The CARES Act and Other COVID-19 Developments: An Update for the Tax Professional

in partnership with
The Iowa State Bar Association
April 9, 2020
Schedule

• Paycheck Protection Program
• EIDL Loans
• Employer Retention Credit
• Payroll Deferral
• Families First Coronavirus Protection Act
• Other Tax Provisions
Paycheck Protection Program Loans
Paycheck Protection Program

- Signed into law as part of the CARES Act.
  - Sections 1102 (eligibility & implementation), 1106 (forgiveness)

- Expands Small Business Administration’s section 7(a) loan program to offer 100% federally guaranteed loans to small businesses (and self-employed) struggling because of COVID-19.
  - Adds section 7(a)(36) to Small Business Act.
  - Opens door to businesses not generally eligible

- Program administered by SBA, with loans issued directly through approved lenders
PPP Basics

• $349 billion committed to this program
• Loans issued during the section 1102 “covered period,” February 15, 2020, through June 30, 2020, may be used for payroll and other expenses
• Forgiveness is available for eligible expenses paid during the section 1106 “covered period,” which is the 8-week period beginning on the date the funds are disbursed
• Loan terms for unforgiven portion set by regulations:
  • 1 percent interest
  • Two-year term
  • One loan per borrower
  • e-signatures allowed
  • First come, first served
  • No payments for six months following disbursement
PPP Basics

4/7/2020:

Steven Mnuchin @stevenmnuchin1 · 8h
At the direction of President @realDonaldTrump, I've spoken with @SenateMajLdr, @SenSchumer, @SpeakerPelosi, and @GOPLeader to secure an additional $250 billion for the #PPPLoan program to make sure small businesses get the money they need!

💬 656  🔺 🔻  1.3K  🥳  3.7K

4/9/2020 (9:48 am):

The Associated Press @AP · 4m
BREAKING: Senate Democrats stall President Trump's $250 billion business virus aid package, demanding protections for minority-owned businesses and matching money for health care providers and state and local governments.
WASHINGTON – Pursuant to section 13(3) of the Federal Reserve Act, U.S. Treasury Secretary Steven T. Mnuchin today approved the establishment of a Main Street Business Lending Program and a Municipal Liquidity Facility to support the flow of credit to American workers, businesses, States, counties, and cities impacted by the coronavirus pandemic.

**Mnuchin: Details could come soon for program for midsize businesses**

4/9/2020

Treasury Secretary Steven Mnuchin says he wants to announce details of a lending program for midsize businesses and "get it up and running as soon as we can." The program would target companies too large for small-business loans but too small for assistance designed for major corporations.
PPP Eligibility

• “Small business concerns” (15 U.S.C. section 632)
• Businesses with 500 or fewer employees whose principal place of residence is in the United States
  • Also, businesses that meet the SBA employee-based size standards for the industry in which it operates (may be > 500)
• Following types of businesses also included if they meet size requirements:
  • qualifying tax-exempt nonprofit organizations described in IRC section 501(c)(3)
  • tax-exempt veterans organizations described in IRC section 501(c)(19) of the IRC, and
  • Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act
PPP Eligibility - Employees

- Employees must have principal place of residence in the U.S.
- Lodging and restaurant businesses cannot exceed 500 *per location*.
- Count full-time, part-time, or “other basis” employees for purposes of eligibility.
- Time period for counting employees:
  - May use data either from the previous 12 months or from calendar year 2019.
  - Alternatively, borrowers may elect to use SBA’s usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).
PPP Eligibility - Agriculture

• There is no additional restriction on agricultural businesses applying for PPP loans.

• Although agricultural enterprises have been ineligible for SBA 7(b) loans, section 7(a) has had no such restriction (just a suggestion in the long-time rules to seek options through FSA first).
  • Nor does the statute place a revenue limit on these businesses

• Businesses do not count workers with a principal place of residence outside of the U.S. Nor do they get to include those employees’ wages in payroll costs (H-2A workers).
PPP Eligibility – Agriculture (USDA)

Q: Are agricultural producers, farmers, and ranchers eligible for the Small Business Administration’s Paycheck Protection Program (PPP)?

A: Agricultural producers, farmers, and ranchers with 500 or fewer employees whose principal place of residence is in the United States are eligible.

Farms are eligible if: (i) the farm has 500 or less employees, OR (ii) it fits within the revenue-based sized standard, which is on average annual receipts of $1M.

Additionally, farms can qualify for PPP if it meets SBA’s “alternative size standard.” The “alternative size standard” is currently: (1) a maximum net worth of the business not more than $15 million, AND (2) the average net income Federal income taxes of the business for the two full fiscal years before the date of the application be not more than $5 million.

Q: Are agricultural and other forms of cooperatives eligible for PPP?

A: As long as other eligibility requirements are met, small agricultural cooperatives may receive PPP loans. Other forms of cooperatives may be eligible provided they comply with all other Loan Program Requirements (as defined in 13 CFR 120.10).
PPP Eligibility – Self-Employed

• During the covered period, individuals who “operate under a sole proprietorship or as an independent contractor, and eligible self-employed individuals are eligible”
  • Unclear the distinction among these terms
• “Eligible self-employed individual”:
  • Regularly carries on any trade or business within the meaning of § 1402 and
  • Would be entitled to received paid leave (under FFCRA) during the taxable year if he or she were an employee of an employer other than himself or herself
• Must submit documents to establish the individual as eligible, including payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietorship
PPP Eligibility – Self-Employed (USDA)

Q: How do sole proprietor farmers provide accurate documentation regarding payroll, when they may not take a traditional salary?

