also apply, based on income from 2019
  • If the activity had a loss in 2019, then it does not qualify for the PPP
• Originally, it was unclear whether partners should apply as a part of their partnership application or individually
  • The SBA later issued guidance that they should apply with the partnership NOT individually, which meant companies who already applied without partner earnings lost out on additional funds
  • The SBA changed gears and is now allowing partnerships to add to their loan
    • If this applies, follow up with your bank ASAP, as this generally needs to be completed by May 22, 2020
Paycheck Protection Program (PPP)

Updated Guidance and PPP FAQs

• The SBA keeps updating the FAQs for the PPP loans as additional information begins to come into play
  • Continually updated by the SBA, often several new FAQs weekly

• Additional Certification on Need for PPP Loan
  • Recently, the SBA came out with guidance that, if a company had access to other sources of liquidity, they would not qualify for the PPP and should return the money
  • However, on May 13, 2020, they updated the FAQ’s to state that, for businesses that took out less than $2 million (including related entities), there is a safe harbor that they have met the liquidity regulation
Paycheck Protection Program (PPP)

Forgiveness Application

• The SBA released their PPP forgiveness application on May 15, 2020
  • https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf
  • They have not yet released guidance to go with the application, which should be coming soon
  • As you will see as we discuss, there are still unanswered questions, even though this application comes more than halfway into the eight week covered periods for many businesses
    • SBA is trying to keep up with the information as much as they as possible
Forgiveness Application – Key Highlights

• What Costs Qualify
  • Worded to reference both costs incurred AND costs paid
    • Appears to be more generous than was originally anticipated, but some clarification is needed on just how flexible they will ultimately be
      • Might be intended to give the option of either, not include both
      • Also, it is clear that you couldn’t double count an amount as both incurred and paid
    • Capped at $15,385 of compensation per employee
      • Clarification will be needed on treatment of bonuses
  • Rental costs clarified to include both real and personal property
    • Building leases, along with equipment and vehicle leases should count

• Alternative Eight Week Period Allowed
  • Some costs, such as rent, utilities, and interest must use the eight weeks starting with the loan disbursement date, but certain payroll costs can be elected to start on the first payroll date following disbursement
Forgiveness Application – Supporting Schedules

• Schedule A Worksheet
  • Breakout of employees (not including owners or self-employed individuals) both below and above $100,000 of annualized compensation for any 2019 pay period that helps compute some various forgiveness aspects
  • Note that the application is worded that you must look at all 2019 pay periods to find any employees who had annualized compensation above $100,000 for any pay period
    • For companies with bi-weekly payroll, that would mean any pay period above $3,846
    • Guidance will be important to understand this
Paycheck Protection Program (PPP)

Forgiveness Application – Supporting Schedules

- Schedule A Worksheet - Continued
  - Computation of FTEs
    - Normal Method
    - Simplified Method
  - The computation can create issues, though there is a safe harbor in place to help out
    - Businesses who restore FTEs by June 30, 2020 will have met the safe harbor
Forgiveness Application – Supporting Schedules

• Schedule A
  • Contains the calculations for forgiveness that flow onto the application itself
  • Includes information about owners’ compensation as well as non-cash compensation items, such as health insurance, retirement plan contributions, and SUTA tax
    • Limited guidance on owner’s compensation inputs
  • Also has the FTE calculation from the information on the worksheet
Forgiveness Application Itself

• All the information flows onto the forgiveness application, which then computes the amounts and also factors in the possible reduction to the forgiveness from not spending enough of the funds on payroll or not maintaining enough FTEs

• Fairly simple front-page of application, as most information is on the supporting schedules
  • Additional revisions to all the forms are still likely
Forgiveness Application – Other Items of Note

- Documentation Required
  - Payroll documentation
    - Payroll documentation from the loan period
    - Payroll documentation from 2019 showing employee calculations
    - Payroll documentation from the last quarter prior to the covered period AND from February 15, 2020 through April 27, 2020
  - Documentation showing payments on rent, interest, and utility payments, possibly including the original contracts or other documentations
  - Authorized certification to the amounts and information provided
  - Anything else the SBA Requires

- Important to lean on your advisors for help with information – and payroll companies (Gusto, ADP, QuickBooks, etc.) are putting together tools that will help, as well

- The application notes that lenders will have 60 days from the receipt of this forgiveness application to issue an answer on Forgiveness to the recipient
  - Application expires October 31, 2020, but no mention of an earlier date that businesses need to apply by
Paycheck Protection Program (PPP)

Income Tax Implications of Forgiveness

• The CARES Act provided that forgiveness of the PPP loan does NOT constitute income, but was silent on the deductibility of the expenses paid for with forgiven funds
• The IRS has since clarified that, under current rules, those expenses would NOT be deductible since the company did not actually pay out of pocket
• Congress is currently considering a bill that would allow for the deductibility of these expenses, but it is not a certainty
Paycheck Protection Program (PPP)

Possible Future Update

• Congress and the SBA have noted several items that they are working on updating and changing to the loans in the coming weeks

