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The CARES Act: An Analysis of the Financing, Loan Forgiveness and Tax Provisions Within the New Act Webinar

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Coronavirus Aid, Relief and Economic Security Act (CARES Act): Financing and Loan Provisions

Michael J. Reilly, CPA/ABV, CVA, CFF, CDA

.... CARES Act - Overall Summary

- On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed by the President and became law.
- The CARES Act provides the **largest aid package in history** and provides **2 trillion dollars of relief** for emergency assistance and health care response for individuals, families and businesses affected by the COVID-19 pandemic.
- **With respect to small businesses**, the bill:
 - Establishes, and provides funding for, forgivable bridge loans.
 - Provides additional funding for grants and technical assistance.
- The bill also provides funding for **rebates to individuals (\$1,200) and families (\$2,400)**, with additional **\$500 payments per qualifying child**. The rebate begins phasing out when incomes exceed \$75,000 for singles (or \$150,000 for joint filers).
- The bill **establishes limits on requirements for employers to provide paid leave**.
- **With respect to taxes**, the bill:
 - Establishes special rules for certain tax-favored withdrawals from retirement plans.
 - Delays due dates for employer payroll taxes and estimated tax payments for corporations.
 - Revises other provisions, including those related to losses, charitable deductions, and business interest.

... CARES Act - Overall Summary

- **With respect to health care**, the bill:
 - Provides additional funding for the prevention, diagnosis, and treatment of COVID-19.
 - Limits liability for volunteer health care professionals.
 - Prioritizes Food and Drug Administration (FDA) review of certain drugs.
 - Allows emergency use of certain diagnostic tests that are not approved by the FDA.
 - Expands health-insurance coverage for diagnostic testing and requires coverage for preventative services and vaccines.
 - Revises other provisions, including those regarding the medical supply chain, the national stockpile, the health care workforce, the Healthy Start program, telehealth services, nutrition services, Medicare, and Medicaid.
- **With respect to education**, the bill:
 - Temporarily suspends payments for federal student loans.
 - Otherwise revises provisions related to campus-based aid, supplemental educational-opportunity grants, federal work-study, subsidized loans, Pell grants, and foreign institutions.
- The bill also authorizes the Department of the Treasury **to temporarily guarantee money-market funds**.

.... CARES Act - Paycheck Protection Program

General Provisions

- **Loan Program** - Due to the Coronavirus pandemic, eligible recipients are able to obtain forgivable SBA backed loans from lenders with delegated authority from SBA, which allows lenders to grant loans to eligible recipients without going through normal SBA procedures.
- **Eligibility and Substantiation Requirements** - Generally, an eligible recipient must be a small business or organization with less than 500 employees that was in operation on February 15, 2020 and who made salary payments to employees.
- **Appropriation** - Congress has appropriated \$349 billion for the Paycheck Protection Program.
- **Program Start Date** - The SBA is required to issue rules within 15 days of the Act's passage to implement the program.
- **Loan Application Period** - February 15, 2020 through June 30, 2020.
 - Will be granted on a **"first-come, first-served"** basis.

CARES Act - Paycheck Protection Program

Eligible Small Businesses and Organizations

- In addition to small business concerns, any business concern, IRC Section 501(c)(3) non-profit organization, IRC Section 501(c)(19) veterans organization, Tribal small business concern (defined under the Small Business Act), individuals who operate as sole proprietors or independent contractors, eligible self-employed individuals is eligible to receive a covered loan if they employ not more than the greater of:
 - 500 employees; or
 - If applicable, the SBA size standard for employees in the industry in which the borrower operates determined by NAICS code.
 - Many manufacturers, etc. can exceed 500 employees under these SBA Standards (i.e., 750 – 1,500 employees).
- Employee - Includes individuals employed on a full-time, part-time or other basis.
- For business concerns with more than one physical location and a NAICS Code beginning with 72 (e.g., hotel/food services industry), the 500-employee requirement can be measured per physical location.
- The normal affiliation rules do not apply to businesses operating as a franchise or that receives financial assistance from an approved Small Business Investment Company.
- Eligibility requirements must be met for the period beginning on February 15, 2020 and ending on June 30, 2020.

.... CARES Act - Paycheck Protection Program

General Definitions Under the Paycheck Protection Program

- **Covered Loan** means a loan made under the CARES Act Paycheck Protection Program during the covered period.
- **Covered Period** means the period beginning on February 15, 2020 and ending on June 30, 2020.
- **Eligible Recipient** means an individual or entity that is eligible to receive a covered loan.
- **Eligible Self-Employed Individual** has the meaning given the term in Section 7002(b) of the Families First Coronavirus Response Act.
 - Regularly carries on a **trade or business within the meaning of IRC Section 1402.**
 - Would be entitled to receive paid leave pursuant to the Emergency Paid Sick Leave Act if the individual were an employee of an employer (other than himself or herself).
- **Nonprofit organization** means a tax-exempt organization that is described in IRC Section 501(c)(3).
- **Small Business Concern** has the meaning given the term in **Section 3 of the Small Business Act.**

.... CARES Act - Paycheck Protection Program

Maximum Loan Amount – Most Employers

- The maximum loan amount under the PPP is **the lesser of:**
 - \$10,000,000, or
- The sum of:
 - **2.5 x the average total monthly payroll costs** incurred during the **1-year period before the loan date (SBA says use calendar year 2019;**
 - **Plus** the outstanding amount of any Emergency Injury Disaster Loan (**EIDL**) **obtained between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan** (because it does not have to be repaid) which is to be refinanced under this loan.