A: SBA requires sole proprietors, independent contractors, and other eligible self-employed individuals to provide documentation to its lender that the business was in operation as of February 15, 2020. This documentation may include payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation to its lender, such as bank records, sufficient to demonstrate the qualifying payroll amount.

Documentation options for payroll tax filings include the following:

IRS Form 941 (quarterly wages); IRS Form 944 (calendar year wages); State income, payroll and unemployment insurance filings; QuickBooks; bank repository accounts; and/or internally generated profit and loss statements. However:

- Nonprofit organizations must include IRS Form 990;
- Sole proprietors must include IRS Form 1040 Schedule C;
- Any entity that filed IRS Form 1099-MISC must include this form;
- Seasonal employers must document the period beginning February 15, 2019 through June 30, 2019
PPP Eligibility – Additional Requirement

- Must also have been in operation on February 15, 2020, and either:
  1. had employees for whom you paid salaries and payroll taxes or
  2. paid independent contractors as reported on Form 1099-MISC

- This requirement is found in section 7(a)(36)(F)(ii)(II)(BB) in the statute informing lenders of a borrower’s eligibility requirements.

- Unclear how this requirement applies to the self-employed
  - Interim rule seems to apply it outside of the self-employment context. Need more guidance
PPP Eligibility – Affiliation

• For purposes of the determining the number of employees of an applicant to the Paycheck Protection Program, the applicant is considered together with its affiliates.

• SBA’s existing affiliation exclusions generally apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2) (control or power to control).

• Interim rule establishes four tests:
  1. Affiliation based on ownership (> 50 percent of the concern's voting equity)
  2. Affiliation arising under stock options, etc.
  3. Affiliation based on management
  4. Affiliation based on identity of interest (related parties)
PPP Eligibility – Who is Ineligible?

• Engaged in any activity that is illegal under federal, state, or local law;
• Household employer (individuals who employ household employees such as nannies or housekeepers);
• 20 percent or more owner of employer is incarcerated, on parole, subject to criminal indictment or convicted of a felony within the last five years; or
• Any business owned or controlled by them has ever obtained a direct or guaranteed loan from SBA or any other federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government
  • 13 CFR §120.110 exclusions (other non-profits, passive landlords, financial businesses, life insurance companies)
PPP Loan – Maximum Amount

- During the covered period, the loan amount is the lesser of:
  - $10,000,000 or
  - 250 percent of the average monthly “payroll costs” (prior twelve months or 2019 calendar year), plus any refinanced EIDL received after January 31, 2020

- Those not in business between February 15, 2019, and July 31, 2019 calculate average monthly payroll costs based upon the period beginning January 1, 2020, through February 29, 2020.

- Seasonal employers may calculate the average monthly payroll costs based on the 12-week period between February 15, 2019 and June 30, 2019, or, alternatively, from March 1, 2019 through June 30, 2019.
PPP Loan – “Payroll Costs”

- Salary, wages, commissions, and similar compensation
- Payment of cash tips or equivalent
- Payment for vacation parental, family, medical, or sick-leave
- Allowance for dismissal or separation
- Payment required for group health care coverage, including insurance premiums and retirement
- Payment of state or local tax assessed on employee compensation
- For an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment or similar compensation (in an amount <= $100,000 in one year)

**Note:** Interim rule states that payments to independent contractors do not count as employees for purposes of calculation because they have the right to apply for a PPP loan themselves.
PPP Loan – NOT Payroll Costs

• Compensation of an individual employee in excess of an annual salary of $100,000, as prorated for the covered period
• Federal employment or withholding taxes imposed during the covered period
• Compensation to an employee whose principal residence is outside of the U.S.
• Qualified sick leave for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (other sick leave qualifies (FAQ number 8)
• Qualified family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act
PPP Loan – Payroll Reductions

• **FAQ #16**: Payroll costs are *not reduced* by taxes imposed on an employee and required to be withheld by the employer, and payroll costs *do not include* the employer’s share of payroll tax.

  • This interpretation applies for loan qualification, loan use, and loan forgiveness purposes.

• **FAQ #7**: Only cash compensation, not non-cash benefits, such as health benefit plan or retirement compensation, in excess of $100,000 must be excluded from payroll costs.
PPP Loan – Allowable Uses

• During the covered period, recipients may use the proceeds of a covered loan for the following purposes:
  • Payroll costs
  • *Costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums*
  • *Employee salaries, commissions, or similar compensation (the interim rule does not separately list this provision as the statute had)*
  • Payments of interest on any mortgage obligation (not including prepayments or the payment of principal)
  • Rent (including rent under a lease agreement)
  • Utilities
  • Interest on any other debt obligations that were incurred before the covered period (February 15, 2020).
PPP Loan – Allowable Uses

• The interim rule added the requirement that 75 percent of the PPP loan proceeds be used for payroll costs.

• For purposes of determining percentage of use, the amount of any refinanced EIDL will be included.

