

COVID-19

Accounting and Tax Updates

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Version 3.4

What you need to know

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Note: This is not meant to be comprehensive of *all* parts of both pieces of legislation. There are many parts of both that are not discussed here. We tried to distill this down into the parts that are most relevant to our clients. It has also been updated for changes from the Senate bill to the finalized bill passed by the house with some changes from earlier versions.

Overview

1. Families First Coronavirus Response Act (“FFCRA”)

- a. Emergency Family and Medical Leave Expansion Act
- b. Emergency Unemployment Insurance Stabilization and Access Act of 2020
- c. Emergency Paid Sick Leave Act
- d. Health provisions
- e. Tax credits for paid leave

2. Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)*

- a. Small Business Interruption Loans
- b. Relief for Individuals, Families, and Business
- c. Health Care Response

*\$2.2 trillion dollars in total relief under the act

Individual Impact

Recovery rebates ([Sec. 2201](#))

1. Dependent upon income from 2019 tax return (if filed) or 2018 if 2019 has not yet been filed
2. Payments will be direct deposited using your bank information from 2018
3. Subject to earnings limitations based off your filing status as follows:
 - a. **Single:** \$1,200 for individuals making less than \$75,000
 - i. If you make more than **\$99,000** you get \$0
 - b. **Married:** \$2,400 for couples making less than \$150,000
 - i. If you make more than **\$198,000** you get \$0
 - c. **Head of Household:** \$1,200 for qualified individuals making less than \$112,500
 - i. If you make more than **\$136,500** you get \$0
4. Additional \$500 per qualifying child under the age of 17
5. **Phases out at a rate of 5% for each dollar over thresholds defined above**
6. Must have a social security number and have qualifying income
7. It technically is a tax credit that is advanced from your 2020 taxes but is not required to be refunded if the credit amount received exceeds your 2020 tax liability

Recommendation: If you have not yet filed your 2019 tax return, check to see if waiting to do so would qualify you for a larger rebate using your 2018 taxable income

Individual Impact

Deadline delays

1. Federal filing and payment deadline is extended from April 15th, 2020 to July 15th, 2020
2. Estimated tax payments normally due on April 15th, 2020 are also extended to July 15th, 2020
3. Keep in mind that this is at the federal level and states *may* be different

Recommendation: If you expect to receive a refund for your 2019 taxes you should file as soon as possible *unless* it would lead to a smaller stimulus check as described in the previous section on our analysis of Sec. 2201.

For example, if your 2018 income was \$50,000 (perhaps due to working a partial year or other circumstances) but your 2019 income was \$115,000 and you are a single taxpayer who expects to receive a small refund for 2019 it may be advantageous to *not* file your 2019 return yet so that you qualify for a \$1,200 rebate check that your 2019 income would disallow you from claiming.

Individual Impact

Retirement account provisions ([Sec. 2202](#))

1. In order to qualify an individual must satisfy one of the following
 - a. Be formally diagnosed with COVID-19
 - b. Have a spouse or dependant who is formally diagnosed with COVID-19
 - c. Experience *“adverse financial consequences as a result of being quarantined, being furlough 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 and operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury...”*
2. Withdrawal must be done before December 31st of 2020
3. Early withdrawals from retirement accounts can avoid both the 10% penalty *and* income tax
 - a. Limit of \$100,000
 - b. Must be paid back in full within 3 years to avoid triggering income tax
 - c. Also increases amount you can borrow against your retirement account to \$100,000 (up from \$50,000)

Recommendation: It's generally best to leave retirement accounts untouched, especially after the recent market downturn has negatively impacted plan balances. However, if you need a short term influx of cash and have the ability to repay it within 3 years, this could be a good option for you.

Individual Impact

Charitable deductions ([Sec. 2204](#) & [Sec. 2205](#))

1. Changes to rules for both filers who itemize and who take the standard deduction
2. Itemized filers typically have a more complex tax situation and higher income which make certain items (i.e. mortgage interest, state and local taxes, etc.) deductible
3. Filers who take the standard deduction typically have a pretty straightforward tax return
4. After enactment of the TCJA, charitable contributions were not deductible for as many filers due to the increase in the standard deduction and were limited for those who itemized based on their Adjusted Gross Income
5. New rules under the CARES Act
 - a. Standard deduction filers can deduct up to \$300 “above the line”
 - b. Itemized filers can deduct up to 100% of their AGI (up from 60%) for 2020 only
 - c. Donations must be in cash
 - d. Donations still have to be to a qualified charitable organization under [IRC Sec. 170\(b\)\(1\)\(A\)](#)
 - i. You cannot donate directly to an individual, family or business and receive a deduction

Recommendation: If you are fortunate enough to be in the position to give to a charitable organization please consider doing so. You now have an additional tax benefit for up to the first \$300 you contribute if you take the standard deduction that was not afforded to you prior to the CARES Act. Keep proper documentation to substantiate the deduction on your 2020 taxes!