.... CARES Act - Paycheck Protection Program

Maximum Loan Amount – Seasonal Employers

- For seasonal employers (as determined by the SBA), the maximum loan amount under the PPP is **the lesser of:**
 - \$10,000,000, or
- The sum of:
 - **2.5 x the average total monthly payroll costs** for the 12-week (?) period **from February 15, 2019, or March 1, 2019** (decided by the loan recipient) **through June 30, 2019;**
 - **Plus** the outstanding amount of any Emergency Injury Disaster Loan (**EIDL**) **obtained between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan** (because it does not have to be repaid) which is to be refinanced under this loan.

.... CARES Act - Paycheck Protection Program

Maximum Loan Amount – New Employers

- For otherwise eligible employers **not in business** during the period **beginning on February 15, 2019 and ending on June 30, 2019**, the maximum loan amount under the PPP is **the lesser of:**
 - \$10,000,000, or
- The sum of:
 - **2.5 x the average total monthly payroll costs** incurred **from January 1, 2020 through February 29, 2020;**
 - **Plus** the outstanding amount of any Emergency Injury Disaster Loan (**EIDL**) **obtained between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan** (because it does not have to be repaid) which is to be refinanced under this loan.

... CARES Act - Paycheck Protection Program

Refinancing an SBA EIDL 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.**

.... CARES Act - Paycheck Protection Program

Maximum Loan Amount – Definition of Payroll Costs

Payroll Costs include:

- **For Employers:** The sum of payments of any compensation with respect to employees that is a:
 - **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**;
 - Payment required for the provision of **group health care benefits, including insurance premiums, and retirement**; or
 - Payment of **state or local tax assessed** on the compensation of employees.
- **For Sole Proprietors, Independent Contractors and Self-Employed Individuals:**
 - The sum of payments of any compensation to or income of a **sole proprietor or independent contractor** that is a wage, commission, income, net earnings from self-employment, or similar compensation and **that is in an amount not exceeding more than \$100,000 in 1 year**, as prorated for the period beginning on February 15, 2020 and ending on June 30, 2020.

.... CARES Act - Paycheck Protection Program

Maximum Loan Amount – Payroll Costs Not Included

- **Payroll Costs shall not include** the following:
- The compensation of an individual employee **in excess of an annual salary of \$100,000** as prorated for the period beginning on February 15, 2020 and ending on June 30, 2020.
- **Federal employment taxes imposed or withheld on wages between February 15, 2020 and June 30, 2020:**
 - FICA and Medicare taxes (employer and employee share);
 - Railroad Retirement Act taxes (employer and employee share); and
 - Federal income tax withholdings.
- Any compensation of an employee whose principal place of residence is outside of the United States.
- **Qualified sick leave and/or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.**

.... CARES Act - Paycheck Protection Program

Allowable Uses of Loan Proceeds

- The loan proceeds must be used during the period beginning on February 15, 2020 and ending on June 30, 2020, for the following costs:
 - **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 compensations;
 - **Interest on any mortgage obligation** (excludes payment or prepayment of principal);
 - **Rent** (including rent under a lease agreement);
 - **Utilities**; and
 - **Interest on any other debt obligations** that were **incurred before February 15, 2020**.
- Note, while maximum amount of loan is determined based on payroll costs, the use of the proceeds can be used for other specified non-payroll costs as well.

.... CARES Act - Paycheck Protection Program

Borrower Certification Requirements

- An eligible recipient applying for a covered loan **must make a good faith certification** to the lender that:
 - The **uncertainty of current economic conditions makes necessary** the loan request to support the ongoing operations of the eligible recipient.
 - The borrower will **use the funds to retain workers** and maintain payroll or **make mortgage, lease, and utility payments**.
 - **Note, there appears to be no tracing rule as to the use of the proceeds.**
 - **Not more than 25%** of the loan proceeds will be **used for non-payroll costs**.
 - Borrower does not have an application pending for a loan **duplicative of amounts** applied for here
 - From February 15, 2020 through December 31, 2020, the borrower has not received a loan **duplicative of the purpose** and amounts applied for here.

.... CARES Act - Paycheck Protection Program

Waiver of Requirements and Fees

- **Refinancing** - Certain SBA Loans made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available may be refinanced as part of a covered loan.
- **Nonrecourse Provision** - The SBA has no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan **unless it is used for an unauthorized purpose**.
- **Waiver of Personal Guarantee** - **Between February 15, 2020 and June 30, 2020**, no personal guarantee is required for the covered loan and no collateral is required for the covered loan.
- **Credit Elsewhere** - Between February 15, 2020 and June 30, 2020, the requirement that a small business concern is unable to obtain credit elsewhere, as defined in Section 3(h) of the Small Business Act, **shall not apply** to a covered loan.
- **Fee Waiver** - **Between February 15, 2020 and June 30, 2020**, with respect to covered loan, the SBA will not collect a fee.

.... CARES Act - Paycheck Protection Program

Deferral of Payment

- From February 15, 2020 through June 30, 2020, the SBA shall:
 - Consider each eligible recipient that applies for a covered loan to be an **impacted borrower**, and
 - Require lenders to provide complete payment deferment relief for impacted borrowers with covered loans for **a period of 6 months**.
 - This includes the payment of principal, interest, and fees.
 - Interest will continue to accrue during the 6-month deferment.
- An **impacted borrower** is an eligible recipient who is in operation on February 15, 2020 and has an application for covered loan that is approved or pending after the date of enactment of the CARES Act (March 27, 2020).
- **Within 30 days** after the date of enactment of the CARES Act, the SBA will provide guidance to the lenders on the deferment process.