• For purposes of loan forgiveness, the borrower will have to document the proceeds used for payroll.
PPP Loan – Misuse

• If PPP funds are used for unauthorized purposes, SBA will require the borrower to repay the loan, and the borrower may be subject to additional liability, such as charges for fraud.
PPP Loan – Applications

- Potential borrowers must file their applications with an SBA-approved lender.
- A lender approved to make loans under the program shall be deemed to have been delegated authority by the SBA Administrator to make and approve covered loans, without separate SBA approval.
- In evaluating the eligibility of a borrower for a covered loan, a lender shall consider
  - whether the borrower was in operation on February 15, 2020, and
    - had employees for whom the borrower paid salaries and payroll taxes or
    - paid independent contractors, as reported on a Form 1099-MISC.
PPP Loan – Applications

When can I apply?

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.
Those applying for a covered loan must make a good faith certification that:

- The uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations,
- That the funds will be used to retain workers and pay eligible expenses,
- That the applicant does not have an application pending for another loan for the same purpose, and
- That for the period beginning on February 15, 2020, and ending on December 31, 2020, the eligible recipient has not received amounts under the program for the same purpose.
PPP Loan – Application Certifications

CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by initialing next to each one:

_____ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.

_____ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

_____ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

_____ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant’s payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

_____ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

_____ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.

_____ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan
PPP Loan – Additional Lenders

• The law extends the authority to make Paycheck Payment Program loans (but not other SBA loans) to additional lenders determined by the SBA Administrator and the Secretary of the Treasury to have the necessary qualifications to process, close, disburse, and service loans made with the guarantee of the SBA.

• Lenders authorized to make covered loans are eligible to be reimbursed from the SBA Administrator at a rate of (based on the balance of the financing outstanding at the time of disbursement of the covered loan):
  • Five percent for loans of not more than $350,000
  • Three percent for loans of more than $350,000 and less than $2,000,000, and
  • One percent for loans of not less than $2,000,000
Prioritization of Loans - "Sense of the Senate"

- It is the sense of the Senate that the Administrator should issue guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals, women, and businesses in operation for less than 2 years.
Prioritization of Loans - "Sense of the Senate"

Steven Mnuchin @stevenmnuchin1 · Apr 3
UPDATE #PPPlan now over $875,000,000 processed almost all from community banks! Big banks taking applications and will submitting them shortly. @SBAgov @USTreasury #CARESAct #SmallBizRelief 💚

💬 852  🔁 1.6K  💖 4.2K
PPP Loan – Loan Forgiveness

• Section 1106 outlines the loan forgiveness available for “covered loans.”

• Generally, a borrower is eligible for loan forgiveness on a covered loan in an amount equal to the sum of eligible costs incurred and payments made during the “covered period” (8-week period beginning on the date of the origination of a covered loan).

20. **Question:** The amount of forgiveness of a PPP loan depends on the borrower’s payroll costs over an eight-week period; when does that eight-week period begin?

   **Answer:** The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.
PPP Loan – Loan Forgiveness

- Payroll costs (as defined in the above section)

- Any interest payment on any “covered mortgage obligation” (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) (notice this does not include other interest)

- Payment of any covered rent obligation

- Covered utility payments
PPP Loan – Loan Forgiveness

• “Covered mortgage obligation” means an indebtedness or debt instrument incurred in the ordinary course of business that (a) is a liability of the borrower, (b) is a mortgage on real or personal property, and (c) was incurred before February 15, 2020.

• “Covered rent obligation” means rent obligated under a leasing agreement in force before February 15, 2020.

• “Covered utility payment” means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.
PPP Loan – Loan Forgiveness

- The amount of forgiveness can be up to the full principal amount of the loan and any accrued interest if:
  - Borrower uses all loan proceeds for forgivable purposes
  - Employee and compensation levels are maintained (discuss later)
  - Not more than 25 percent of the proceeds were used for non-payroll costs
    - Rule says that this regulatory requirement ensures that finite program resources are devoted primarily to payroll.
PPP Loan – Loan Forgiveness

Reduction in Number of Employees:

- Loan forgiveness is reduced by multiplying the *presumed forgiveness amount* by (the average full-time equivalent employees (FTEs) during the covered period ÷ average FTEs for the period from February 15, 2019 through June 30, 2019 or January 1, 2020 through February 29, 2020, at the election of the borrower). (Special rules apply to seasonal employers)

- No reduction of employees, no reduction in forgiveness

- Need guidance on forgiveness provisions
PPP Loan – Loan Forgiveness

Salary and Wage Reduction:

- Loan forgiveness is reduced by any reduction in total salary or wages of any employee during the covered period that is in excess of 25 percent of the total salary or wages during the most recent full quarter during which the employee was employed before the eight-week coverage period (FTE).
  - Employees who received, during any single pay period during 2019, wages or salary at an annualized rate of pay in excess of $100,000 are not included in this calculation.
  - Reductions in employees, salaries and wages that occur between February 15, 2020 and April 26, 2020, are disregarded for purposes of the forgiveness reduction as long as the reductions are eliminated by June 30, 2020.
PPP Loan – Loan Forgiveness

- SBA has stated that more guidance on forgiveness is forthcoming.
- It is needed – still many questions, particularly with respect to the self-employed.
PPP Loan – Application for Forgiveness

