

TAX AND PPP PROVISIONS OF THE EMERGENCY CORONAVIRUS RELIEF LEGISLATION

David S. De Jong, LL.M., CPA
(301) 838-3204 direct
ddejong@steinsperling.com

Mark W. Schweighofer, LL.M.
(301) 838-3233 direct
mschweighofer@steinsperling.com



STEIN SPERLING

BENNETT • DE JONG • DRISCOLL PC

ATTORNEYS AT LAW

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Part One Tax Provisions

the Taxpayer Certainty & Disaster Tax Relief Act of 2020, part of PL 116-260,
the Consolidated Appropriations Act, 2021:

EMPLOYER PAYMENT OF STUDENT LOANS

The exclusion on employer payment of student loans of up to \$5,250 per year as part of an educational benefit plan is extended through 2025.

FINANCIAL AID GRANTS

Financial aid grants under the CARES Act are made excludable from the income of university students and their receipt does not affect eligibility for either the American Opportunity or Lifetime Learning tax credit.

RELIEF FROM INDEBTEDNESS

The exclusion from gross income on discharge of acquisition indebtedness on a principal residence is extended through 2025, irrespective of insolvency, but a change reduces the maximum exclusion effective 2021 from \$2 million to \$750,000.

EDUCATION EXPENSES

The above the line deduction for qualified education expenses is repealed and replaced after 2020 with higher phaseout limits on the lifetime learning credit of \$58,000-\$80,000 (double for joint filers) of modified adjusted gross income.

PERSONAL PROTECTIVE EQUIPMENT

Personal protective equipment and other supplies for the prevention of COVID, if purchased after March 11, 2020, are eligible for the above the line deduction for educator expenses.

VOLUNTEER FIRST RESPONDERS

The exclusions of up to \$50 per month for reimbursement payments to volunteer first responders and for any state or local tax benefit are made permanent.

MEDICAL EXPENSES

A restoration of the 7½ percent floor on medical expenses as an itemized deduction is made permanent.

FLEXIBLE SPENDING PLANS

Flexible spending plans are permitted to make arrangements for the carryover of unused 2020 and 2021 amounts to the succeeding year, can raise the maximum age for eligible dependents from 12 to 13 for 2020 and may permit midyear prospective changes in elections during 2021.

MORTGAGE INSURANCE PREMIUMS

The treatment of mortgage insurance premiums (PMI) as home mortgage interest is extended through 2021 but phased out for those with adjusted gross income between \$100,000 and \$109,000.

INDIVIDUAL CHARITABLE CONTRIBUTIONS

The 100 percent of adjusted gross income limitation on charitable contributions by itemizers is extended through 2021 and the \$300 limit for married itemizers is doubled for 2021 and restructured so that deduction do not reduce AGI.

REFUNDABLE TAX CREDIT

A new \$600 per person refundable tax credit per family member is created but phased out at \$5 per additional \$100 of income over a \$75,000 modified adjusted gross income level for singles, \$112,500 for heads of household and \$150,000 on joint returns with advance payments generally based on 2019 MAGI; nonfilers with social security or disability income will also receive advance payments.

QUALIFIED ENERGY IMPROVEMENTS

The lifetime credit of \$500 for the purchase of nonbusiness qualified energy improvements to a principal residence is extended through 2021.

WITHDRAWALS FROM RETIREMENT PLANS

The penalty-free withdrawals permitted through 2020 from certain retirement plans with recontribution possible through 2022 will apply to money purchase pension plans as well as profit sharing plans as the result of a clarification.

RETIREMENT PLAN TERMINATIONS

Deemed plan terminations are precluded if the number of active participants on March 31, 2021 is at least 80 percent of the number as of March 13, 2020.

PPP & EIDL LOAN EXPENSES

The expenses paid with forgiven PPP loans and EIDL loans are clarified as deductible and the basis of business assets and other attributes are unaffected by forgiveness.

BUSINESS MEALS

The 100 percent deduction is restored for business meals “provided by a restaurant” and paid or incurred in 2021 and 2022.

CORPORATE CHARITABLE CONTRIBUTIONS

C corporations are allowed to deduct charitable contributions up to 25 percent of tentative taxable income for 2021 as in 2020.