CARES Act - Paycheck Protection Program

Loan Forgiveness Amount

- An eligible recipient is eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during **the 8-week period beginning on the date of the origination of a covered loan:**
 - **Payroll Costs.**
 - **Interest Payments** on indebtedness or a debt instrument incurred in the ordinary course of business that is:
 - A liability of the borrower;
 - Is a **mortgage** on real or personal property; **and**
 - Was incurred before February 15, 2020.
 - **Rent Payments** made under a lease agreement **dated before February 15, 2020.**
 - Make sure **written related party lease agreements** are in place.
 - **Utility Payments** related to the distribution of **electricity, gas, water, transportation, telephone or internet access** for which service began before February 15, 2020.
 - **Tipped Workers** - A eligible recipient with tipped employees may receive forgiveness for additional wages paid to those employees.

CARES Act - Paycheck Protection Program

Reduction of Loan Forgiveness – FTEs Reduction

- The **amount of loan forgiveness shall be reduced** (but not increased) by multiplying the tentative loan forgiveness amount as determined per above by the **quotient obtained by dividing**:
 - The average number of full-time equivalent employees (**FTEs**) per month during the **8-week covered period** by
 - The average number of **FTEs** per month during the period **February 15, 2019 through June 30, 2019, or if elected, the period January 1, 2020 through February 29, 2020**
 - **Seasonal eligible recipient employers** (as determined by the SBA) **must use the period February 15, 2019 through June 30, 2019.**
- **No more than 25%** of the loan forgiveness amount may be attributable **to non-payroll costs.**
- **The amount of loan forgiveness shall not exceed the principal plus accrued interest amount of the loan.**

.... CARES Act - Paycheck Protection Program

Reduction of Loan Forgiveness – Reduction in Wages

- The amount of **loan forgiveness shall also be reduced** by the amount of any **reduction in total salary** of any employee that is **in excess of 25%** of the total salary of the employee during the most recent quarter during which the employee was employed before the covered 8-week period.
 - **This reduction rule only applies to employees who did not receive** during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount **more than \$100,000**.
- **Exemption for Re-Hires - Reductions in employment or wages** that occur during the period beginning February 15, 2020, and ending 30 days after the enactment of the CARES Act (April 26, 2020), (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness **if by June 30, 2020** the borrower eliminates the reduction in employees or reduction in wages.
 - **Key Consideration: Should reductions after April 26, 2020 be avoided?**

.... CARES Act - Paycheck Protection Program

Reduction of Loan Forgiveness – Example 1

Maximum Loan:

Payroll Costs incurred during 1-year period prior to the loan date - **\$1,200,000**

Average Monthly Total Payroll Costs - **$\$1,200,000 / 12 = \$100,000$**

Maximum Loan - **$\$100,000 \times 2.5 = \$250,000$**

Loan Forgiveness Calculation:

Payroll Costs, Interest, Rent and Utilities costs during the 8-week covered period - **\$240,000**

of FTEs per month during 8-week covered period - **15**

of FTEs per month during the base period (2/15/19 to 6/30/19 or optional 1/1/20 to 2/29/20 period) - **20**

Quotient - **$15/20 = 75\%$**

Loan Forgiveness Amount - **$\$240,000 \times 75\% = \$180,000$**

.... CARES Act - Paycheck Protection Program

Reduction of Loan Forgiveness – Example 2

Maximum Loan:

Payroll Costs incurred during 1-year period prior to the loan date - **\$1,200,000**

Average Monthly Total Payroll Costs - **$\$1,200,000/12 = \$100,000$**

Maximum Loan - **$\$100,000 \times 2.5 = \$250,000$**

Loan Forgiveness Calculation:

Payroll Costs, Interest, Rent and Utilities costs during the 8-week covered period - **\$340,000**

of FTEs per month during 8-week covered period - **15**

of FTEs per month during the base period (2/15/19 to 6/30/19 or optional 1/1/20 to 2/29/20 period) - **20**

Quotient - **$15/20 = 75\%$**

Loan Forgiveness Amount - **$\$340,000 \times 75\% = \$255,000$, but limited to \$250,000**

CARES Act - Paycheck Protection Program

Loan Forgiveness – Application and Documentation Requirements

- An eligible recipient seeking loan forgiveness **shall submit to the lender an application** which shall include the following:
 - Documentation verifying the number of FTEs on payroll and pay rates.
 - 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.
 - **Certification from an authorized representative of the eligible recipient that:**
 - The documentation presented is true and correct; and
 - **The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments.**
 - **Proof – Open separate account for loan proceeds?**
 - **Any other documentation the SBA determines is necessary.**
- No eligible recipient shall receive forgiveness without submitting to the lender the documentation required.
- **Decision** - The **lender shall issue a decision** on the application **no later than 60 days** after the lender receives the loan forgiveness application.

.... CARES Act - Paycheck Protection Program

Loan Forgiveness Tax Issues

- CARES Act provides that PPP loan forgiveness amount is **excluded from gross income**.
- CARES Act (Section 2301) **Employee Retention Tax Credit** provision is **not available** if PPP loan is received.
- CARES Act (Section 2302) **Employment Taxes Payment Deferral** provision is **not available** if PPP loan is forgiven.