• Documentation verifying the number of **FTE equivalent employees** on payroll and pay rates, including:
  • Payroll tax filings reported to the IRS and State income, payroll, and unemployment insurance filings
  • Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments
  • A certification that the documentation is true and correct and the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage, make payments on a covered rent obligation, or make covered utility payments
PPP Loan – Impact of Forgiveness

• Forgiveness will not be granted absent required documentation
• Lenders have 60 days to review and make a determination on the forgiveness application
• Lender will be held harmless for decisions made based upon erroneous documentation

• *Forgiven loans will be excluded from gross income of the borrower. The statute does not reference IRC § 108, no indication that tax attributes must be reduced (i.e. keep deduction for wages, etc.?)*
  • Need guidance here
Economic Injury Disaster Loans
EIDL Loan – Basics

• The CARES Act also expanded the ability of SBA to provide section 7(b) small business economic injury disaster (EIDL) loans.
  • These are traditional disaster loans to small businesses.

• Eligible business owners (requirements have been relaxed) may receive an advance on the loan up to $10,000
  • Emergency EIDL grant, supposed to receive in 3 days
  • Used for sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, or repaying obligations that cannot be met due to revenue losses
  • The applicant is not required to repay the advance, even if the business is subsequently denied an EIDL.
  • If receives a PPP loan, $10,000 reduces loan forgiveness available.
  • Available through 12/31/2020
EIDL Loan – Basics

• It appears that SBA is limiting EIDL loan advances to $1,000 per employee, up to $10,000.

• Have not talked anyone who has yet received the advance.
  • 3 day timeline in statute
EIDL Loan – Eligibility

- A business with no more than 500 employees
- Individual who operates under a sole proprietorship or as an independent contractor
- Cooperative with no more than 500 employees
  - Includes “small agricultural cooperatives”
- Employee stock ownership plan (ESOP) with no more than 500 employees
- A tribal small business concern with no more than 500 employees
- A business, including a business with more than 500 employees, that is deemed a small business under the SBA Size Standards
- A private non-profit organization that is granted tax exemption under 501(c), (d) or (e) of the Internal Revenue Code

- Must have been in business on January 31, 2020.
Although it expanded the eligibility of businesses eligible for EIDL loans, the CARES Act did not modify the provision excepting “agricultural enterprises”

- Small agricultural cooperatives are specifically eligible
- Some evidence Congress did not intend to exclude agricultural enterprises
EIDL Loan – Terms

• Up to $2,000,000 (based upon economic injury suffered)

• Interest rate = 3.75% for a small business and 2.75% for a non-profit

• Maximum term is 30 years
  • SBA determines repayment period and monthly payments based upon the applicant’s financial condition

• EIDLs are not forgiven

• Loans with a principal balance > $25,000 must be secured by collateral

• CARES Act waives personal guaranty when EIDL < $200,000
EIDL Loan – Uses

- EIDL may be used for:
  - fixed debts,
  - payroll,
  - accounts payable, and
  - other operating expenses that cannot be paid because of the disaster’s impact.

- EIDL proceeds cannot be used for:
  - expanding business,
  - paying cash dividends or bonuses, or
  - disbursing payments to officers and owners, unless directly related to the performance of services.
EIDL and PPP

- Can apply for both.
  - Funds cannot be used for the same purpose
  - Must carefully document use of funds under both loans
  - If EIDL was used for payroll costs, PPP loan must be used to refinance EIDL
  - EIDL Advance will be deducted from PPP loan forgiveness
  - Can accept PPP first – then decide whether or not to close on your EIDL approved loan
    - Application period for PPP loans runs through June 30, 2020, but the EIDL application period runs through December 2020
- EIDL application is through SBA: https://covid19relief.sba.gov/#/
  - PPP is through lender
Employee Retention Credit
Employee Retention Credit

- **Not allowed if business receives a PPP loan** / Can’t count Work Opportunity Credit wages
- Section 2301 of the CARES Act allows “eligible employers” a **refundable payroll tax credit** equal to **50 percent of qualified wages paid to each employee for each calendar quarter during the COVID-19 crisis.**
  - Applies to qualified wages paid after March 12, 2020, and before January 1, 2021
- The qualified wages which may be taken into account **cannot exceed $10,000 per employee for all quarters** (maximum credit is $5,000)
- The credit is allowed against applicable employment taxes (6.2% employer’s share) on the qualified wages (reduced by any credits taken under the Families First Coronavirus Response Act), but balance is refundable.
ERC – Eligible Employers

• Those employers (including non-profit employers) whose businesses were fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19 (no size limit) OR
• Those employers that experienced a “significant decline in gross receipts” for a given calendar quarter
  • An employer becomes an “eligible employer” under the “significant decline in gross receipts” test during the first calendar quarter for which gross receipts for that quarter are less than 50 percent of gross receipts for the same calendar quarter in the prior year.
  • The eligibility period ends in the calendar quarter following the first calendar quarter in which gross receipts are greater than 80 percent of gross receipts for the same calendar quarter in the prior year.
ERC – Qualified Wages

• The definition of "qualified wages" depends upon the size of the employer:
  • Eligible employers that had an average of 100 or fewer full-time employees in 2019 may take the credit for all employee wages, whether or not the employee was furloughed.
  • For eligible employers with more than 100 average employees in 2019, the employer may take the credit only for the wages of employees who were actually furloughed or placed on reduced hours because of a business closure or reduced gross receipts.
    • The definition of "qualified wages" includes the cost of health benefits.
ERC – Fully Refundable (IRS Example)

