

Coronavirus Pandemic

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CARES ACT WEBINAR – BD
4.3.2020
ANALYSIS OF H.R. 748



BARNES DENNIG
Accounting • Tax • Business Insight

PRESENTERS



Scott D. Cress, CPA, CVA, CM&AA

Tax Director

Scott has over 20 years of experience both in and out of public accounting and receives advanced training to help middle-market clients traverse an ever-changing business environment to make informed decisions that align with their long-term strategy.

He helps lead the firm's tax, valuation and mergers & acquisitions service lines.



Cheryl A. Ganim, CPA

Tax Director

Cheryl's expertise in state and local taxation, credits and incentives, and tax research and analysis has helped numerous companies identify and execute state tax planning opportunities, internal best practices, and minimize tax exposure. Her areas of expertise include State Income and Sales Tax nexus, Audit Defense and Analysis, as well as Research & Experimentation Tax Credits, and other tax credits and incentives.

DISCLAIMER

- Please note that the CARES Act, estimated at over \$2.2 trillion, is the most expensive piece of legislation in U.S. history! To add context, it is more than double the cost of FDR's New Deal, even when adjusted for inflation. Given the size, the Act passed in lightning speed. As such, more guidance is needed and being published practically daily. The information presented today is subject to change!
- We encourage you to contact your Barnes Dennig service provider for more information.

YOUR GUIDE TO THE CARES ACT (H.R. 748)



Review of individual & business tax provisions of the CARES Act



Review of the Paycheck Protection Program Loans – SBA 7(a)



Comparison and explanation of SBA disaster and PPA loans



Your questions answered

INDIVIDUAL TAX PROVISIONS

- Enhanced Unemployment Benefits
 - Three new programs
 - Pandemic Unemployment Assistance
 - Pandemic Unemployment Compensation
 - Pandemic Emergency Unemployment Compensation
 - Available for partial employment
 - Federal "kicker" of \$600 / week
 - Expanded to include self-employed, independent contractors

INDIVIDUAL TAX PROVISIONS

- Rebates – advanced payment of 2020 tax credit
 - \$1,200 for single or \$2,400 for married filing jointly plus \$500 for qualifying child under age 17
 - AGI phase out begins at \$75,000 if single, \$112,500 for head of household and \$150,000 if married
 - Phase-out is \$5 for every \$100 that AGI exceeds threshold
 - Credit is an advance on 2020 tax return
 - No pay-back due if 2020 income is higher
 - Will receive short-fall if 2020 income is lower

INDIVIDUAL TAX PROVISIONS

➤ Retirement Plan Relief

- Waives the 10% early distribution penalty on withdrawals up to \$100,000 from qualified retirement accounts for COVID-19 related purposes
 - Income subject to tax over 3 years or you can recontribute over 3 years without regard to income caps
- Suspend Required Minimum Distributions (RMDs) for 2020
- Pension plan funding relief

INDIVIDUAL TAX PROVISIONS

➤ Student Loan Relief

- All payments of principal and interest are suspended
- Employers can provide a student loan repayment benefit tax free to employees. Employers can contribute up to \$5,250 toward an employee's student loans tax free to the employee. The cap is counted against any educational assistance currently provided by the employer. Payments should be made after Feb 27, 2020 and before Jan 1, 2021

➤ Above the line deduction for 2020 charitable contributions up to \$300 and relaxation of other limitations

BUSINESS TAX PROVISIONS

- Employee Retention Payroll Tax Credit
 - Eligibility Requirement 1: operations fully or partially suspended due to shut-down order
 - Eligibility Requirement 2: gross receipts decline by more than 50% compared to same quarter in 2019
 - Credit is against 6.2% (ER share) of Soc Sec taxes
 - Credit is 50% of qualified wages paid
 - Up to \$10,000 of wages (\$5,000 credit) paid from 3/13-12/31/20
 - If more than 100 employees only wages paid to employees not performing services qualifies
 - Credit **NOT** available if utilizing paycheck protection loan or FFCRA credits

