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Status of PPP Loans, Tax Credits and Deferrals, and SBA Loan Programs

SCHEFFEL BOYLE
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Introduction

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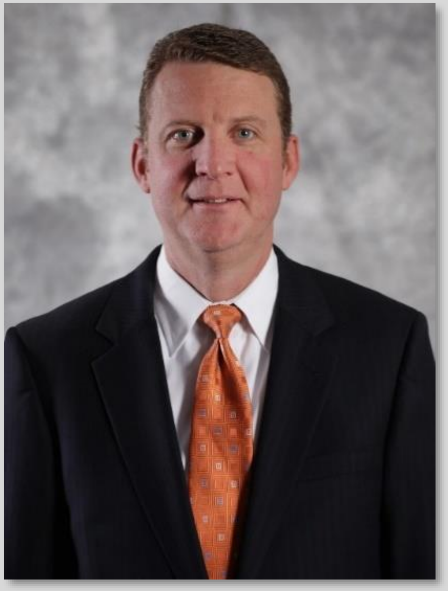

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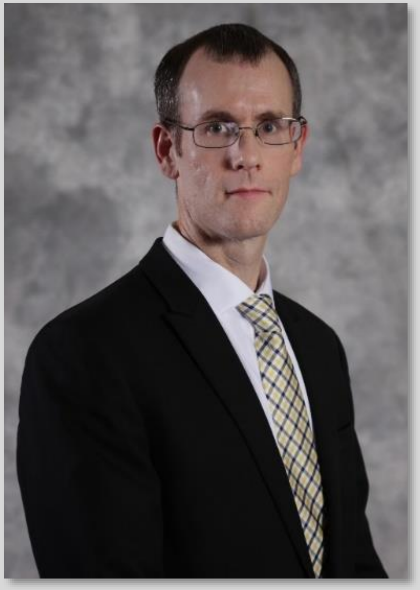

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Overview

SBA PPP Loan Overview

PPP Loan Current Updates

Forgiveness of PPP Loans

Tax Credits & Deferrals

Main Street Business Lending Program

*Based on guidance provided through May 15, 2020

SBA PPP Loan Overview

- Qualify, calculate and obtain loan
- Receive loan proceeds – 8 week Covered Period begins
  - Spend loan proceeds on covered expenses
- 8 week Covered Period ends
  - Accumulate documentation for payroll expenses
    - Comparison period and 8 week Covered Period
  - Accumulate documentation for non-payroll costs
    - Mortgage interest, rent, utilities
- Submit documentation to lender
- Lender to calculate and report amount of loan forgiveness within 60 days
- Repayment begins 6 months after loan is received
    - Repayment period is 18 months

PPP Loan Current Updates

PARTNERSHIP LOAN CALCULATION

FARMERS & SCHEDULE F

IRS NOTICE 2020-32

CERTIFICATIONS

SEASONAL EMPLOYERS

PPP Loan Current Updates

Partnership Loan Calculation

- Partnerships use the partners' 2019 net earnings (not loss) from SE as reported in box 14a of the partners' K-1s.
  - This box includes guaranteed payments
  - This is the payroll cost amount as it relates to partners
- Payroll costs for all partners is reduced by any 179 deduction claimed, unreimbursed partnership expenses, and depletion on oil and gas properties.
  - This amount is multiplied by .9235 and limited to $100,000 for each partner.
  - This is more restrictive as the guidance is requiring a reduction to 92.35% of earnings. This is not required for Schedule C and Schedule F applicants.

PPP Loan Current Updates

- The payroll costs previously calculated for partners is then added to:
  - 2019 employee gross wages (before employee pre-tax deductions), limited to $100,000 per employee
  - 2019 employer paid health insurance
  - 2019 employer retirement contributions not included in gross wages
  - 2019 employer state and local taxes assessed on employee compensation (SUTA for example)

- The result of that calculation is then divided by 12 and multiplied by 2.5

PPP Loan Current Updates

Farmers Filing Schedule F

- Agricultural and other forms of cooperatives are now eligible for PPP loans as long as other eligibility requirements are met
- SBA released clarification on Schedule F filers in late April for PPP loan calculation.
  - Schedule F filers calculate payroll costs in the same way that Schedule C filers calculate that number, using net farm income as reported on line 34 of Schedule F
- Currently no provision allowing farmers to use 4797 gains on equipment exchanges/sales to be included in calculation