• Eligible Employer pays $10,000 in qualified wages to Employee A in Q2 2020. The Employee Retention Credit available to the Eligible Employer for the qualified wages paid to Employee A is $5,000.
• This amount may be applied against the employer share of social security taxes that the Eligible Employer is liable for with respect to all employee wages paid in Q2 2020.
• Any excess over the employer’s share of social security taxes is treated as an overpayment and refunded to the Eligible Employer after offsetting other tax liabilities on the employment tax return and subject to any other offsets under section 6402(a) of the Code.
ERC – No Penalty under Section 6656

- The Eligible Employer paid qualified wages to its employees in the calendar quarter before the required deposit,
- The amount of federal employment taxes not timely deposited (reduced by any FFCRA credit amounts), is less than or equal to the anticipated ERC Credit, and
- The Eligible Employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to any portion of the anticipated credits it relied upon to reduce its deposits.

- See IRS Notice 2020-22.
ERC – Form 7200

- Because quarterly returns are not filed until after qualified wages are paid, some employers may not have sufficient federal employment taxes set aside for deposit to the IRS to fund their qualified wages.
- Accordingly, the IRS has established a procedure for obtaining an advance of the refundable credits.
- Employer must first reduce its remaining federal employment tax deposits for wages paid in the same calendar quarter by the maximum allowable amount.
  - If the anticipated credit for the qualified wages exceeds the remaining federal employment tax deposits for that quarter, the Eligible Employer can file a Form 7200, Advance Payment of Employer Credits Due to COVID-19, to claim an advance refund for the full amount of the rest of the credit.
ERC – Form 7200 (IRS Example)

• An Eligible Employer paid $20,000 in qualified wages, and is entitled to a credit of $10,000, and is otherwise required to deposit $8,000 in federal employment taxes, including taxes withheld from all of its employees, on wage payments made during the same calendar quarter.
• The employer has no paid sick or family leave credits under the FFCRA. The Eligible Employer can keep the entire $8,000 of taxes that the Eligible Employer was otherwise required to deposit without penalties as a portion of the credits it is otherwise entitled to claim on the Form 941. The Eligible Employer may file a request for an advance credit for the remaining $2,000 by completing Form 7200.
Delayed Payment of Payroll Taxes
Delayed Payroll Taxes

• Cannot take advantage of this provision if take advantage of PPP loan forgiveness

• Section 2302 of the CARES Act allows employers to *temporarily defer* payment of the *employer’s portion* of social security and RRTA payroll taxes (6.2%).
  • It provides the same opportunity to self-employed individuals for ½ of the self-employment tax.

• The requirement to deposit these taxes is delayed through the end of 2020. The delayed taxes must then be repaid in two equal installments, one due by December 31, 2021, and the other due by December 31, 2022.
  • Use caution regarding the future balloon payment!
Families First Coronavirus Response Act
Families First Coronavirus Response Act

- H.R.6201, Effective April 1, 2020
- Temporary expansion of FMLA
- The law requires most private employers with fewer than 500 employees to provide emergency paid sick leave (Emergency Paid Sick Leave Act) and emergency paid family and medical leave (Emergency Family Medical Leave Expansion Act) to their employees for coronavirus-related absences.
- It also creates a corresponding refundable paid sick leave credit and paid child care leave credit for these employers.
FFCRA – Sick Leave

- For COVID-19-related absences, employers with fewer than 500 employees must provide employees with **up to 80 hours of paid sick leave** (for full-time employees) and expanded paid child care leave when their children's schools are closed or child care providers are unavailable.
FFCRA – Sick Leave

- Private employers with fewer than 500 employees must provide paid sick leave where an employee is unable to work (or telework) because of one of the following circumstances:
  1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
  2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID–19.
  3. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis.
FFCRA – Sick Leave

• Private employers with fewer than 500 employees must provide paid sick leave where an employee is unable to work (or telework) because of one of the following circumstances:
  4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
  5. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
  6. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions.

• Employers of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the sick leave provisions.
FFCRA – Sick Leave

• Full-time eligible employees are entitled to receive two weeks of paid sick leave, up to 80 hours, at 100 percent of their pay.
• Part-time employees are entitled to sick leave in an amount equal to the average number of hours they typically work in a two-week period.
  • For an employee who is unable to work because of reasons 1-3, required sick leave is 100 percent of pay rate, capped at $511 per day and $5,110 in the aggregate.
  • Sick pay for the other eligible reasons (4-6) is at a 2/3 pay rate, capped at $200 per day and $2,000 in the aggregate.
FFCRA – Sick Leave

• An employer may not require, as a condition of providing paid sick time, that the employee search for or find a replacement employee to cover the hours during which the employee is using paid sick time.

• The paid sick time must be available for immediate use by the employee, regardless of how long the employee has been employed by an employer.

• Employers cannot require employees to use other paid leave before taking advantage of the sick leave provided by the Act.