Individual Impact

Medical costs ([Sec. 3702](#))

1. Additional over-the-counter medical products are now qualified medical costs if you have an HSA, FSA, Archer MSA or other qualified health reimbursement arrangements
 - a. Menstrual care products can now be paid for directly with your tax favored health reimbursement accounts
 - i. Tampons, pads, liners, cup, sponge or other similar products now qualify
 - b. Expenses must relate to costs incurred after December 31st of 2019
2. Expansion of what constitutes a 'High Deductible Plan' under [IRC Section 223\(c\)](#) by adding a safe harbor provision that does not require the plan to include a deductible for telehealth and other remote care services

Recommendation: If you have a high deductible health care plan paired with a pre-tax savings plan (i.e. HSA, FSA, MSA) and you have qualifying medical costs outlined above that you have incurred in 2020, make sure to reimburse yourself for those costs and document appropriately.

Individual Impact

Student loans ([Sec. 3513](#))

1. Payments for loans due under part D of title IV of the Higher Education Act of 1965 ([20 U.S.C. 1087a et seq.](#)) are suspended for 3 months (up until September 30th, 2020)
 - a. There is an *option* for the government to extend this an additional 3 months
 - b. This does not apply to **private** student loans, only government backed loans
2. Interest accruals on student loans will also be suspended for 3 months
 - a. Interest rate will temporarily be 0% and no new interest will be added
3. Student loan debt collection is temporarily suspended for 60 days
 - a. This does not negatively impact your loan forgiveness eligibility

Recommendation: If you have student loans that are government backed, contact your lender ASAP. You will need to work with your loan servicer to temporarily pause the payments. They will not do this automatically for you so make sure you request this temporarily relief.

Business Impact

SBA Loans ([Sec. 1102](#))

1. There are two programs:
 - a. SBA Economic Injury Disaster Loans 7(b)(2) (“EIDL”)
 - b. Payroll Protection Program under 7(a) (“PPP”)
2. EIDL loans will be serviced by the SBA directly and applications should be submitted to the SBA
3. PPP loans can be facilitated by approved SBA lenders and you should work directly with your banking relationships to see if your bank can originate these loans
4. You can apply for loans under both programs if the funds received from the EIDL would not be used for the same purposes as the PPP loans
 - a. No “double dipping”
5. “Certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19” could preclude unaffected businesses from receiving funding

Recommendation: If your business is facing financial hardship directly or indirectly caused by COVID-19, determine which loan program is best for your particular circumstances. We will examine each type in more depth next.

*This is not meant to enrich businesses unaffected by the COVID-19 virus. The SBA is inundated with applications from those who truly need help. Don't be the person who tries to exploit this program for your advantage and slow down the process for those who need it most.

Business Impact

SBA Loans ([Sec. 1102](#)) - EIDL Loans

Who qualifies

1. Businesses with no more than 500 employees (does not waive '[affiliation rules](#)')
2. Individuals operating sole proprietorships or as an independent contractor
3. Waives requirement that borrower is unable to borrow funds elsewhere
4. Business must have been operating prior to January 31st 2020

Loan amount

1. Can qualify for up to \$200,000 without personal guarantee
2. Up to a maximum amount of \$2,000,000
3. Maximum term of 30 years
4. Interest rates as low as 3.75%

Loan permitted uses

1. Payment of fixed debts, payroll, accounts payable and other costs
2. Not intended to replace lost sales or profits and cannot be used to refinance debt, make payments on loans or tax penalty obligations nor for dividends or distributions to owners

Other considerations

1. Eligible to request an advance of up to \$10,000 from the SBA that is not required to be repaid even if your loan request is otherwise denied
2. Cannot "double dip" and use EIDL funds for purposes under the PPP loans but can qualify for both

How to apply

Apply online [here](#). You will need to gather paperwork ahead of time and it will take several hours to complete. If the SBA enlists the help of private banks in the future, you may be able to apply directly through that bank.