BUSINESS TAX PROVISIONS

➤ Delay of Payment – Employer Payroll Taxes

- Employers and self-employed individuals can defer making deposits of the employer share of Social Security taxes for remainder of year
- Medicare tax excluded
- 50% of deferred amount due 12/31/21
- 50% balance due 12/31/22
- Think of it as an interest free loan (and not much else)
- Delay **NOT** available if employer has paycheck protection loan forgiven

BUSINESS TAX PROVISIONS

➤ Interest Deduction Limitation Relief

- Section 163(j) updates: interest expense deduction previously limited to 30% of adjusted taxable income ("ATI") increased to 50% of ATI
- Provides special rule for a partnerships 2019 disallowed interest expense
- Allows for an election to apply 2019 ATI to the 2020 163(j) computation
- Adds complexity to 2019 and 2020 tax returns – consult with your tax advisor

BUSINESS TAX PROVISIONS

➤ Qualified Improvement Property (QIP)

- The fix is finally here!
- Eligible for 100% bonus depreciation
- Retroactive to 2018 – opportunity to amend

➤ Definition:

- QIP is defined as any improvement to an interior portion of a building that is nonresidential real property as long as that improvement is placed in service after the building was first placed in service by any taxpayer

BUSINESS TAX PROVISIONS

- Relaxation of limitations on Net Operating Losses
 - 5-year carry-back now allowed
 - 80% limitation eliminated

- Relaxation of limitations on excess business losses
 - Retroactive to 2018 – amend?

- Accelerates ability to recover Corporate AMT credits

PAYCHECK PROTECTION PROGRAM (PPP)

- Paycheck Protection Program is a modification of the SBA's 7(a) loan program, banks make loans to businesses that are guaranteed by SBA
- **New guidance – PPPL interest rates 1.0%.**
- **Not more than 25% of the forgiven amount may be for non-payroll costs.**
- Cares Act says unforgiven loan amount repayment term – 10 years
- However, Treasury says unforgiven loan amount repayment term – 2 years. **2-year term is now rule.**
- **ONE PPP loan per borrower.**

PAYCHECK PROTECTION PROGRAM (PPP)

- Expands the businesses that are eligible for loans, modifies the loan terms
- Allows forgiveness of loan if borrower maintains payroll, or restores by June 30, 2020, previous full-time employment and salary levels for changes made between February 15, 2020, and April 26, 2020 .
- Can't defer employer payroll taxes if you get PPP.

PAYCHECK PROTECTION PROGRAM (PPP) 500 EMPLOYEE LIMIT WAIVED FOR:

- Accommodation and food service businesses, with NAICS code 72 (unless the SBA has made a larger designation for a specific industry, see SBA.gov)
- Franchises, where SBA assigns a franchise identifier code
- Business receiving financial assistance from a small business investment company (SBIC) licensed by SBA.

PAYCHECK PROTECTION PROGRAM (PPP) LOAN DEFERMENT/FORGIVENESS

- The Cares Act states that a presumption of hardship will exist if the business applies for the SBA or PPP loan.
- The Act requires lenders to provide complete payment deferment relief for impacted borrowers with covered loans for:
 - not less than 6 months (this includes principal, interest, and fees).

PAYCHECK PROTECTION PROGRAM (PPP)

- Payment deferral for first six months, including interest, principal, and fees. Interest will continue to accrue during deferral period.
- No personal guaranties required for PPPL. However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges.

PAYCHECK PROTECTION PROGRAM (PPP) WHO IS ELIGIBLE?

- For-profit small businesses
- Non-profit businesses (specifically 501(c)(3))
- Veterans organizations
- Tribal business concerns

PAYCHECK PROTECTION PROGRAM (PPP) WHO IS ELIGIBLE?