NET OPERATING LOSS CARRYBACKS

Farmers are allowed to elect a two-year net operating loss carryback instead of the five-year carryback created by the CARES Act and, accordingly, an election to waive the carryback may be revoked.

LIFE INSURANCE

A floating interest rate is created for determining whether a life insurance policy qualifies as a “life insurance contract” effective for contracts entered into after 2020.

EMPOWERMENT ZONE INCENTIVES

The empowerment zone tax incentives are extended through 2025 but increased expensing and capital gains tax deferrals after 2020 are eliminated.

EMPLOYEE RETENTION TAX CREDIT - CHANGES

The employee retention tax credit is extended through June 30, 2021, increasing the credit rate from 50 to 70 percent, allowing advance payments, reducing the required gross receipts decline from 50 to 20 percent, increasing creditable wages from \$10,000 per year to \$10,000 per quarter and changing from 100 to 500 the maximum number of employees a business can have and still claim the credit for workers still on the job.

EMPLOYEE RETENTION TAX CREDIT - CLARIFICATIONS

- Employers receiving PPP loans remain eligible retroactively for the employee retention tax credit as to wages not paid for with forgiven PPP money.
- Health benefits are considered wages even when no other compensation is paid to an employee.

PAID SICK AND FAMILY LEAVE – 2020 ACT

The refundable payroll tax credit for paid sick and family leave, originally in the Families First Coronavirus Response Act, is extended for an additional calendar quarter through March 2021.

PAID FAMILY & MEDICAL LEAVE – 2017 ACT

The 12½ to 25 percent credit for paid family and medical leave which was part of the Tax Cuts and Jobs Act of 2017 is extended through 2025.

WORK OPPORTUNITY CREDIT

The Work Opportunity Credit is extended through 2025.

EMPLOYEE PORTIONS OF SOCIAL SECURITY

The repayment period on deferred employee portions of social security is spread out through December 31, 2021 (instead of April 30, 2021) with penalties and interest accruing thereafter.

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Part Two PPP Round 2

What you need to know

PPP LOAN - OVERVIEW

- The purpose of the PPP loan is to create a source of funds to allow businesses to keep their workforce employed and paid at a substantially similar level as before the COVID-19 crisis began.
- Eligible businesses can receive PPP loans equal to 2.5 times their average monthly payroll costs, not to exceed \$10 million.
- Businesses are eligible for forgiveness of up to 100% of the loan proceeds that are used for prescribed purposes within a specific timeframe.

PPP LOAN - OVERVIEW

- For PPP loans applied for on or after June 5, 2020, the maturity date of the PPP loan is 5 years; for PPP loans applied for prior to June 5, 2020, there is no automatic extension but the borrower and lender are permitted to extend by mutual agreement.

PPP LOAN - OVERVIEW

- Since its enactment on March 27, 2020, the **CARES Act** has been modified by the **Paycheck Protection Program Flexibility Act of 2020**, enacted June 5, 2020 (the “Flexibility Act”), Bill S. 4116 (enacted July 4, 2020), and all subsequent Small Business Administration (“SBA”) and U.S. Treasury (“Treasury”) guidance in the form of interim final rules and amendments thereto, FAQs and SBA PPP loan forgiveness applications and instructions.

PPP LOAN - ECONOMIC AID TO HARD-HIT SMALL BUSINESSES, NONPROFITS & VENUES ACT

- Signed December 27, 2021 as part of Government's ongoing response to COVID-19 pandemic
- Reauthorized over \$284 Billion of additional PPP funding
- Expands expenses that will be eligible for forgiveness
- Allows certain businesses to apply for a second PPP loan
- Clarifying certain procedural issues, including deductibility of PPP expenses and authorizing a simplified forgiveness application for smaller loans

PPP LOAN – ELIGIBILITY

- Eligible Businesses (original rules):
- U.S. businesses in operation prior to February 15, 2020 (change in ownership generally will not bar eligibility)
 - For-profits, including self-employed individuals, independent contractors, sole proprietors
 - Non-profits; faith-based organizations
 - Tribal groups
 - Veteran groups
- 500 or fewer employees (CARES Act/SBA affiliation rules)