Business Impact

SBA Loans ([Sec. 1102](#)) - PPP Loans

Who qualifies

1. Businesses with no more than 500 employees (waives **some** 'affiliation rules')
2. Individuals operating sole proprietorships or as an independent contractor
3. Waives requirement that borrower is unable to borrow funds elsewhere
4. Business must have been operating as of March 1st, 2020

Loan amount

1. Can qualify for the **lesser of** \$10,000,000 **or** average total monthly payments for the preceding twelve months for qualified expenses x 2.5 (subject to limitations)
2. Can be forgiven if you meet certain requirements
3. Payments are deferred for up to six to twelve months

Loan permitted uses

1. Payroll (including benefits), mortgage/rent, utilities, debt obligations (i.e. loans)
2. Cannot be used for duplicative purposes as a SBA 7(b)(2) EIDL loan

Other considerations

1. Can be serviced by private lenders on behalf of the SBA (which should help expedite the process)
2. No personal guarantee, collateral or loan guarantee fees and can be forgiven entirely
3. Loans under PPP make the borrower ineligible for Employee Retention Tax Credit

How to apply

Talk to your banker that you work with for your business banking. These loans, unlike EIDL (as of now) can be serviced by private banks. Start preparing your documentation now (payroll costs, rent, mortgage, utilities, etc.).

Business Impact

SBA Loans ([Sec. 1102](#)) - PPP Loans - Calculating Eligible Loan Amounts

3

How much can I **BORROW?**

Loans can be up to 2.5 x the borrower's average monthly payroll costs, not to exceed **\$10 million**.

How do I calculate my average monthly **PAYROLL COSTS?**



sum of
INCLUDED
payroll costs

−

sum of
EXCLUDED
payroll costs

=

**PAYROLL
COSTS**

Recommendation: Start calculating your eligible amounts based off of what is considered 'eligible' under the program and consider whether or not you will be able to qualify to have these amounts forgiven (discussed next)

Source: [US Chamber of Commerce](#)

INCLUDED Payroll Cost:

- 1. 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 provisions of group health care benefits, including insurance premiums
 - payment of any retirement benefit
 - payment of state or local tax assessed on the compensation of the employee
- 2. 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 that is not more than \$100,000 in one year, as pro-rated for the covered period.

EXCLUDED Payroll Cost:

1. Compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the period February 15, to June 30, 2020
2. Payroll taxes, railroad retirement taxes, and income taxes
3. Any compensation of an employee whose principal place of residence is outside of the United States
4. Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–5 127); or qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act

Business Impact

SBA Loans ([Sec. 1102](#)) - PPP Loans - Calculating Eligible Loan Forgiveness Amounts

Will this loan be FORGIVEN?

Borrowers are eligible to have their loans forgiven.

How Much?

A borrower is eligible for loan forgiveness equal to the amount the borrower spent on the following items during the 8-week period beginning on the date of the origination of the loan:

- Payroll costs (using the same definition of payroll costs used to determine loan eligibility)
- Interest on the mortgage obligation incurred in the ordinary course of business
- Rent on a leasing agreement
- Payments on utilities (electricity, gas, water, transportation, telephone, or internet)
- For borrowers with tipped employees, additional wages paid to those employees

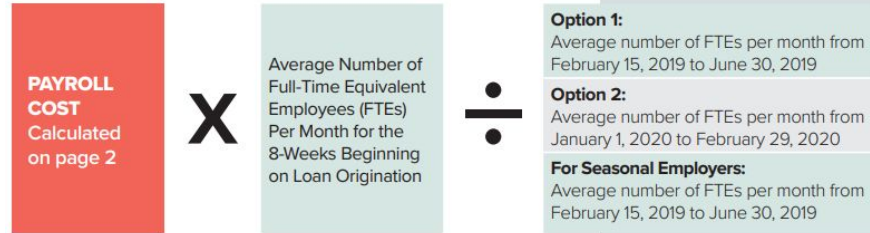
The loan forgiveness cannot exceed the principal.

How could the forgiveness be reduced?

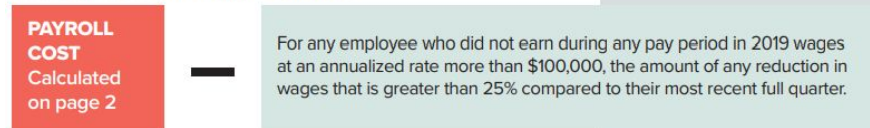
The amount of loan forgiveness calculated above is reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees. Specifically:

Source: [US Chamber of Commerce](#)

Reduction based on reduction of number of employees



Reduction based on reduction in salaries



What if I bring back employees or restore wages?

Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act, (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.

*Special rules apply for seasonal businesses

You must **apply for loan forgiveness, it is not automatic

***Wording *seems* to indicate that employees with salaries > \$100k are excluded from the forgiveness calculation

Business Impact

Payroll tax credits ([Sec. 2301](#))

1. Companies under a local or state mandate to shut down due to COVID-19 may be eligible for a payroll tax credit on up to 50% of the employer portion of social security (6.2%) on wages paid to employees who are unable to work.
 - a. “the operation of the trade or business described in clause (i) is 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)”
2. Credit is calculated as the product of 50% of qualified wages for a maximum base for qualified wages of up to \$10,000 per qualified employee, or a per employee credit amount of \$5,000. If the credit amount exceeds the quarterly social security payments it will be treated as an overpayment and refunded to the employer.

Recommendation: If you have employees who are unable to work due to a mandated shut down of your business, you can get up to \$5,000 in payroll tax credits back for that employee and businesses who have less than 100 employees can get the credit regardless of if employees were able to work. You will need to work with your payroll provider to make sure you’re claiming this credit.

Business Impact

Payroll tax deferral ([Sec. 2302](#))

1. Payroll taxes otherwise required to be paid under [IRC Sec. 3111\(a\)](#) can be deferred as follows:
 - a. Payment of up to 50% of taxes for the period beginning March 12th, 2020 and ending December 31st, 2020 can be deferred until December 31st 2021
 - b. Payment of the remaining balance of taxes is due December 31st of 2022
2. Payroll taxes are the 6.2% employer portion of social security and seems to apply to self employment taxes for self employed individuals as well
 - a. This is only for federal purposes, not state so check with your state to see if any relief has been offered for certain otherwise required tax payments

Recommendation: Further, if you are experiencing cash flow issues, hold off on paying your payroll taxes but be careful to diligently track the payments owed and make sure you can meet those future obligations. Work closely with your payroll provider to make sure that you're tracking the payments that you will eventually owe.

Business Impact

Net operating losses ([Sec. 2303](#)) & Qualified improvement property technical correction ([Sec. 2307](#))

1. The Tax Cut and Jobs Act previously limited net operating losses arising after 2017 to only 80% and on a carry forward basis only
 - a. CARES Act allows for NOLs to be carried back up to 5 years for NOLs from 2017-2020 and can be applied at a 100% reduction rate rather than 80%
2. The CARES Act fixes a limitation imposed by the Tax Cut and Jobs Act that reduced the amount of bonus depreciation that could be applied for qualified improvement property (i.e. restaurants, retail establishments)
 - a. This fix is retroactive to 2017 and means that businesses can amend prior year tax returns to take advantage of bonus depreciation

Recommendation: Consider amending your prior year tax returns if you either of the scenarios above apply to you as it could lead to a cash refund on tax amounts paid in previous years. This is especially applicable to newer restaurants.

Business Impact

Paid leave updates from the FFCRA ([Sec. 3601](#) & [Sec. 4607](#))

1. We received additional clarifications about certain parts of the FFCRA
2. Employer shall not be required to pay more than either:
 - a. \$511 per day and \$5,110 in aggregate per employee who has COVID-19, is subject to quarantine at the advice of a healthcare professional or a government order, is experiencing symptoms of COVID-19 and is seeking medical treatment for it **or**
 - b. \$200 per day and \$2,000 in aggregate for each employee if the employee is taking leave due to the need to care for family member who has COVID-19, is advised to quarantine by a healthcare professional or is caring for a child if their child's school has been closed and no child care is available due to COVID-19 precautions
3. An advance of a credit for situations arising from gross wages in excess of a social security payments will be granted as well as confirmation of the ability to reconcile credit amounts in real time instead of on a quarterly basis has been acknowledged

Recommendation: If you have employees who are eligible and apply for paid leave under the FFCRA, make sure you understand your requirements to pay these individuals and work with your payroll provider to capture the appropriate payroll tax credit that you are entitled to.

What now?

1. Don't blindly act on any of the topics discussed without considering longer term ramifications
 - a. For example, startups or small businesses with venture or private equity investors may not qualify for SBA 7(a) or 7(b)(2) loans under the [affiliation rules](#)
2. Talk to us to see how these changes apply to your specific facts and circumstances
3. Stay safe!

Questions?

Email: curt@founderscpa.com

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