PPP Loan Current Updates

IRS Notice 2020-32

- CARES Act did not address whether the business expenses that result in PPP loan forgiveness will be deductible for tax purposes
- Released April 30, 2020
- IRS concludes that when the payment of business expenses results in the forgiveness of a PPP loan, those expenses will not be deductible for tax purposes

PPP Loan Current Updates

Certifications

- On the application, "Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant."
- On April 29, SBA Q&A:
  - "Borrowers must make the certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business."
- Safe Harbor repayment is May 18, 2020
- Many industry groups are looking for additional guidance
- On May 13 SBA released FAQ #46 providing a safe harbor for borrowers with less than $2 million, they will have been deemed to have made the required certification in good faith.
- Borrowers with PPP loans greater than $2 million still must have an adequate basis for making the required good-faith certification.

PPP Loan Current Updates

Seasonal Employers

- Original options: employer choice to use either 12-week period beginning either February 15, 2019 or March 1, 2019
- New option: allows the seasonal employer to choose any consecutive 12-week period between May 1, 2019 and September 15, 2019

Forgiveness of PPP Loans

Prior to May 15th, there had been little guidance outside of the language in the CARES Act to address forgiveness.

SBA just released the loan forgiveness application and instructions.

This has provided some clarification.

Forgiveness of PPP Loans

Loan Forgiveness Application and Instructions Takeaways

Alternative Payroll Covered Period

- Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using an 8 week period that begins on the first day of their first pay period following their PPP loan disbursement date. (For payroll costs only)

Forgiveness of PPP Loans

Loan Forgiveness Application and Instructions Takeaways

Incurred and/or Paid guidance.

- Payroll and Other costs now can be incurred OR paid during the Covered or Alternative Payroll Period.
- Payroll Costs
  - Costs are considered paid on the day that paychecks are disbursed or originates an ACH credit transaction
  - Costs are considered incurred on the day that the employees' pay is earned.
  - Costs incurred but not paid during the last pay period of the Covered or Alternative Payroll Period are eligible for forgiveness if paid on or before the next regular payroll date. Otherwise payroll costs must be paid during the Covered Period.
- Non Payroll Costs
  - Costs must be paid during the Covered Period or incurred during Covered Period and paid on or before the next regular billing date even if the billing date is after the Covered Period.
  - Cannot exceed 25% of the total FORGIVENESS

Forgiveness of PPP Loans

Loan Forgiveness Application and Instructions Takeaways

- Average Full-Time Equivalent defined somewhat. Discussed later.
- FTE Reduction Exemptions added
  - Any employees who during the Covered or Alternative Payroll Period
    - Were fired for cause
    - Voluntarily resigned
    - Voluntarily requested and received a reduction of their hours
  - Any FTE reductions in these cases do not reduce the Borrower's loan forgiveness
- Documents that must be submitted with the application, Page 10 of the application and instructions

Forgiveness of PPP Loans

- The “ticking clock”: recipient of a covered loan can receive forgiveness of the loan in an amount equal to the eligible expenses paid in the following eight-week “Covered Period”, beginning on the covered loan’s funding date. (See Alternative Payroll Covered Period mentioned earlier)
- AICPA has proposed that the Covered Period should begin when the State lifts the shutdown order for that particular business.
- Forgiveness Reductions
  - Staffing requirements
  - 75/25 Rule
  - Don’t spend it all

Forgiveness of PPP Loans

Project payroll costs for the clients Covered Period or Alternative Payroll Covered Period.

- No more than $100,000 per employee on an annualized basis, cannot be more than $15,385 during the Covered Periods
- For owner-employee, compensation does not exceed 8 weeks worth of 2019 compensation capped at $15,385

Owner Compensation Replacement

- 8/52 of 2019 net profit on Schedule C and Schedule F

Other costs during the Covered Period, which includes interest on a mortgage, rent, and utilities.

- Rent (real or personal property) and interest must be related to obligations that existed on 2/15/20
- Utilities also must have been in existence on 2/15/20.
- More guidance is needed to define “utilities”. The CARES Act and forgiveness application and instructions say electric, gas, water, sewer, transportation, telephone, or internet. Fuel costs in a company truck were included in an example in the Interim Final Rule.
    - Transportation and cell phone are unanswered questions
- May need to supply loan amortization schedules, copy of lease agreements, invoices, cancelled checks, etc.