- Sole proprietorships
- Independent contractors, eligible self-employed individuals – need to submit necessary documentation to establish that the individual is eligible, including payroll tax filings, other applicable tax forms (i.e., 1099-MISC), and income and expenses.

PAYCHECK PROTECTION PROGRAM (PPP)

- Maximum PPP Loan Amount: The maximum loan amount will be the lesser of: Option 1: (1) the sum of: (A) 2.5 multiplied by the average total monthly payments for payroll costs incurred during the 1-year period before the date on which the loan is made, **plus** previously closed EIDL loan **if proceeds used for payroll**; or \$10M.

PPP LOAN AND SBA EIDL LOAN EXAMPLE

- EIDL Loan - \$500,000.
- PPP Loan - 2.5 X monthly average payroll calculation yields Maximum PPPL amount = \$100,000.
- Law states that the maximum PPPL also includes the balance of any outstanding EIDL made between January 31 and June 30, 2020.

PPP LOAN AND SBA EIDL LOAN EXAMPLE

- The EIDL Loan balance must be refinanced into the PPPL. Can't have both loans.
- The maximum PPPL is now \$600,000.
- This additional \$500,000 can *possibly* be factored into the amount of the PPPL that is eligible to be forgiven. Waiting on further guidance.

PAYCHECK PROTECTION PROGRAM (PPP) ALLOWABLE USES OF COVERED LOANS:

1. Payroll costs (defined)
2. Costs related to continuing group health care benefits - paid sick, medical, or family leave, and insurance premiums
 - Waiting on guidance for self-insured
3. Employee salaries, commissions, or similar compensations
4. Interest on mortgage obligation (excludes prepayment of or payment of & principal on a mortgage)
5. Rent (including under a lease agreement)
6. Utilities
7. Interest on any other debt obligations incurred **before February 15, 2020;**

PAYCHECK PROTECTION PROGRAM (PPP)

“PAYROLL COSTS” MEANS:

- Aggregate payroll costs for the last 12 months to employees (salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical, or sick leave; allowance for dismissal or separation;
- Independent contractors do not qualify as employees for the purpose of PPP loans as they have the ability to apply for a PPP loan on their own.
- Payment of state or local tax assessed on the compensation of employees;
- Payment of any retirement benefit;

PAYCHECK PROTECTION PROGRAM (PPP) “PAYROLL COSTS” MEANS:

- Payment required for group health care benefits, including insurance premiums); and
- Compensation/income of a sole proprietor or independent contractor (wage, commission, income, net earnings from self-employment, or
- Similar compensation that is not more than \$100,000 per year, as prorated for the covered period.

PAYCHECK PROTECTION PROGRAM (PPP) “PAYROLL COSTS” EXCLUDES:

- Compensation in excess of \$100,000 annual salary (prorated for the covered period);
- Certain taxes imposed or withheld during the covered period; compensation of employee w/ principal residence outside of the US; qualified sick leave wages (for which credit is allowed under the Families First Coronavirus Response Act (FFCRA)); or qualified family leave wages (for which credit is allowed under section 7003 of the FFCRA).

PAYCHECK PROTECTION PROGRAM (PPP) LOAN FORGIVENESS

- Qualifying expenses eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after loan origination for:
 - Payroll costs,
 - Interest on any mortgage in place prior to Feb. 15, 2020,
 - Rent on any lease in force prior to Feb. 15, 2020,
 - Utility payments for which service began before Feb. 15, 2020.
- **The new SBA guidance indicates no more than 25% should be spent for non-payroll costs**

PAYCHECK PROTECTION PROGRAM (PPP) REDUCTION OF LOAN FORGIVENESS

- Loan recipients must maintain existing employment levels "to the extent practicable" during the loan term and cannot reduce salaries by more than 25% (for those paid under \$100k)
- Employers that maintain employment for the 8 weeks after origination of loan, **or restore employees by June 30, 2020** will have loans forgiven in whole or part, essentially turning the loan into a grant. Section 1106.