• Employers are required to post notices and will be subject to Fair Labor Standards Act violations if they fail to comply with the law.
FFCRA – Small Business Exemption

- Small businesses with fewer than 50 employees AND
  - Employee’s leave is to care for his or her child whose school or place of care is closed (or child care provider is unavailable), but only if
    - Requirements of the FFCRA jeopardize business viability
FFCRA – Small Business Exemption

- Exemption automatically applies if employer determines:
  - Leave would result in expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity,
  - Employee’s absence would entail a substantial risk to the financial health or operational capabilities of the business because of the employee’s specialized skills, knowledge of the business, or responsibilities, OR
  - Insufficient employees able, willing, and qualified at time and place needed to perform labor or services provided by the employee, and these labor or services are needed for business to operate at a minimal capacity.

- Don’t send anything to the Department of Labor yet. More regulations coming.
FFCRA – Notice

- Poster must be conspicuously posted, may be distributed online, posted on employer website, directly mailed or e-mailed to employees—
  - Does not have to be visible to job applicants
  - DOL Spanish and English FFCRA posters available online at www.dol.gov/agencies/whd
FFCRA – Impact of Layoffs

- Does not apply to any leave prior to April 1.
- If a business closes after April 1, but before leave is taken, FFCRA requirements don’t apply.
- Does not apply to employees who are furloughed or laid off before leave is taken.
Under the Emergency Family and Medical Leave Expansion Act, employers with fewer than 500 employees must provide employees (who have been employed for at least 30 days) with up to 12 weeks of leave for COVID-19-related needs. This leave requirement applies to employees who are unable to work due to a need to care for his or her Son or Daughter whose School or Place of Care has been closed, or whose Child Care Provider is unavailable, for reasons related to COVID-19. An Eligible Employee has need to take Expanded Family and Medical Leave for this purposes only if no suitable person is available to care for his or her Son or Daughter during the period of such leave.
FFCRA – Family Medical Leave (Expanded)

- The first 10 days of expanded family leave are unpaid, but the employee may receive sick pay during this time.
- After the first 10 days, an employee is eligible to receive paid leave, at 2/3 of the employee’s regular pay.
  - This paid leave is capped at $200 per day or $10,000 in the aggregate.
FFCRA – Paid Sick Leave Credit

- For an employee who is unable to work because of Coronavirus quarantine or self-quarantine or has Coronavirus symptoms and is seeking a medical diagnosis, eligible employers may receive a refundable sick leave credit for sick leave at the employee’s regular rate of pay, up to $511 per day and $5,110 in the aggregate, for a total of 10 days.

- For an employee who is caring for someone with Coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to the Coronavirus, eligible employers may claim a credit for 2/3 of the employee's regular rate of pay, up to $200 per day and $2,000 in the aggregate, for up to 10 days.
  - Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.
In addition to the sick leave credit, for an employee who is unable to work because of a need to care for a child whose school or child care facility is closed or whose child care provider is unavailable due to the Coronavirus, eligible employers may receive a refundable child care leave credit.

- This credit is equal to 2/3 of the employee's regular pay, capped at $200 per day or $10,000 in the aggregate.
- Up to 10 weeks of qualifying leave counts towards the child care leave credit.
  - Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.
FFCRA – Payroll Credit

• Eligible Employers are entitled to receive a credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer’s share of Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020.

• The credit is allowed against the taxes imposed on employers by section 3111(a) of the Internal Revenue Code (the “Code”) (the Old-Age, Survivors, and Disability Insurance tax (social security tax)) and section 3221(a) of the Code (the Railroad Retirement Tax Act Tier 1 rate) on all wages and compensation paid to all employees.
FFCRA – Payroll Credit

• Eligible Employers that pay qualified leave wages will be able to retain an amount of all federal employment taxes equal to the amount of the qualified leave wages paid, plus the allocable qualified health plan expenses and the amount of the employer’s share of Medicare tax imposed on those wages, rather than depositing them with the IRS.
• The federal employment taxes that are available for retention by Eligible Employers include:
  • federal income taxes withheld from employees,
  • the employees’ share of social security and Medicare taxes, and
  • the employer’s share of social security and Medicare taxes with respect to all employees.
FFCRA – Advance Payment of Credit

- If the federal employment taxes yet to be deposited are not sufficient to cover the Eligible Employer’s cost of qualified leave wages, plus the allocable qualified health plan expenses and the amount of the employer’s share of Medicare tax imposed on those wages, the employer will be able file a request for an advance payment from the IRS.

- See IRS Notice 2020-22 regarding suspension of penalty for failure to file employment taxes
FFCRA – Advance Payment of Credit

- Eligible Employers will report their total qualified leave wages and the related credits for each quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return.
- In anticipation of receiving the credits, Eligible Employers can fund qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer’s share of Medicare tax on the qualified leave wages) by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance from the IRS.
  - An Eligible Employer may obtain the Form 7200, Advance Payment of Employer Credits Due to COVID-19, and may fax its completed form to 855-248-0552.
Other Tax Provisions
Economic Impact Payments

• Law calls them “recovery rebates”
  • IRS has named them “economic impact payments”

• $1,200 for eligible individuals, $2,400 for joint filers
  • $500 for qualifying child (< 17 years)
  • Must have social security numbers

• “Eligible individual” does not include:
  • Nonresident aliens, individuals who can be considered dependents, or Estates or trusts

• Phased out by five percent of amount by which taxpayer’s AGI exceeds:
  • $150,000 for joint return filers
  • $112,500 for head of household
  • $75,000 for other taxpayers
Economic Impact Payments

- Should be going out soon.
Economic Impact Payments

• Payment is a “credit against 2020 income,” but is a wholly refundable credit for which no taxable income is required.