Forgiveness of PPP Loans

Full Time Equivalents (FTE)

Per the application, the average FTE for each employee is based on the average number of hours paid per week divided by 40. Capped at 1.0

- Simplified method calculation assigns 1.0 for employees who work 40 hours or more per week and .5 for those with fewer hours.

Determine employee count for the comparison periods to determine how much of a decrease in employee count (if any) will impact forgiveness*.

- Two comparison periods to choose from. Pick the one with the lowest Full-Time Equivalents count.
  - 2019 Comparison Period (2/15/19 - 6/30/19)
  - 2020 Comparison Period (1/1/20 – 2/29/20)
- 8 week Covered Period
- You then average each employee's hours to calculate an average weekly hours per employee

*New SBA Q#40 allows employer with a written offer of employment to an employee, but is turned down, the ability to NOT count the reduction in the FTE calculation. More details needed.

Forgiveness of PPP Loans

Calculating Your FTE: Items Needed

- 2019 Comparison Period Data (2/15/19 – 6/30/19)
  - Payroll calendar during that time frame (weekly, semi-monthly, etc.)
  - Total hours worked per pay period per employee
- 2020 Comparison Period Data (1/1/20 – 2/29/20)
  - Same data as above
- Rehire Eligibility Period Data (2/15/20 – 4/26/20)
  - Same data as above
  - FTE increases between 4/26/20 and 6/30/20

- Accumulate this information now to be prepared
  - Can use this information to make estimated forgiveness calculations
  - Then use estimated forgiveness calculations to guide decisions in remaining amount of 8-week Covered Period.

Forgiveness of PPP Loans

Covered Period Data (date of loan – 8 weeks later)

- Payroll calendar during that time frame (weekly, semi-monthly, etc.)
- Total hours worked per pay period per employee

Forgiveness of PPP Loans

Wage Reductions

- Employee wage reduction: if employee wages are less than 75% during the Covered Period when compared to the 1st quarter of 2020 (1/1/20 – 3/31/20), there is a reduction in forgiveness.

- 75/25% rule: no more than 25% of forgivable costs can be non-payroll costs. Any non-payroll costs in excess of this amount may remain a loan.

The Unknowns of PPP Loan Forgiveness

Many parts of loan forgiveness are still unknown, not addressed, and/or not clarified

We expect guidance, but until then, the following is a non-exclusive list of some of the biggest unknowns in addition to what has already been discussed:

- Related party rules for rent and payroll. Are there any? Not currently, but historically related party restrictions prevent taxpayers abusing the intent of the law.
- Are amounts paid with forgivable funds tax deductible?
  - Legislation introduced in Senate could reverse IRS position in deductibility of expenses
- How will the rehire period for FTEs work?
- Covered Period ends June 30, 2020, what about loans still being issued?

Forgiveness of PPP Loans

This information is subject to change as the programs continue to evolve and more guidance is issued.

Tax Credits & Deferrals

Employee Retention Credit (ERC) vs. PPP Loans

- Both are aimed at keeping people employed and providing business relief
- ERC is possibly more beneficial when PPP loan forgiveness may be minimal because the business was forced to shutdown or operate at less than full capacity

Tax Credits & Deferrals

Employee Retention Credit (ERC)

The ERC is a refundable payroll tax credit equal to 50% of qualifying wages, up to $10,000 per employee, paid by eligible employers.

Eligible employers are:

- Employers that carry on a trade or business during calendar year 2020
- Tax-exempt organizations
- Does not include government employers (federal, state, local or instrumentalities of such entities)
- Self-employed individuals can claim ERC for employee wages, but not for their SE income
- Receipt of a PPP loan makes an employer ineligible, unless the loan was repaid by May 18, 2020

Tax Credits & Deferrals

Employee Retention Credit (ERC)

In addition, eligible employers must have one of the following apply during a 2020 calendar quarter.

- The operation of the trade or business must be fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
- The employer must experience a significant decline in gross receipts during the calendar quarter.

Tax Credits & Deferrals

Employee Retention Credit (ERC)

- A significant decline in gross receipts begins with the first calendar quarter in 2020 in which an employer's gross receipts are less than 50% of the gross receipts in the same calendar quarter of 2019.
- The significant decline ends on the first day of the quarter that follows the quarter where an employer's gross receipts exceed 80% of the gross receipts for the same calendar quarter in 2019.