PAYCHECK PROTECTION PROGRAM (PPP) LOAN FORGIVENESS

- Loan forgiveness will not be included in taxable income
- Businesses will be able to convert loan to "grant" while being able to tax deductions for same business expenses.
- Deductions may contribute to reduced taxable income, or NOL carryback, so secondary tax savings.

PAYCHECK PROTECTION PROGRAM (PPP) LOAN FORGIVENESS

- Maximum forgiveness is principal amount of the loan.
- Loan forgiveness or cancellation of debt - will not impact future borrowing capability.

PAYCHECK PROTECTION PROGRAM (PPP) LOAN FORGIVENESS

- Loan Forgiveness will depend on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan.

PAYCHECK PROTECTION PROGRAM (PPP) EIDL LOAN AND PPP LOAN:

- If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. **If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan.** Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

PAYCHECK PROTECTION PROGRAM (PPP)

PPP LOAN:

- **Documentation:** The applicant must submit SBA Form 2483 (Paycheck Protection Program Application Form) and payroll documentation.

PAYCHECK PROTECTION PROGRAM (PPP)

PPP LOAN:

- Documentation verifying the number of full-time equivalent employees on 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 will be provided to the lender. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities.

SBA DISASTER LOAN AND PPP LOAN AFFILIATION RULES – 500 EMPLOYEE LIMIT

- Separate entities may be considered a single employer under the Act if they meet the “integrated employer” tests.
- Common management
- Interrelation between operations
- Centralized control of labor relations
- Degree of common ownership/**financial control-voting**
- Joint ventures; and
- Franchise and license agreements.
- Temporary employees who are jointly employed by the employer and another entity, are included.

COMPARISON OF SBA DISASTER LOAN AND PPP LOAN

- The SBA Disaster - Economic Injury Disaster Loan (EIDL) Expands the businesses that are eligible for loans, modifies the loan terms,
- 500 employee limit.
- Difference – EIDL Max loan is lesser of: A) the average monthly payments for payroll, mortgage, rent, and other debt for the one-year period before the loan is made X 4, or B) \$10M

COMPARISON OF SBA DISASTER LOAN AND PPP LOAN

- EIDL Loan can be used for payroll support for sick pay and medical leave, employee salaries, mortgage payments, rent, utilities, certain debt obligations incurred before the covered period.
- Difference - 20% or more owners are generally required to personally guaranty the EIDL loan. SBA uses credit scores of business owners in their decisions for approval. Collateral is required.

COMPARISON OF SBA DISASTER LOAN AND PPP LOAN

Difference:

- EIDL loan maturity up to 30 years.
- PPP loan maturity up to 2 years

PPP LOAN LENDERS



Lenders: SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness. Lenders must comply with the applicable lender obligations set forth in this interim final rule, but will be held harmless for borrowers' failure to comply with program criteria; remedies for borrower violations or fraud are separately addressed in this interim final rule.

PPP LOAN LENDERS



The program requirements of the PPP identified in this rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 CFR 120.10). Loans are 100 percent guaranteed by the SBA and the fact that lenders will receive a substantial processing fee from the SBA provide ample inducement for lenders to participate in the PPP. The lender must submit SBA Form 2484 (Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty) electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

PPP LOAN LENDERS



The lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs. The Administrator will hold harmless any lender that relies on such borrower documents and attestation from a borrower.

SBA –COVID-19 WEBSITE

- The SBA just announced 4/1/20 a new Coronavirus (COVID-19) website: <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>
- This includes information and online applications for:
- Economic Injury Disaster Loans (streamlined application):
- <https://covid19relief.sba.gov/#/>
- Low-Interest Disaster Loans (awaiting further guidance)
- Express Bridge Loan Pilot Program (loans up to \$25,000)

Coronavirus Pandemic

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QUESTIONS?

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