• IRS will determine an “advance refund credit” amount for each person by determining the amount that would have been allowed had the rebate credit been part of the law in 2019.
  • If no 2019 return is on file, the IRS calculates the rebate based upon 2018 data.
  • If neither return has been filed, IRS will look at Social Security Benefit Statement to allow a rebate to social security, disability and railroad retirement benefit recipients who were not required to file returns.

• Others may need to file a simple return, details not yet published.
• IRS has not yet released portal through which bank account information can be entered.
Economic Impact Payments

- Reconciliation on 2020 return will be taxpayer friendly:
  - The amount of the 2020 rebate credit will be reduced *(but not below zero)* by the aggregate refunds or credits made or allowable through the advance refund credit.
    - With joint filers, half of each credit is treated as made or allowed to each individual.
      - Helps with divorce
  - Dependent who has become independent in 2020 will get the $1,200 credit when filing 2020 return.
  - Taxpayer who exceeds AGI in 2020, but not 2019, will not have to pay credit back.
  - Given time crunch and way law is written, good chance parents will receive $500 check for children who age out in 2020. (We’ll see!)
Retirement Plan Changes

- Section 2202 of the CARES Act provides that a taxpayer may take up to $100,000 in distributions from a qualified retirement plan without being subject to the 10 percent penalty imposed by IRC § 72(t) if that distribution is “coronavirus-related.”
Retirement Plan Changes

• This includes distributions made on or after January 1, 2020, and before December 31, 2020, to:
  • individuals diagnosed with COVID-19,
  • individuals whose spouse or dependent was diagnosed with COVID-19, or
  • individuals who experience adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to the virus, being unable to work due to the lack of child care due to the virus, or closing or reducing hours of a business owned or operated by the individual due to the virus.

• An individual receiving such a distribution may repay it within three years. In addition, the taxpayer may include the income from the distribution in gross income ratably over a period of three years.
Retirement Plan Changes

• Rules have been relaxed for retirement plan loans (increasing limit from $50,000 to $100,000) and delaying some repayments by one year

• Section 2203 temporarily waives required minimum distributions for 2020
  • This applies to ALL RMD, even those for beneficiaries.
  • If someone already took their RMD, remember the 60-day recontribution.
    • If outside of that window, no relief at this time
Charitable Contribution Changes

• Section 2204 of the CARES Act provides that taxpayers who do not itemize deductions may take an above-the-line deduction on their 2020 return for qualified charitable contributions in an amount not to exceed $300.
  • Some are reading this as a permanent change.

• Section 2205 of the CARES Act temporarily suspends the 60 percent AGI limit for cash charitable contributions that can be deducted by individuals.
  • In 2020, individuals may deduct qualified contributions in an amount up to 100 percent of AGI.

• The deduction limit for cash charitable contributions for corporations is increased for 2020 from 10 percent of taxable income to 25 percent of taxable income for qualified contributions.
  • Qualified contributions do not include those to a donor advised fund.
Student Loan Changes

• Current law allows an employee to exclude from income up to $5,250 of employer payments made under an educational assistance program for the employee’s education.
  • Section 2206 of the CARES Act allows student loan repayments by an employer to be included in qualifying payments under an educational assistance program.
  • In other words, an employee can exclude from income up to $5,250 of student loan payments made on his or her behalf by an employer if no other educational assistance was provided. [Employees may not also take a deduction for the interest on those payments.]

• Other sections of the CARES Act have suspended federal student loan payments through September 30, 2020, and the interest rate has been temporarily set to zero on a number of federal loans.
Net Operating Loss Changes

• Section § 2303(b) of the CARES Act provides that net operating losses arising in tax years **beginning in 2018, 2019, and 2020** are to be **carried back five years**.
  • The Tax Cuts and Jobs Act had eliminated carrybacks for net operating losses arising in businesses other than farming businesses and casualty insurance companies (which were allowed a two-year carryback).
  • The new five-year rule applies to all businesses, including farming businesses and casualty insurance companies.
  • Taxpayers may continue to elect out of the carryback and carry the loss forward during these years. Such elections for taxable years beginning in 2018 and 2019 must be made by the due date (including extensions) for filing the taxpayer’s return for the first taxable year ending after the law was enacted (March 27, 2020).
Net Operating Loss Changes

- Section 2303(a) of the CARES Act temporarily increases the amount of taxable income a net operating loss carryback or carryforward can offset to 100 percent.
  - This taxable income limit was set to 80 percent by the Tax Cuts and Jobs Act.
  - Specifically, net operating loss carryforwards and carrybacks can offset 100 percent of taxable income in tax years arising before 2021, regardless of the year in which they arose.
    - The 80 percent taxable income limitation, however, will be reinstated for tax years beginning after December 31, 2020.
- We will be watching for guidance. Interesting questions with respect to farm NOLs, and IRS may provide streamlined rules for adjustments.
Net Operating Loss - Technical Correction