Example, Employer X has 2019 and 2020 gross receipts as follows

QUARTER	2019	2020	PERCENT
1st	$210,000	$180,000	86%
2nd	$230,000	$100,000	43%
3rd	$240,000	$200,000	83%
4th	$225,000	$200,000	93%

The significant decline in gross receipts begins in the 2nd quarter since gross receipts were less than 50% when compared to the same quarter of 2019. The significant decline ends on the first day of the 4th quarter, since this is the first day of the quarter that follows the quarter where X's gross receipts exceeded 80% of the 2019 gross receipts.

Tax Credits & Deferrals

Employee Retention Credit (ERC)

Qualifying Wages

- Once it is determined that an eligible employer experienced a full or partial shutdown or significant decline in gross receipts, it must be determined what the qualifying wages are for that employer.
- Qualifying wages are wages paid between March 13, 2020 and December 31, 2020 during a full or partial shutdown affecting the employer or during a quarter in which there was a significant decline in gross receipts.
- Further, qualifying wages differ based on whether the employer averaged more or less than 100 full-time employees during 2019.

Tax Credits & Deferrals

Employee Retention Credit (ERC)

Qualifying Wages

- For eligible employers that averaged more than 100 full-time employees during 2019, qualified wages are the wages paid to an employee for the time the employee is not providing services. Wages paid to these employees may not exceed what would have been paid to them working an equivalent amount of time during the 30-day period preceding the hardship.
  - Example, IL executive order requires all restaurants to close their dining areas, but allows for carryout and drive through services. This results in a partial shutdown for Restaurant Y, an employer that averaged more than 100 full-time employees during 2019. Y decides to continue paying all employees (servers, bartenders, chefs, etc.). Only wages paid to those employees paid not to work during the partial shutdown are qualifying wages. Wages for staff that are working during the partial shutdown do not qualify.

Tax Credits & Deferrals

Employee Retention Credit (ERC)

Qualifying Wages

- For eligible employers that averaged 100 or fewer full-time employees during 2019, qualified wages are wages paid to any employee.
    - Same as previous example, except that Y averaged 100 or fewer full-time employees during 2019. In this case, all wages paid to employees, whether working or not, are qualifying wages for purposes of the ERC.

Tax Credits & Deferrals

Employee Retention Credit (ERC)

Qualifying Wages

- Full-time employees are those who averaged 30 hours per week or 130 per month in 2019.
- Wages paid to related individuals (more than 50% owners and family members of more than 50% owners) are not qualifying wages.
- Wages for which an employer received a credit for qualified sick leave and/or family leave wages are not qualifying wages.
- An employee included in the calculation of the Work Opportunity Credit may not be included for purposes of the ERC.
- Qualifying wages also include health plan expenses paid by the employer or those that are paid by the employee on a pre-tax basis. However, the total of health plan expenses and qualifying wages cannot exceed $10,000 per employee for the year.

Tax Credits & Deferrals

Employee Retention Credit (ERC)

Calculation of ERC

- Once it is determined that you are an eligible employer and you are paying qualifying wages, the credit is equal to 50% of the qualifying wages up to $10,000 per employee for the year for a maximum credit of $5,000 per employee for the year.
- The refundable credit is calculated on a quarterly basis

Tax Credits & Deferrals

Employee Retention Credit (ERC)

Calculation of ERC

The ERC may be claimed in several ways.

- Reducing payroll tax deposits in anticipation of the credit
- Filing Form 7200 in advance of the close of the quarter
- When Form 941 is filed on a quarterly basis
- Using Form 941-X if the credit is determined later
  - Example, Employer Z is an eligible employer that averaged fewer than 100 full-time employees during 2019 and experienced a significant decline in gross receipts in the 2^{nd} quarter of 2020. Z paid the following wages during April of 2020.

EMPLOYEE 1	EMPLOYEE 2	EMPLOYEE 3	EMPLOYEE 4	EMPLOYEE 5
$8,000	$12,000	$10,000	$9,000	$15,000

Qualifying wages for the ERC are $47,000 (wages in excess of $10,000 per employee do not qualify). Therefore, the ERC is $23,500 ($47,000 * 50%). Federal payroll tax deposits (employer and employee share of Social Security and Medicare tax deposits plus federal income tax withholdings) made for employees is $16,000. Assuming Z did not reduce its payroll tax deposits, Z may either file Form 7200 to receive an advance payment of the credit or Z may wait and claim the credit when the 2^{nd} quarter payroll tax return (Form 941) is filed in July of 2020. If Z fails to claim the credit on the 2^{nd} quarter Form 941, Z may later file Form 941-X to claim the credit.