.... CARES Act - Paycheck Protection Program

Terms of the Unforgiven Portion of the Loan

- Any portion of the covered loan that is unforgiven can be repaid over 2 years with interest at an annual maximum rate of 1%.



Paycheck Protection Program Borrower Application Form

OMB Control No.: 3245-0407
Expiration Date: 09/30/2020

Check One: <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other	DBA or Tradename if Applicable	
Business Legal Name		
Business Address	Business TIN (EIN, SSN)	Business Phone
		() -
	Primary Contact	Email Address

Average Monthly Payroll:	\$	x 2.5 + EIDL, Net of Advance (if Applicable) Equals Loan Request:	\$	Number of Employees:	
Purpose of the loan (select more than one): <input type="checkbox"/> Payroll <input type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain): _____					

Applicant Ownership

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

If questions (1) or (2) below are answered "Yes," the loan will not be approved.

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

If questions (5) or (6) are answered "Yes," the loan will not be approved.

Question	Yes	No
5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? Initial here to confirm your response to question 5 → _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 6 → _____	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?	<input type="checkbox"/>	<input type="checkbox"/>



Paycheck Protection Program Borrower Application Form

By Signing Below, You Make the Following Representations, Authorizations, and Certifications

CERTIFICATIONS AND AUTHORIZATIONS

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

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 from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- _____ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature of Authorized Representative of Applicant

Date

Print Name

Title



Paycheck Protection Program Borrower Application Form

Purpose of this form:

This form is to be completed by the authorized representative of the Applicant and ***submitted to your SBA Participating Lender***. Submission of the requested information is required to make a determination regarding eligibility for financial assistance. Failure to submit the information would affect that determination.

Instructions for completing this form:

With respect to “purpose of the loan,” payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation.

For purposes of calculating “Average Monthly Payroll,” most Applicants will use the average monthly payroll for 2019, excluding costs over \$100,000 on an annualized basis for each employee. For seasonal businesses, the Applicant may elect to instead use average monthly payroll for the time period between February 15, 2019 and June 30, 2019, excluding costs over \$100,000 on an annualized basis for each employee. For new businesses, average monthly payroll may be calculated using the time period from January 1, 2020 to February 29, 2020, excluding costs over \$100,000 on an annualized basis for each employee.

If Applicant is refinancing an Economic Injury Disaster Loan (EIDL): Add the outstanding amount of an EIDL made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan, to Loan Request as indicated on the form.

All parties listed below are considered owners of the Applicant as defined in 13 CFR § 120.10, as well as “principals”:

- For a sole proprietorship, the sole proprietor;
- For a partnership, all general partners, and all limited partners owning 20% or more of the equity of the firm;
- For a corporation, all owners of 20% or more of the corporation;
- For limited liability companies, all members owning 20% or more of the company; and
- Any Trustor (if the Applicant is owned by a trust).

Paperwork Reduction Act – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 8 minutes. Comments about this time or the information requested should be sent to : Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416., and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503.

Privacy Act (5 U.S.C. 552a) – Under the provisions of the Privacy Act, you are not required to provide your social security number. Failure to provide your social security number may not affect any right, benefit or privilege to which you are entitled. (But see Debt Collection Notice regarding taxpayer identification number below.) Disclosures of name and other personal identifiers are required to provide SBA with sufficient information to make a character determination. When evaluating character, SBA considers the person’s integrity, candor, and disposition toward criminal actions. Additionally, SBA is specifically authorized to verify your criminal history, or lack thereof, pursuant to section 7(a)(1)(B), 15 USC Section 636(a)(1)(B) of the Small Business Act (the Act).

Disclosure of Information – Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act. The Privacy Act authorizes SBA to make certain “routine uses” of information protected by that Act. One such routine use is the disclosure of information maintained in SBA’s system of records when this information indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature. Specifically, SBA may refer the information to the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for, or otherwise involved in investigation, prosecution, enforcement or prevention of such violations. Another routine use is disclosure to other Federal agencies conducting background checks but only to the extent the information is relevant to the requesting agencies’ function. See, 74 F.R. 14890 (2009), and as amended from time to time for additional background and other routine uses. In addition, the CARES Act, requires SBA to register every loan made under the Paycheck Protection Act using the Taxpayer Identification Number (TIN) assigned to the borrower.

Debt Collection Act of 1982, Deficit Reduction Act of 1984 (31 U.S.C. 3701 et seq. and other titles) – SBA must obtain your taxpayer identification number when you apply for a loan. If you receive a loan, and do not make payments as they come due, SBA may: (1) report the status of your loan(s) to credit bureaus, (2) hire a collection agency to collect your loan, (3) offset your income tax refund or other amounts due to you from the Federal Government, (4) suspend or debar you or your company from doing business with the Federal Government, (5) refer your loan to the Department of Justice, or (6) foreclose on collateral or take other action permitted in the loan instruments.

Right to Financial Privacy Act of 1978 (12 U.S.C. 3401) – The Right to Financial Privacy Act of 1978, grants SBA access rights to financial records held by financial institutions that are or have been doing business with you or your business including any financial



Paycheck Protection Program Borrower Application Form

institutions participating in a loan or loan guaranty. SBA is only required provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records. SBA's access rights continue for the term of any approved loan guaranty agreement. SBA is also authorized to transfer to another Government authority any financial records concerning an approved loan or loan guarantee, as necessary to process, service or foreclose on a loan guaranty or collect on a defaulted loan guaranty.