PPP LOAN – ELIGIBILITY

- Eligible Businesses (Modified by the Act):
- Expanded the base of eligible borrowers to include:
 - Housing cooperatives (300 employee cap)
 - Certain news organizations with NAICS code of 51110 (Newspapers) or 5151 (Broadcast radio and TV) — note — it appears digital media is not covered
 - 501(c)(6) organizations (300 employee cap and subject to rules with respect to lobbying receipts/expenses)
 - Seasonal Employers
 - Considered in business as of February 15, 2020 if the business was in operation for any 12 week period between May 1, 2019 and September 15, 2019

PPP LOAN – ELIGIBILITY

- Ineligible Businesses (original rules):
- Types of businesses that are ineligible for PPP loans include the following:
 - Lobbying firms
 - Lenders
 - Insurance companies
 - Hedge funds
 - Private equity firms

PPP LOAN – PERMISSIBLE EXPENDITURES

- Businesses can only spend PPP loan proceeds on the following business expenses:
 - Certain payroll cost (which include certain retirement plan contributions and group health premiums paid by the employer);
 - Mortgage interest payments (but not for mortgage prepayments or principal payments);
 - Rent payments under a lease agreement entered into on or before February 15, 2020;
 - Utility payments with suppliers under agreements entered into on or before February 15, 2020;
 - Interest payments on any other debt obligations that were incurred before February 15, 2020; and/or
 - Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

PPP LOAN – FORGIVENESS

- Forgivable expenditures are a subset of the overall permissible PPP loan expenditures and consist of the following:
 - Payroll costs;
 - Mortgage interest payments (but not for mortgage prepayments or principal payments);
 - Utility payments with suppliers under agreements entered into on or before February 15, 2020; and
 - Rent payments under a lease agreement entered into on or before February 15, 2020.

PPP LOAN – FORGIVENESS

- The Act expanded the list of permissible and forgivable expenses:
 - Covered Operational Expenditure
 - Covered Property Damage Costs
 - Certain Worker Protection Expenditures
 - Certain Supplier Costs

PPP LOAN – PERMITTED EXPENDITURES

- Covered Operational Expenditures:
 - Expenses for business software/cloud computing that facilitates operations, service/product delivery, payment processing, tracking payroll/human resource expense, sales and billing, inventory systems, etc.

PPP LOAN – PERMITTED EXPENDITURES

- Covered Property Damage Costs:
 - Costs, not covered by insurance, to repair property damage/vandalism incurred in 2020 in connection with public disturbances

PPP LOAN – PERMITTED EXPENDITURES

- Covered Worker Protection Costs:
 - Costs, including capital expenditures, incurred to adapt the business environment to comply with requirements or guidelines established by HHS, CDC, OSHA as well as state and local governments. Runs from March 1 through the expiration of the national emergency. Items include
 - Drive through window;
 - Sneeze guards and other barriers;
 - Ventilation systems

PPP LOAN – PERMITTED EXPENDITURES

- Supplier Costs:

- Amounts paid by a business to supply goods which are (a) essential to the operations of the business; (b) pursuant to a contract/purchase order that is (i) in effect prior to the covered period of the PPP loan and (ii) with respect to goods subject to spoilage (restaurants), in effect before or at any time during the covered period
 - More guidance to come

PPP INCREASED LOAN AMOUNT

- Under the Act, borrowers that have not yet received loan forgiveness may request an increased loan amount to account for the changes under the Act if:
 - The borrower returned a portion of its PPP funds; or
 - The borrower took less than the amount allowed

SECOND PPP LOAN PROGRAM

- The Act permits certain borrowers to receive a second draw of PPP funding depending on circumstances.