NOTE – if Z had reduced its payroll tax deposits to zero in anticipation of the credit, the additional $7,500 to which Z was entitled could be claimed by filing Form 7200 before 7/1/20, filing Form 941 by 7/31/20 or filing Form 941-X after 7/31/20.

Tax Credits & Deferrals

Deferral of Employment Tax Deposits

- CARES Act provides that the employer’s portion of Social Security taxes may be deferred.
- Employers may not defer the employer’s portion of Social Security taxes that are due after the employer receives a decision from the lender that a PPP loan has been forgiven.
- The deferral applies to deposits that would otherwise be required to be made between 3/27/20 and 12/31/20.

Tax Credits & Deferrals

Deferral of Employment Tax Deposits

- The employer's portion of the Social Security taxes may be deferred until the following dates without incurring a failure to pay or failure to deposit penalties.
  - To 12/31/21, 50% of the deferred amount, and
  - To 12/31/22, the remaining amount
- The deferral also applies to a self-employed individual's 50% of the Social Security portion of self employment tax.
  - No estimated tax penalty for the portion of a self-employed individual's deferral

Tax Credits & Deferrals

Deferral of Employment Tax Deposits

- Deferral of the employer's portion of Social Security taxes may be made before considering paid leave credits or the ERC.
  - Example, In the 2nd quarter of 2020 Employer XYZ pays emergency sick leave of $2,000 for which it is entitled to a $2,000 credit. XYZ also pays qualifying wages and is entitled to a $18,000 ERC. Finally, XYZ's total federal payroll taxes (employer and employee share of Social Security and Medicare taxes and federal income tax withholdings) is $20,000, of which $6,000 is XYZ's share of Social Security taxes. First, XYZ may defer the $6,000 in payroll taxes to 12/31/21 and 12/31/22. The remaining $14,000 may be used to claim the other payroll tax credits by shorting the payroll tax deposits or making the deposits and claiming an advance of the credit by filing Form 7200 or Form 941 in July of 2020.

Tax Credits & Deferrals

Individual Updates

- Early withdrawals from retirement plans
- Additional retirement plan distributions available
- Participant loans from retirement plans
- Waiver of required minimum distributions
- Recovery rebates
- Charitable Contribution Changes
  - Allowance for partial above-the-line deduction for charitable contributions
- Modification of limitation on losses for individuals
- Changes to NOLs

Tax Credits & Deferrals

Business Updates

- Employee Retention Credit (ERC)
- Deferral of employer payroll taxes
- Changes to mandated paid leave
- Employer payment of employee student loans
- Changes to NOLs
- Changes to AMT Credit refunds
- Changes to limitations on deductibility of business interest expense
- Changes to depreciation for qualified improvement property

Main Street Business Lending Program

- Established in the CARES Act to provide access to financing for businesses that were in good financial standing prior to the COVID-19 crisis.
- Provides 4-year loans to businesses that meet one of the following:
  - Employs up to 15,000 employees, or
  - Has less than $5 billion in 2019 gross revenue

Main Street Business Lending Program

- The loans have the following features:
  - Unsecured 4-year term loan
  - Originated on or after 4/24/20
  - Principal and interest payments are deferred for one year
  - Adjustable rate of LIBOR (1 or 3 months), plus 300 basis points
  - Minimum loan size of $500K
  - Maximum loan size is the smaller of:
    - $25 million or
    - Loan amount, when added to borrower's existing undrawn debt, does not exceed 4x (or 6x based on the loan type) borrower's 2019 EBITDA
  - Prepayment allowed without penalty
  - Borrowers with PPP loans are not disqualified
  - Loans are not forgivable

Main Street Business Lending Program

- Borrowers must attest to the following:
  - Loan proceeds will not be used to repay other loan balances or other debt of equal or lower priority unless the eligible borrower has repaid the eligible loan in full.
  - The borrower will not cancel or reduce any existing lines of credit with the eligible lender or any other lender.
  - That it requires financing due to the COVID-19 pandemic and that it will use loan proceeds to make reasonable efforts to maintain payroll and retain employees during the term of the loan.
  - Loan proceeds do not exceed 4x (or 6x based on the loan type) 2019 EBITDA.
  - Must follow compensation, stock repurchase, and capital distribution restrictions under Title IV in the CARES Act. Pass-through entities may make tax distributions.

THANK YOU

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