Freedom of Information Act (5 U.S.C. 552) – Subject to certain exceptions, SBA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest SBA office and be identified as a Freedom of Information request.

Occupational Safety and Health Act (15 U.S.C. 651 et seq.) – The Occupational Safety and Health Administration (OSHA) can require businesses to modify facilities and procedures to protect employees. Businesses that do not comply may be fined, forced to cease operations, or prevented from starting operations. Signing this form is certification that the applicant, to the best of its knowledge, is in compliance with the applicable OSHA requirements, and will remain in compliance during the life of the loan.

Civil Rights (13 C.F.R. 112, 113, 117) – All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public on the basis of categories cited in 13 C.F.R., Parts 112, 113, and 117 of SBA Regulations. All borrowers must display the "Equal Employment Opportunity Poster" prescribed by SBA.

Equal Credit Opportunity Act (15 U.S.C. 1691) – Creditors are prohibited from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

Debarment and Suspension Executive Order 12549; (2 CFR Part 180 and Part 2700) – By submitting this loan application, you certify that neither the Applicant or any owner of the Applicant have within the past three years been: (a) debarred, suspended, declared ineligible or voluntarily excluded from participation in a transaction by any Federal Agency; (b) formally proposed for debarment, with a final determination still pending; (c) indicted, convicted, or had a civil judgment rendered against you for any of the offenses listed in the regulations or (d) delinquent on any amounts owed to the U.S. Government or its instrumentalities as of the date of execution of this certification.

Other SBA Loan and Grant Opportunities

.... SBA's Economic Injury Disaster Loan (EIDL)

- The SBA **Economic Injury Disaster Loans (EIDL)** are provided to eligible companies to help fund working capital to be used to pay fixed debts, and cover payrolls, COVID-19 related sick pay, and operating expenses that were paid prior to the disaster.
 - The loans have zero cost to apply and there is no obligation to utilize the loan if one is granted after the application process.
- **Eligibility is based upon:**
 - Credit history acceptable to SBA;
 - Repayment capability by the business and its owners; and
 - All US territories are currently eligible.
- Application with existing SBA loans, can qualify for EIDL loan but cannot be consolidated with existing loans.
- Maximum borrowing is up to \$2 million for eligible entities.
- Interest rates are 2.75% - 3.75%.
- Terms are up to 30 years.

.... SBA's Economic Injury Disaster Loan (EIDL)

- **Duplicative Loans:**
 - The CARES Act allows businesses to receive both a PPP loan and an EIDL under certain circumstances, including if the business obtained the EIDL before the PPP loans became available.
 - **However, if a business obtains both an EIDL and a PPP loan, EIDL funds must be used for purposes other than paying payroll costs, mortgage interest, rent and utilities as covered under the PPP.**
 - **Note tracing rules have not been addressed.**
- Just recently the SBA implemented a **simple streamlined online application process** where the SBA will make a decision on the loan within a few days.

... SBA's Emergency Economic Injury Grants

- The CARES Act includes an **Emergency Economic Injury Grants of \$10,000** to all eligible small businesses and nonprofits who apply for an EIDL.
- A borrower may request the grant be advanced within 3 days of applying for the EIDL.
- Grant funds may be used for allowable purposes under the EIDL, including:
 - Providing paid sick leave to employees unable to work due to the direct effect of COVID-19;
 - Maintaining payroll;
 - Paying increased material costs due to interrupted supply chains;
 - Paying rent or mortgage obligations; and
 - Repaying other obligations that cannot be met due to revenue losses.

SBA Loans to Midsized Businesses

Eligibility:

- Businesses and IRC Section 501(c) organizations with more than 500 and less than 10,000 employees.
- Loans are available if alternative financing is not reasonably available.
- Loans must be sufficiently secured with a market risk-based interest rate (risk assessment before COVID-19 pandemic).
- The loan should not exceed five years.
- The borrower must certify that it is a U.S. based business and that employees are predominately located in the U.S.
- Loans cannot be forgiven.

Loan Restrictions - Businesses must make a good-faith certification that:

- Economic uncertainty exists for the loan terms given.
- Funds received will be used to retain 90% of their workforce at full compensation and benefit levels through September 30, 2020.
- The business intends to restore not less than 90% of their workforce level prior to February 1, 2020 while restoring all compensation and benefit levels to rehired workers no later than 4 months after their termination date.
- The business would be prohibited from engaging in stock buybacks or paying dividends until one year after the date the loan is no longer outstanding.
- The business would be prohibited outsourcing or offshoring jobs for the term of the loan plus an additional 2 years.
- The business would be prohibited from abrogating collective bargaining agreements for the term of the loan plus an additional 2 years.
- Business would be subject to certain executive compensation limitations.

CARES Act Unemployment Insurance Provisions

.... Unemployment Insurance Provisions

- The CARES Act significantly expands unemployment benefits due to the COVID-19 pandemic.
- In addition to state unemployment insurance, affected individuals will receive an **additional \$600 in unemployment benefits per week** until July 31, 2020, including retroactive benefits back to January 27, 2020.
- Individuals who are not typically eligible for unemployment benefits are also covered, **including self-employed individuals and independent contractors who would now be allowed to collect unemployment benefits.**

.... Unemployment Insurance Provisions

- Eligibility is also be expanded **to include applicants who have already exhausted their unemployment benefits or who are still partially employed**, provided they are unable to work due to certain qualifying reasons related to COVID-19.
- **New York State has already waived the 7-day waiting period** to receive unemployment benefits, but the CARES Act would require any states that have not already done so to waive any waiting period and allow individuals to apply for benefits immediately.
- While unemployment benefits are typically only available to applicants for a maximum of 26 weeks, **the CARES Act provides funding for an additional 13 weeks**, allowing applicants to receive up to 39 weeks of benefits up until December 31, 2020.