- The Tax Cuts and Jobs Act provided that the changes to net operating loss carryforwards and carrybacks were effective for “taxable years ending after December 31, 2017.”
  - The committee report, however, stated that the effective date for the changes would be tax years “beginning after December 31, 2017.”
  - As written, fiscal year taxpayers with years ending in 2018 were subject to the new restrictions for their 2017 fiscal year, even if the majority of their tax year was in 2017.
- Section 2303(c) of the CARES Act corrects this error by providing that the modified carryover and carryback provisions apply to net operating losses arising in taxable years beginning after December 31, 2017.
  - Impacted taxpayers have 120 days from the date of enactment to adjust their elections accordingly.
AMT Credits

  - Corporations with AMT credits from prior taxable years could use them as refundable tax credits.
  - The credits were to be used over tax years beginning after 2017 and before 2022.
- Section 2305 of the CARES Act accelerates use of these credits by allowing the full amount of the remaining refundable AMT credit to be available for the corporation’s first taxable year beginning in 2019. The corporation may also elect to use all of its AMT credits in its first taxable year beginning in 2018.
Business Loss Limits Suspended

- The Tax Cuts and Jobs Act enacted an “excess business loss” rule, restricting a noncorporate business taxpayer’s loss to $250,000 ($500,000 in the case of a joint return).
- Section 2304 of the CARES Act temporarily suspends this loss limitation, allowing these taxpayers to deduct excess business losses arising in tax years 2018-2020.
Business Interest Deduction Limit

• The Tax Cuts and Jobs Act generally limited the deduction for business interest to 30 percent of adjusted taxable income for businesses with gross receipts in excess of $26 million (in 2019).
• Section 2306 of the CARES Act temporarily and retroactively increases the business interest deduction limit from 30 percent to 50 percent for taxable years beginning in 2019 and 2020.
  • A special rule applies to partnerships.
Qualified Improvement Technical Correction

- Section 2307 of the CARES Act provides a fix to this error in the Tax Cuts and Jobs Act that left “qualified improvement property” to be 39-year property, not eligible for bonus depreciation.
  - This section modifies IRC § 168(e)(3)(E)(vii) to include “qualified improvement property” as 15-year MACRS property (20-year ADS). Qualified improvement property is thus eligible for bonus depreciation.
  - This amendment is effective for property placed in service after December 31, 2017.
Temporary Exception from Excise Tax

- Section 2308 of the CARES Act waives for calendar year 2020 the federal excise tax on any distilled spirits used to produce hand sanitizers.
Rev. Proc. 2020-23 – April 8, 2020

• Allows eligible partnerships to file amended returns for tax years beginning in 2018 and 2019 using a Form 1065, “U.S. Return of Partnership Income,” and to issue an amended Schedule K-1, “Partner’s Share of Income, Deductions, Credits, etc.,” to each of its partners instead of filing an administrative adjustment request (AAR).
  • Gets around centralized partnership audit regime requirement that partnerships cannot file amended returns.
  • AARs take time, and partners would not see relief until 2021.
  • This allows partnerships to take advantage of relief provisions in CARES Act that allow for amended returns.
  • Must be filed by September 30, 2020
• Does not apply if partnership opted out of centralized partnership audit rules
• Only applies if partnership timely filed 2019 return and distributed K-1s
Filing Delay – Notice 2020-18, 2020-20

- Any person with a Federal income tax return or payment due on April 15, 2020, is eligible for relief under the Notice. Relief is automatic. No forms are filed.
  - “Person” includes any type of taxpayer, such as an individual, a trust, an estate, a corporation, or any type of unincorporated business entity.
  - The payment due refers to both 2019 Federal income tax payments (including payments of tax on self-employment income) and 2020 estimated Federal income tax payments (including payments of tax on self-employment income), regardless of the amount owed.
    - Does NOT apply to forms or payments not due April 15. Does not apply to estimated payments due June 15
    - Does not apply to payroll or excise taxes
    - Does not apply to Form 706 or estate tax payments
    - Does not apply to information returns
    - Notice 2020-20 has provided delay to Form 709 and gift tax payments due April 15
Filing Delay – Notice 2020-18, 2020-20

• If a person already filed return, payment may be delayed until July 15.

• If a person already scheduled a payment, see IRS instructions on https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers.

• Delays deadline for contributions to IRAs, qualified retirement plans, HSAs, Archer MSAs to July 15

• AICPA is asking for much more relief.
  • Wait and see!
Iowa Delay – Order 2020-01

The order extends filing and payment deadlines for income, franchise, and moneys and credits taxes with a due date on or after March 19, 2020, and before July 31, 2020, to a new deadline of July 31, 2020.

Specifically, the order includes:

- IA 1040 Individual Income Tax Return and all supporting forms and schedules
- IA 1040C Composite Return and all supporting forms and schedules
- IA 1041 Fiduciary Return and all supporting forms and schedules
- IA 1120 Corporation Income Tax Return and all supporting forms and schedules
- IA 1120F Franchise Tax Return for Financial Institutions and all supporting forms and schedules
- IA 1065 Iowa Partnership Return and all supporting forms and schedules
- IA 1120S S Corporation Return and all supporting forms and schedules
- Credit Union Moneys and Credits Tax Confidential Report

What does the deadline extension apply to?

The tax returns listed above and any tax due associated with those returns if the due date is on or after March 19 but before July 31 of this year. The extension does not apply to estimated tax payments.
Updating Resources – Ever Changing

- www.calt.iastate.edu
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