• Extension of PPP Loan Window
  • Currently, Congress is exploring extending the PPP covered period from eight weeks to sixteen weeks, with some support from both political parties
Economic Injury Disaster Loan Program (EIDL)

• Direct application to SBA - https://covid19relief.sba.gov/#/
• SBA information - https://www.sba.gov/page/disaster-loan-applications
• $2 million maximum loan amount
  • Term up to 30 years
  • 3.75% fixed interest rate
• Potentially a month long or longer approval process with SBA
• Applications are currently closed, except for farmers
Economic Injury Disaster Loan Program (EIDL)

- Initial $10,000 Grant
  - Ability to take a grant for up to $10,000 shortly after application
  - After the program went live, it ended up being based on the number of employees, capped at $10,000 for 10 employees
  - This is a grant, so it is not something that has to be paid back
  - The grant amount reduces the later EIDL loan amount and PPP forgiveness

Qualified Improvement Property

- Nonstructural interior improvements to commercial property
- ‘Fixed’ to be treated as a 15 year asset (instead of 39)
- Qualifies for 100% bonus depreciation
  - More flexibility than Section 179 with more businesses eligible for bonus and ability to create a loss
- Applies retroactively to tax years 2018 and later
  - Prior year returns can be amended or an accounting method change can be made on current year return

Net Operating Losses (NOL) & Other Business Losses

• TCJA only allowed NOL’s to be carried forward instead of carried back after 2017, except for certain farm losses

• CARES Act allows losses from 2018, 2019, and 2020 to be carried back 5 years, in addition to be carried forward
  • Taxable income limitation increased from 80% to 100% offset

• In addition, the TCJA provision that business losses in excess of $500,000 are carried forward has been suspended for 2019 and 2020

Net Operating Losses (NOL) – Application

• Important to review individual situation to see what makes the most sense – carrying forward or carrying back
  • Important to consider tax brackets and other items
    • Five years back would be pre-TCJA, so tax rates are generally higher and pass-through businesses do not have QBI deduction
    • Carrying back the loss also has the benefit of getting cash back to businesses sooner rather than later
• Different steps involved to adjusting returns already filed – best to consult with your accountant to see what makes the most sense.

Business Interest Limitations – 163(j)

• For entities with average annual gross receipts over $25 million and certain smaller entities (including rental entities that distribute losses to limited partners), business interest is limited to 30% of adjusted taxable income (ATI) under the TCJA

• Under the CARES Act, this has been adjusted to 50% of ATI for 2019 and 2020
  • As well, the taxpayer can use the 2019 ATI for the 2020 calculation if 2019 ATI is higher than the amount for 2020
CARES Act Payroll Tax Credits

• Employee Retention Credits
  • Employers are only eligible if:
    o Business was carried on during 2020 AND
    o Business operations have been fully or partially suspended during any calendar quarter as a result of a COVID-19 government order limiting OR
    o The business remained open, but experienced a greater than 50% reduction in quarterly receipts as compared to the same quarter in 2019.
    
    o Employers receiving a PPP loan are **NOT** eligible for these credits
CARES Act Payroll Tax Credits

- Employee Retention Credits
  - Refundable payroll tax credit for 50% of qualified wages paid by eligible employers to certain employees
    - Capped at total credits of $5,000 per employee for the year (based on $10,000 of maximum wages per employee)
    - Applies for wages paid after March 12, 2020 and before January 1, 2021
  - Provides incentive to keep employees on payroll even if forced to close or suspend business
CARES Act Payroll Tax Credits

• Delay of Payment of Employer Payroll Taxes
  • *Businesses receiving a PPP loan with forgiveness are NOT eligible for this deferral*
  • Allows employers to defer paying the employer’s 6.2% share of Social Security taxes due from date of enactment of the Act through the end of 2020
  • Self-employed taxpayers can defer 50% of their self-employment tax
  • Any amounts deferred will be payable 50% by December 31, 2021 and 50% by December 31, 2022
  • Applies to any remaining amounts due after applying the previously discussed credits
Updated Tax Due Dates
Updated Tax Due Dates

• Federal & Nebraska Income Tax Deadlines Extended to July 15, 2020
  • Includes most returns and payments due between April 1, 2020 and July 15, 2020

• Estimate Payments
  • Federal 1st & 2nd Quarter Estimates, normally due April 15th and June 15th, have been extended to July 15, 2020
  • Nebraska 1st Quarter Estimates were extended from April 15th to July 15, 2020, BUT 2nd Quarter Estimates are still due June 15, 2020

• COVID-19 has also impacted processing and response time from the IRS

• Personal Property Tax Returns
  • Penalties for late filing do not apply until July 15, 2020, but they are retroactive to May
Keep in mind that this is still a developing area, and there will likely be more changes in the coming weeks and months. It’s important to stay on top of the changes and have a good advisor relationship to help you keep up.
QUESTIONS?

PEOPLE AND RESULTS YOU CAN COUNT ON
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