Paycheck Protection Loan and Forgiveness Program Application Process

Christopher Didio, CPA, CFE

COVID-19 CARES ACT: Individual Tax Provisions

Karl Jacob, CPA/PFS, CFP®, CDA

.... Recovery Rebates for Individuals

(Act Section 2021-New IRC Section 6248)

- The stimulus checks we are all hearing about, are an advance payment of the 2020 credit.
 - Amounts are up to \$1,200 per individual and \$500 for each qualifying child.
 - Family of four can receive up to \$3,400.
 - Credit is phased-out by 5% of the amount a taxpayers AGI exceeds certain thresholds:
 - MFJ: \$150,000
 - HOH: \$112,500; and
 - Other: \$75,000

.... Recovery Rebates for Individuals

(Act Section 2021-New IRC Section 6248)

- *Advance rebate of credit during 2020.* Each individual who was an eligible individual for 2019 is treated as having made an income tax payment for 2019 equal to the advance refund amount for 2019.
 - The "advance refund amount" is the amount that would have been allowed as a credit for 2019 (or 2018), had the credit provision been in effect.
 - If a taxpayer has not filed a 2018 or 2019, they will be required to file a simple return to qualify.
 - i.e. low-income taxpayers, senior citizens, ~~Social Security recipients~~, some veterans, people with disabilities or retirees.
 - The IRS will have soon have instructions for how to file a 2019 tax return on its [coronavirus web page](#) for those who typically aren't required to file.

.... Recovery Rebates for Individuals

(Act Section 2021-New IRC Section 6248)

- *How paid:*
 - Electronically to any account to which the payee authorized on or after January 1, 2018; or
 - By check to last known address.
 - For those who don't have direct deposit set up but want to receive the payment electronically, the federal government will create an online system that will let you set up electronic payments, so you get the money deposited directly into a bank account. The IRS said the online tool will be available in the coming weeks.
- No later than 15 days after distributing a rebate payment, IRS must mail a notice to the taxpayer's last known address indicating how the payment was made, the amount of the payment, and a phone number for reporting any failure to receive the payment to the IRS.

.... Special Rules for Use of Retirement Funds (Act Section 2202)

- **No 10% Additional Tax for Coronavirus-related Retirement Plan Distributions**
 - 10% additional tax (IRC Section 72(t)) does not apply to any coronavirus-related distribution of up to \$100,000 made to a qualified individual.
 - A qualified individual is an individual who:
 - Is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC);
 - Whose spouse or dependent is diagnosed with such virus or disease by such a test; or
 - Who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid-off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury.

.... Special Rules for Use of Retirement Funds (Act Section 2202)

- *Recontribution:*
 - Any individual who receives a coronavirus-related distribution may, at any time during the 3-year period beginning on the day after the date on which such distribution was received, make one or more contribution in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary and to which a rollover contribution of such distribution could be made.

.... Special Rules for Use of Retirement Funds (Act Section 2202)

- *Inclusion in income over three years:*
 - Unless the taxpayer elects not to, any amount required to be included in gross income for such tax year will be so included ratably over the 3-tax year period beginning with such tax year.
- Coronavirus-related distributions are not treated as eligible rollover distributions.
- The administrator of an eligible retirement plan may rely on an employee's certification that the employee satisfies the conditions of subparagraph (A)(ii) in determining whether any distribution is a coronavirus-related distribution.
- Applies to distributions made on or after January 1, 2020, and before December 31, 2020.

.... **Special Rules for Use of Retirement Funds** (Act Section 2202)

- Increase in limit on loans not treated as a distribution.
 - Plan loan limit increased from \$50,000 to \$100,000.
 - Due date extension for repayments for any loans with a due date falling between date of enactment (March 27, 2020) and December 31, 2020.
 - Due date is extended one year.

.... **Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts** (Act Section 2203, IRC Section 401(a)(9) Amended)

- CARES Act provides that the RMD requirements do not apply for calendar year 2020 to:
 - Defined contribution plan (i.e., Pension/401k);
 - An eligible deferred compensation plan described in Code Section 457(b), but only if such plan is maintained by an employer described in Code Section 457(e)(1)(A); and
 - An IRA.

.... Allowance of Partial Above the Line Deduction for Charitable Contributions

(Act Section 2204, IRC Section 62(a) Amended)

- Adds a deduction to the calculation of gross income, in the case of tax years beginning in 2020, for the amount (not to exceed \$300) of qualified charitable contributions made by an eligible individual (non-itemizer) during the tax year.
- Qualified contributions:
 - Paid in cash during calendar year 2020 to 501(c)(3) and certain other charitable organizations;
 - Taxpayer elects to apply this provision with respect to the contribution; and
 - Applicable for tax year beginning after December 31, 2019.

.... **Modification of Limitations on Charitable Contributions During 2020** (Act Section 2205)

- Individuals: Temporary suspension of limitations on certain cash contributions.
 - 60% adjusted gross income (AGI) limit disregarded for qualified contributions.
 - To the extent the qualified contributions exceed the taxpayer's base (100% of AGI), excess treated as a carryover under normal 5-year carryover rules.

