

Expanded and Enhanced Tax & Funding Provisions

January 5, 2021

On December 27, 2020, President Trump signed **The Consolidated Appropriations Act of 2021 ("The Act")**. The nearly 6,000 page bill contains several expansions of the Paycheck Protection Program ("PPP") as well as technical corrections regarding the tax implications of both the existing loans and the new "PPP2" loans to be issued shortly. Also included in The Act was the funding package necessary to keep the government open.

PPP Loans

Perhaps of most interest to PPP loan recipients was the issue of whether or not the expenses paid with forgiven PPP loans would be tax deductible. The bill reverses a significant IRS decision from earlier this year to disallow tax deductions for expenses paid with PPP funds. Small business groups worried that businesses would incur vastly higher tax liabilities without the ability to deduct those expenses. Those expenses are now entirely tax deductible which was Congress' original intent.

EIDL Grants

The Act also addresses the Economic Injury Disaster Loan (EIDL) Advance Grants. It ensures that the grants of \$1,000 per employee, up to \$10,000, will remain excluded from taxable income and that expenses paid with those funds are fully deductible. The Act also eliminates the requirement that a borrower's PPP loan forgiveness amount be reduced by any EIDL Advanced Grant.

Another Round of PPP Loans on the Way

The Act includes provisions for a new round of PPP Loans, many are referring to as PPP2. There are additional eligibility requirements for businesses applying for a second loan, including:

- 300 or fewer employees
- A decline in gross receipts of 25% or more in any quarter during 2020 as compared to the same quarter in 2019.
- 501(c)(6) organizations (Chambers of Commerce and similar entities) are now eligible with some limitations.
- Loan amount calculation remains the same at 2.5 times the average monthly payroll, however businesses included in the NAICS Code 72 (hotels, restaurants, and other businesses in the hospitality industry) have their multiplier increased to 3.5 times their average monthly payroll.
- Businesses have some additional flexibility in the calculation of their average monthly payroll, including the chance to utilize 2019, or the 12 months preceding their new loan application.
- The second PPP Loan is capped at a maximum of \$2 million and all loans to all

affiliated entities, from both the first and second round of PPP loans, cannot exceed \$10 million.

Though not explicitly stated in The Act, it is likely that borrowers who apply for a second PPP loan will need to make an additional necessity certification that “the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations.”

Two categories of businesses are specifically excluded:

- Publicly traded companies
- Businesses and organizations not in existence or in operation on 2/15/2020

Loan Forgiveness Requirements

The Act maintains the requirement that to receive full forgiveness a borrower must spend at least 60% of the loan proceeds on forgivable payroll costs. The Act does expand the types of expenses that are considered eligible payroll costs, and created new categories of eligible non-payroll costs. Payroll costs are expanded to include payments for group life, disability, vision and dental insurance premiums.

Non Payroll Costs

Eligible non-payroll costs now include the following:

- Covered operations expenditures (payments for software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses)
- Covered property damage costs (costs related to property damage, vandalism and looting due to public disturbances that occurred during 2020 not covered by insurance)
- Covered supplier costs (amounts paid to a supplier of goods pursuant to a contract, order, or purchase order in effect before the loan disbursement date for the supply of goods that are essential to the operations at the time at which the amounts were paid)
- Covered worker protection expenditures (operating or capital expenditures required to facilitate the adaptation of business activities to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020 and ending on the date on which the COVID-19 national emergency declaration expires).

Forgiveness Applications

Under The Act the SBA has 24 days to create a new simplified one page forgiveness application for loans under \$150,000. Similar to the already released Form 3508S, the new application should only require attestations from the borrower that it complied with all loan requirements, summary information about the borrower, and a forgiveness amount. This will further reduce the administrative burden on more small businesses that are trying to navigate the complex forgiveness applications. Despite a simpler application, the borrower will still need to maintain complete records and substantiation of the forgivable expenses. However, applicants should no longer need to submit the documentation with their forgiveness application.

SBA Compliance Audits

Large PPP loan recipients (loans of \$2 million or more) were already required to be audited with many already receiving Loan Necessity Questionnaires. However, due to the increasing concern of potential fraud throughout the COVID relief efforts, the bar for loans subject to audit is potentially being lowered to as low as \$150,000. The exact metrics that the SBA will be using to determine which loans to audit are still unclear. The Act requires that by February 10, 2021 (45 days after the Act's passage), the Administrator of the SBA submits an audit plan to Congress that details both the policies and procedures that will be followed for auditing PPP loans as well as the metrics that will be used to determine which loans will be subjected to audit.

Other Business Provisions

- Business meals will be a fully deductible expense for two years.
- The Economic Injury Disaster Loan Program (EIDL) has received an additional \$20 billion in funding.
- \$15 billion will fund additional support for live music venues, movie theaters, and museums that have suffered a "significant" revenue loss.

Relief for Individuals

- The Act provides for direct payments of \$600 to each individual, including an additional \$600 for each qualifying dependent child. The income thresholds remain the same - under \$75,000 for individuals and under \$150,000 for couples.
- Weekly unemployment payments will include a federal supplement of \$300 along with expanded eligibility through mid-March.
- Extension of rental assistance including a federal eviction moratorium and expanded low-income housing, earned income, and child tax credits are included in The Act.

As in the past, we expect complex and complicated guidance will be issued on a continuing basis by the SBA and IRS. Please contact your Seigneur Gustafson LLP advisor as questions arise.