

Consolidated Appropriations Act (Signed December 27, 2020)

## **Tax Provisions Summary:**

### **Expenses related to PPP loan forgiveness are deductible:**

Under the CARES act the IRS position was that expenses that gave rise to PPP loan forgiveness were not deductible. The Appropriations Act reverses this and permits taxpayers whose PPP loans are forgiven to deduct the expenses relating to the loan to the extent they would otherwise qualify as “ordinary and necessary business expenses”. This rule will apply retroactively to the effective date of the CARES Act.

### **Employee Retention Credit:**

Several changes were made to the employee retention credit by the Appropriations Act summarized below:

**CARES Act:** Refundable payroll tax credit of 50% of “qualified wages”, capped at \$5,000/employee (50% of up to \$10,000 of qualified wages for all calendar year quarters).

**Appropriations Act:** Increases the credit to \$7,000 (70% of \$10,000) for any calendar quarter. The maximum credit available in 2021 for each employee will go from \$5,000 to \$14,000.

**CARES Act:** Available through December 31, 2020

**Appropriations Act:** Available through July 1, 2021

**CARES Act:** Businesses that received a PPP loan were not eligible

**Appropriations Act:** Businesses that receive a PPP loan are eligible with the election to exclude qualified wages from either payroll costs for PPP purposes or from the calculation of the credit. You may not overlap qualified wages for PPP and the Employee Tax Credit.

**CARES Act:** To qualify business operations had to be wither fully or partially suspended by a COVID lockdown order or for any quarter in 2020, if gross receipts are less than 50% of gross receipts for the same quarter in 2019.

**Appropriations Act:** Effective Jan. 1, 2021, business operations that are either fully or partially suspended by a COVID-19 lockdown order, or for a quarter in 2021, if gross receipts are less than 80% of gross receipts for the same quarter in 2019.

**CARES Act:** For a company with more than 100 employees, no credit was available for wages paid to an employee performing services for the employer. A company with 100 employees or less was eligible for the credit, even if the employee was working.

**Appropriations Act:** Effective Jan. 1, 2021, this threshold will be raised to 500 employees, so that for the first two quarters of 2021, a company with 500 or fewer employees will be eligible for the credit, even if employees are working. Note that in calculating this 500-employee threshold, the employees of all affiliated companies sharing more the 50% common ownership are combined.

### **Extension of Paid Sick and Family Leave Tax Credits:**

The FFCRA provides an employer with refundable payroll tax credits to cover wages paid to employees while they take time off under new paid sick and family leave programs between April 1, 2020 and December 31, 2020. The Act extends the paid sick and family leave tax credits through March 31, 2021 on a voluntary basis.

***Please note: There are several other tax provisions provided under the new Act. This is a summary of the most used and you should always consult a tax professional for guidance and clarification.***

### **Paycheck Protection Program Provisions:**

**Expanded expenses available for forgiveness to include the following (not available for loans already forgiven):**

- *Covered operations expenditures:* “payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions or accounting or tracking of supplies, inventory, records and expenses.”
- *Covered property damages costs:* “costs related to property damage and vandalism or looting due to public disturbance that occurred during 2020 not covered by insurance or other compensation.”
- *Covered supplier costs:* costs paid by a borrower for goods, made under a contract, order, or purchased order in effect prior to taking out the loan that “are essential to the operations of the borrower at the time at which the expenditure was made.”
- *Covered worker protection expenditures:* operating or capital expenditures to facilitate the loan recipient’s compliance with federal health and safety guidelines or equivalent state and local guidance related to the COVID-19 national emergency beginning on March 1, 2020, through the expiration of the national emergency declaration.

### **Covered period for forgiveness:**

A borrower can now elect when the covered period will end by selecting a date between 8 and 24 weeks after the date of origination.

### **Clarification on payroll costs:**

Payroll costs include payments for employer-provided benefits, including group life insurance, disability, vision and dental.

### **Expanded Eligibility:**

501c6 entities are now eligible to receive PPP loans.