.... **Modification of Limitations on Charitable Contributions During 2020** (Act Section 2205)

- Corporations: Qualified contributions shall be allowed as a deduction only to the extent that the aggregate of such contributions do not exceed the excess of 25%.
 - Nonqualified contributions and carryovers are still subject to the 10% limitation.
- Qualified Contributions.
 - Paid in cash during calendar year 2020 to 501(c)(3) and certain other charitable organizations; and
 - Taxpayer has elected the application of this section with respect to such contribution.

.... **Modification of Limitations on Charitable Contributions During 2020** (Act Section 2205)

- Exceptions: Qualified contribution shall not include a contribution by a donor if the contribution is:
 - Made to an organization described in Section 509(a)(3):
 - Private Foundation.
 - Made for or the establishment of a new, or maintenance of an existing, donor advised fund.
- Increased limits on contributions of food inventory from 15% to 25%.
- Applicable to taxable years ending after December 31, 2019.

.... **Exclusion for Certain Employer Payments of Student Loans** (Act Section 2206, IRC Section 127(c) Amended)

- Eligible student loan payments are now included in the overall \$5,250 per employee limit for all educational payments.
 - Eligible student loan repayments are payments by the employer, whether paid to the employee or a lender, of principle or interest on any qualified higher education loan as defined in Code Section 221(d)(1) for the education of the employee (*but not of a spouse or dependent*).
- To prevent a double benefit, student loan repayments for which the exclusion is allowable can't be deducted under Code Section 221 (which allows the deduction of student loan interest subject to a dollar limit and a phase-out above specified taxpayer income levels).
- Applies to payments made after the date of the enactment (March 27, 2020).

COVID-19 CARES ACT: Business Tax Provisions

••• Payroll Provisions under the Families First Coronavirus Response Act

- Emergency Family and Medical Leave Expansion Act (EFMLEA)
 - Requires employers with fewer than 500 employees to provide both paid and unpaid public health emergency leave to certain employees through December 31, 2020.
 - Available when an employee who has been employed for at least 30 days is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because a school or place of care has been closed, or a childcare provider is unavailable, due to an emergency with respect to COVID-19 that is declared by a federal, state, or local authority.

••• Payroll Provisions under the Families First Coronavirus Response Act

- Emergency Paid Sick Leave Act (EPSLA)
 - Applies to private employers with fewer than 500 employees, and public employers of any size.
 - Employers must provide 80 hours of paid sick time to full-time employees who are unable to work (or telework) for specified virus-related reasons.
- The Act provides tax credits to employers to cover wages paid to employees while they are taking time off under the Emergency paid Sick Leave Act (EPSLA) and Emergency Family Leave and Expansion Act (EMFLEA).
- Excellent Resource: <https://www.dol.gov/agencies/whd/pandemic>

.... Employee Retention Credit for Employers Subject to Closure Due to COVID-19 (Act Section 2301)

- **FAQ's now on IRS website:** <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>
- Provides for a refundable payroll tax credit for 50% of qualified wages paid by eligible employers to certain employees during the COVID-19 crisis.
 - Credit limited to employer paid employment taxes.
 - IRC Section 3111(a) - old-age, survivors, and disability insurance. FICA (6.2 %).
 - IRC Section 3221(a) - Railroad Retirement Act (RRTA) insurance (6.2%).
 - Does not apply to Medicare portion (1.45%).

.... **Employee Retention Credit for Employers Subject to Closure Due to COVID-19** (Act Section 2301)

- Eligible employer:
 - Any employer, including non-profits, which were carrying on a trade or business during calendar year 2020, with respect to any calendar quarter in which:
 - Operations are fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19); or
 - Where there is a “significant decline in gross receipts.”

.... **Employee Retention Credit for Employers Subject to Closure Due to COVID-19** (Act Section 2301)

- Significant decline in gross receipts:
 - Beginning with the first calendar quarter beginning after December 31, 2019, for which gross receipts for the calendar quarter are less than 50 percent of gross receipts for the same calendar quarter in the prior year; and
 - Ending with the calendar quarter following the first calendar quarter beginning after a calendar quarter described above for which gross receipts of such employer is greater than 80 percent of gross receipts for the same calendar quarter in the prior year.

.... **Employee Retention Credit for Employers Subject to Closure Due to COVID-19** (Act Section 2301)

- The term “qualified wages” includes health benefits and is capped at the first \$10,000 in wages paid by the employer to an eligible employee.
- Qualified wages:
 - For employers who had an average number of full-time employees in 2019 of 100 or fewer, all employee wages are eligible, regardless of whether the employee is furloughed.
 - For employers who had greater than 100 average number of full-time employees in 2019, only the wages of employees who are furloughed or face reduced hours as a result of their employers' closure or reduced gross receipts are eligible for the credit.

.... Employee Retention Credit for Employers Subject to Closure Due to COVID-19 (Act Section 2301)

- Known restrictions/limitations.
 - No credit is available with respect to an employee for any period for which the employer is **allowed** a Work Opportunity Credit (Code Section 21) with respect to the employee.
 - Not available to employers receiving Small Business Interruption Loans under Section 1102 of the Act.
- The credit applies to wages paid after March 12, 2020 and before January 1, 2021.
- The IRS is granted authority to advance payments to eligible employers and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit.
 - **New IRS Form 7200**

.... Delay of Payment of Employer Payroll Taxes (Act Section 2302)

- Allows taxpayers to defer paying the **employer portion** of certain payroll taxes through the end of 2020. Notwithstanding any other provision of law, the payment for "applicable employment taxes" for the "payroll tax deferral period." Won't be due before the "applicable date."
- *Applicable employment taxes:*
 - Social Security Taxes - 6.2% (IRC Section 3111(a)).
 - Railroad Retirement Tax Act - RRTA. (IRC Sections 3211(a) and 3221(a)).
 - Self-employment tax. (IRC Section 1401(a)).
 - Self-employed individuals can defer paying 50% of the applicable self employment taxes due on a quarterly basis and that amount will not be subject to the underpayment penalty.
 - **DOES NOT** include the employer portion of Medicare taxes.