SECOND PPP LOAN PROGRAM

- Eligible borrowers are generally the same with some exceptions including:
 - Any business who received a grant under the “Save Our Stages” portion of the Act
 - Professional Sports Leagues
 - Political Organizations
 - Any business where the President, VP, department head or member of Congress (or the spouses of such person) holds a controlling interest, directly or indirectly

SECOND PPP LOAN PROGRAM

- Eligible borrowers are generally the same with some exceptions including:
 - Any business that is owned, directly or indirectly, 20% or more by an entity created in the People's Republic of China or the Special Administrative Region of Hong Kong
 - Any business that has a director who is a resident of the People's Republic of China

SECOND PPP LOAN PROGRAM

- Eligible borrowers are generally the same with some exceptions including:
 - Any Businesses that are required to submit a registration statement under Section 2 of the Foreign Agents Registration Act

SECOND PPP LOAN PROGRAM

- Other eligibility criteria:
 - Must have received a PPP loan, and on or before the disbursement of the second loan, have used the full amount of the original PPP on eligible expenses
 - Have 300 employees or less (this is different from 1st time borrowers)

SECOND PPP LOAN PROGRAM

- Other eligibility criteria:
 - Be able to demonstrate a decrease in gross receipts of at least 25% in any quarter of 2020 as compared to the same quarter in 2019
 - Forgiven PPP funds not considered gross receipts
 - Businesses that were not in business for some/all 2019 (but that were operational by February 15, 2020) may select alternative periods in 2020

SECOND PPP LOAN PROGRAM

- Other eligibility criteria:
 - Limitation on amount
 - Calculated in a similar fashion (2.5X average monthly payroll (using 2019 or 2020) not to exceed \$2 million. But:
 - Borrowers with NAICS Code 72 (Hospitality) calculate their amount based on 3.5X average monthly payroll, provided, that the \$2 million cap continues to apply

SECOND PPP LOAN PROGRAM

- Other eligibility criteria:
 - Note, all borrowers receiving a second draw must still certify that the “current economic uncertainty makes this loan request necessary to support ongoing operations...”
 - Borrowers who rely on a reduction in 2020 Q1/Q2 receipts as compared to 2019 Q1/Q2 should anticipate additional scrutiny

SECOND PPP LOAN PROGRAM

- SBA Portal for second draws opened on January 13, 2021
 - Application here: <https://www.sba.gov/sites/default/files/2021-01/PPP%20Second%20Draw%20Borrower%20Application%20Form%20%281.8.2021%29-508.pdf>
 - Note lenders may require additional/different information

SECOND PPP LOAN PROGRAM

- Generally same information required (proof of payroll costs, payroll records, etc.)
 - Note: If using same lender and if first draw loan was based on 2019 payroll, no additional documentation may be required
 - Can also use 2020 payroll

SECOND PPP LOAN PROGRAM

- Loans in excess of \$150,000 must show calculation of the business's reduction in gross receipts
 - Bank records, financial statements, tax returns if prepared
- Loans of \$150,000 or less will not be required to submit documentation showing decrease at time of application but will need to provide such information at the time of forgiveness

DEDUCTIBILITY OF EXPENSES AND EIDL GRANTS

- As noted in the prior presentation, expenses paid with PPP funds, even if forgiven, are deductible for federal income tax purposes
 - Note, some states have not followed suit yet
- The CARES Act reduced the forgiveness amount by the amount of any economic injury disaster loan grant; the Act eliminates this so that forgiveness is no longer reduced
 - Retroactive

SIMPLIFIED FORGIVENESS FOR CERTAIN LOANS

- The Act directs the SBA to prepare a simplified forgiveness application for loans of \$150,000 or less:
 - No more than 1 page that requires the borrower to certify
 - The number of employees retained
 - Estimated amount spent on payroll costs
 - Total loan amount
 - Borrower must retain records for 4 years
 - Retroactive, so it applies to original PPP loans as well as new loans moving forward

CHANGES TO COVERED PERIOD

- The Act modifies the rules applicable to the covered period. Under the CARES Act, borrower was required to use an 8 or 24 week covered period with respect to loan forgiveness.
- Under the Act, borrowers are now allowed to choose a covered period between 8 and 24 weeks

INTERIM FINAL RULES

- Addressing PPP Generally:
 - <https://home.treasury.gov/system/files/136/PPP-IFR-Paycheck-Protection-Program-as-Amended-by-Economic-Aid-Act.pdf>
- Addressing Second Draw Loans Specifically:
 - <https://www.sba.gov/sites/default/files/2021-01/PPP%20--%20IFR%20--%20Second%20Draw%20Loans%20%281.6.2021%29-508.pdf>