### **Simplified Loan Forgiveness Application for Small Loans:**

PPP loans under \$150,000 will have a simplified forgiveness application process, requirements are:

- Loans are forgiven in full if a borrower submits a signed certification to the lender that is under one page in length.
- The certification must describe the number of employees the employer was able to retain due to the loan, give an estimate of the total loan amount spent on payroll costs, and state the loan total.
- Borrowers are required to retain employment records for four years and other records for three years after submission of the application form.

### **PPP Second Draw Loans:**

A second draw loan for smaller businesses with a maximum amount of \$2 million is available. Unlike the first draw loans, which generally allowed businesses with up to 500 employees to obtain a loan, eligible businesses for the second draw loans may not have more than 300 employees. Eligible businesses must have used or will use the full amount of their first PPP loan and demonstrate at least a 25 percent reduction in gross receipts in any quarter of 2020 relative to the same quarter in 2019. Eligible businesses include certain nonprofit organizations, housing cooperatives, veteran organizations, tribal businesses, sole proprietorships, and independent contractors.

### **Second Draw Loan Terms:**

Borrowers may receive a loan amount for up to 2.5 times the average monthly payroll costs in the one year prior to the loan or calendar year, but not to exceed \$2 million. Certain entities in industries assigned a North American Industry Classification System (NAICS) code of 72 Accommodation and Food Services (e.g., hotels and restaurants) may receive loans of up to 3.5 times the average monthly payroll costs. An eligible entity may only receive one PPP second draw loan.

### **Loan Forgiveness Second Draw Loans:**

Borrowers are eligible forgiveness for loans equal to the sum of their payroll costs and for non-payroll costs for covered mortgages, rents, utility payments, covered operational expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered periods of the loans. The 60/40 cost allocation between payroll costs and non-payroll costs to receive full forgiveness remains the same.

Please visit <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources> for additional information and applications.

## **Other Provisions:**

### **Economic Impact Payments:**

Generally, if you're a U.S. citizen or U.S. resident alien, you may be eligible for \$600 (\$1,200 for a joint return), plus \$600 for each qualifying child, if you (and your spouse if filing a joint return) aren't a dependent of another taxpayer on a 2019 tax return, have a social security number (SSN) valid for employment and your adjusted gross income (AGI) does not exceed:

- \$150,000 if married and filing a joint return or if filing as a qualifying widow or widower;
- \$112,500 if filing as head of household; or
- \$75,000 for eligible individuals using any other filing status

Your payment will be reduced by 5% of the amount by which your AGI exceeds the applicable threshold above.

You aren't eligible for a payment if any of the following apply to you:

- You were claimed as a dependent on another taxpayer's 2019 tax return (for example, a child or student who may be claimed on a parent's tax return or a dependent parent who may be claimed on an adult child's tax return).
- You don't have an SSN that is valid for employment issued before the due date of your 2019 tax return (including any extensions).
- You're a nonresident alien.
- Someone was deceased before 2020.
- Are an estate or trust.

### **FSA Provisions:**

All unused amounts in a health or dependent care FSA may be carried over from the 2020 plan year to the 2021 plan year, and from the 2021 plan year to the 2022 plan year. This rule applies to dependent care FSAs even though carry-overs are otherwise not permitted for these accounts.

The grace period for a health FSA or dependent care FSA for a plan year ending in 2020 or 2021 may be extended from two-and-a-half months to 12 months.

For plan years ending in 2021, participants may prospectively modify their health FSA or dependent care FSA contributions for any reason. A similar rule is already in place for plan years ending in 2020. Plan sponsors may, however, decide to limit permitted election changes for health FSAs to avoid overspending in these accounts.

An employee who stops participating in a health FSA during 2021 may continue to receive reimbursements from unused amounts through the end of the plan year, including any grace period. Unlike reimbursements available to participants who have elected COBRA coverage following their

termination, this rule does not require that the participants make further contributions to access their unspent funds.

Although current rules limit reimbursement of qualifying dependent care expenses to children under age 13, the Act provides an extra year for children who "aged out" during the pandemic. Employers can allow unused dependent care FSA amounts for children until they turn age 14, at least through the end of the 2021 plan year.

***Please note: There are several other provisions provided under the new Act. This is a summary of the most used and you should always consult a professional for guidance and clarification.***