.... Delay of Payment of Employer Payroll Taxes (Act Section 2302)

- *Payroll tax deferral period:*
 - Period beginning on the date of enactment of the Act (March 27, 2020) and ending before January 1, 2021.
- *Applicable date:*
 - December 31, 2021, with respect to 50% of the amounts to which Act Section 2302(a) (employment taxes) and Act Section 2302(b) (self-employment tax), as the case may apply; and
 - December 31, 2022, with respect to the remaining 50% of those amounts.

.... Delay of Payment of Employer Payroll Taxes (Act Section 2302)

- *What this means:*
 - Payment for half of these taxes will not be due until the end of 2021, and the other half will not be due until the end of 2022.
 - Technically, this interest-free loan is accomplished by providing that, notwithstanding IRC Section 6302 (which authorizes IRS to set deadlines for tax deposits), an employer will be treated as having timely made all deposits of applicable employment taxes deferred by the CARES Act if all such deposits are made no later than the applicable date.

.... Delay of Payment of Employer Payroll Taxes (Act Section 2302)

- Caution:
 - Not available to any taxpayer that “has had indebtedness forgiven” under CARES Act Section 1106 with respect to a Payroll Protection Program or PPP loan.
 - An employer cannot defer payment of these 2020 payroll taxes if the employer also receives an SBA loan under the new Paycheck Protection Program that is later forgiven in full or in part.
 - TIMING: If immediate cash is needed, take advantage of the deferral now and once the PPP loan is received and it is anticipated all or a portion will be forgiven, pay the deferred taxes. It is anticipated the IRS will abate interest and penalty under these circumstances.

.... Modifications for Net Operating Losses (Act Section 2303)

- Temporarily removes the taxable income limitation to allow an NOL to fully offset income.
 - Under prior law NOL's are currently subject to a taxable-income limitation (80%) and can't fully offset income.
- Provides that NOLs arising in a tax year beginning after December 31, 2018 and before January 1, 2021, can be carried back to each of the five tax years preceding the tax year of such loss.
 - Under prior law, NOL carrybacks were disallowed (except for farming losses and losses of property and casualty insurance companies).

.... **Modification of Limitation on Losses for Taxpayers Other Than Corporations**

(Act Section 2304, IRC Section 461 Amended)

- Code Section 461(l)(1) enacted under TCJA disallowed the deduction of *excess business losses* by noncorporate taxpayers for tax years beginning after December 31, 2017 and ending before January 1, 2026.
 - CARES Act temporarily modifies the loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020.
 - Other technical amendments made.

.... **Modification of Credit for Prior Year Minimum Tax Liability of Corporations**

(Act Section 2305, Amending IRC Section 53(e))

- TCJA repealed the corporate minimum tax and taxpayers with an unused Minimum Tax Credit (MTC) were permitted to claim the MTC under special rules until fully utilized in 2021.
- CARES Act changes the phased-in utilization and now:
 - Allow corporations to claim 100% of MTC in 2018 or 2019.
 - Elect to take the entire refundable credit amount in 2018.
 - A claim for credit or refund where a corporation elects to take the entire refundable credit amount in 2018 must be treated as made under Code Section 6411, i.e., as a tentative carryback refund claim.
 - Taxpayers may file an application for a tentative refund of any amount for which a refund is due by reason of such election.

.... Modifications of Limitation on Business Interest (Act Section 2306 IRC Section 163(j) Amended))

- TCJA added IRC Section 163(j)(10) limited the amount of business interest allowed as a deduction to 30% of adjusted taxable income.
- CARES Act temporarily and retroactively increases the limitation on the deductibility of interest expense under Code Section 163(j)(1) from 30% to 50% for tax years beginning in 2019 and 2020.
- *Special rules for partnerships:*
 - Under a special rule for partnerships, the increase in the limitation will not apply to partners in partnerships for 2019 (it applies only in 2020).
- Taxpayers may elect out of the increase, for any tax year, in the time and manner IRS prescribes. Once made, the election can be revoked only with IRS consent.


.... **Modifications of Limitation on Business Interest** (Act Section 2306 IRC Section 163(j) Amended))

- Taxpayers can also elect to utilize their adjusted taxable income (ATI) to calculate the interest limitation for their tax year beginning in 2020.
 - This provision will allow taxpayers with losses incurred in 2020 to still deduct interest expense.
- For partnerships, this election must be made by the partnership.

.... Technical Amendments Regarding Qualified Improvement Property

(Act Section 2307, IRC Section 168 Amended)

- Provides a technical correction to the TCJA, and specifically designates qualified improvement (QI) property as 15-year property for depreciation purposes.
 - This makes QI property a category eligible for 100% bonus depreciation. QI property also is specifically assigned a 20-year class life for the alternative depreciation system.
- Prior to this correction QI property fell into the 39-year recovery period for nonresidential rental property. That made the QI property category ineligible for 100% bonus depreciation.
- Effective for property placed in service after December 31, 2017.



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