

Paycheck Protection Program CARES Act



Any questions?

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March 31, 2020



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Agenda

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- Paycheck Protection Program – Section 1102
- Loan Forgiveness – Section 1106
- Emergency Economic Injury Grants – Section 1110
- Employee Retention Tax Credit
- Deferral of Employment Taxes
- Net Operating Loss “NOLs”
- Advance Refunding of Credits



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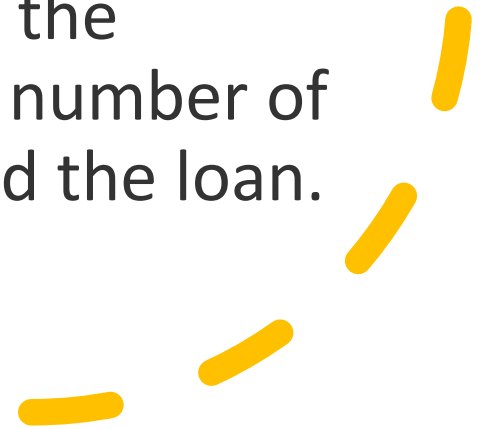


Paycheck Protection Program Section 1102

Paycheck Protection Program – Section 1102

The bill establishes a new guaranteed loan program at SBA for small businesses to cover payroll during the immediate crisis. The Paycheck Protection Program would:

- Support \$349 billion in 100 percent guaranteed, low interest, no fee loans of up to \$10 million with repayment deferred for at least six months; and
- Forgive up to 100% of the loan if the borrower has retained the same number of employees as when they received the loan.



Paycheck Protection Program Section 1102

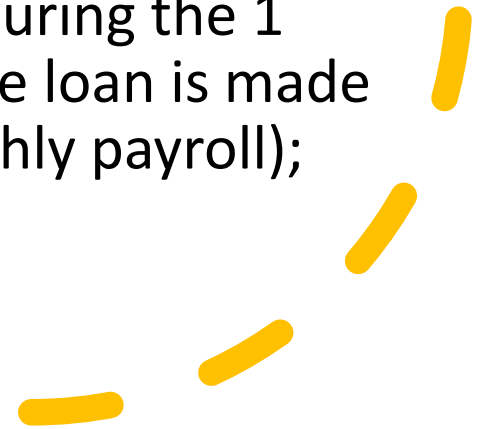


Who Is eligible?

- Small business, sole proprietorships, non-profits, independent contractors with less than 500 employees
 - a. The 500 employee limitation is waived for NAICS codes beginning with 72 – Accommodation and Food Services (Restaurants and Hotels);

How much?

- The maximum loan amount is average monthly payroll costs (a defined term) incurred during the 1 year period before the date on which the loan is made TIMES 2 and ½ (2.5 times average monthly payroll);
 - a) it is capped at \$10 million



Paycheck Protection Program Section 1102



How much?

Example: Loan Made on 5.1.2020

- Average Monthly Payroll Cost 5.1.2019 to 5.1.2020 = \$500,000
- Maximin Loan Amount = \$1,250,000 (2.5 X Average Payroll Cost)



Paycheck Protection Program Section 1102

For purposes of computing the Maximum Loan Amount (as well as for the permitted use of loan proceeds discussed more fully later), the term “Payroll Costs”:

The sum of payments of any compensation with respect to employees that is a –

- A. salary, wage, commission, or similar compensation,
- B. payment of cash tip or equivalent,
- C. payment for vacation, parental, family medical, or sick leave,
- D. allowance for dismissal or separation,
- E. payment required for the provisions of group health care benefits, including insurance premiums,
- F. payment of any retirement benefit,
- or G. payment of State or local tax assessed on the compensation of employees; and

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 1 year, as prorated for the covered



Paycheck Protection Program Section 1102

For purposes of computing the Maximum Loan Amount the term “Payroll Costs”:

(II) shall not include –

- the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the Covered Period if used;
- taxes imposed or withheld under Chapter 21, 22, 24 of the Internal Revenue Code of 1986 during the Covered Period;
- any compensation of employees whose principal place of residence is outside of the United States;
- qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116-127); or
- qualified family leave wages for which credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116-127).

Paycheck Protection Program Section 1102



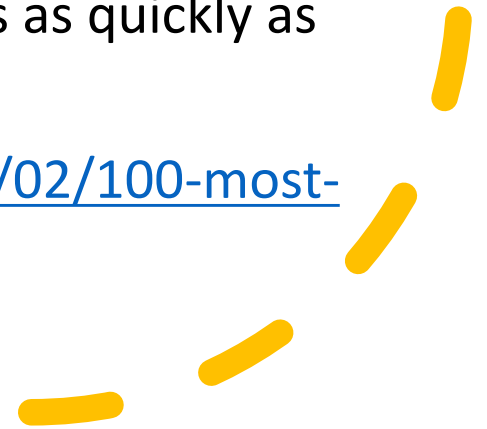
What about franchises and hotels?

The program temporarily waives SBA “affiliation rules” to allow businesses with multiple locations that normally are not considered small, to qualify. This is especially important for our restaurant and lodging sector. They are still limited to the same maximum loan size - \$10 million - as a business with one location.

How are loans made?

The SBA’s network of 2,500 7(a) lenders will be used to process these loans. There is also authority to fast track additional lenders to process and disburse these loans to reach as many small businesses as quickly as possible.

<https://www.sba.gov/article/2020/mar/02/100-most-active-sba-7a-lenders>



Paycheck Protection Program Section 1102



When?

- Can apply for loan as soon as 3/31/2020

SBA stating information should be ready by this Friday 4/3/2020 for Payroll Protection Program.

- Loans to be made/closed between February 15, 2020 and June 30, 2020 (the “Covered Period”)



Paycheck Protection Program Section 1102

Use of proceeds “Permitted Uses”? The loan can ONLY be used for:

1. Payroll costs (presumably having the same meaning as defined prior),
2. costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums;
3. employee salaries, commissions, or similar compensations (it is interesting to note that there is no reference here to excluding portions of compensation above \$100,000 per year);
4. payments of interest on mortgage obligations (not principal); (v) rent (including rent under a lease agreement);
5. utilities;
6. and interest on any other debt obligations that were incurred before the Covered Period.

At present, there is no guidance on what “rent” may include but presumably it includes rent paid for land and buildings and may include rent paid for equipment, vehicles and other movable (tangible) property.

Paycheck Protection Program Section 1102



Are these grants?

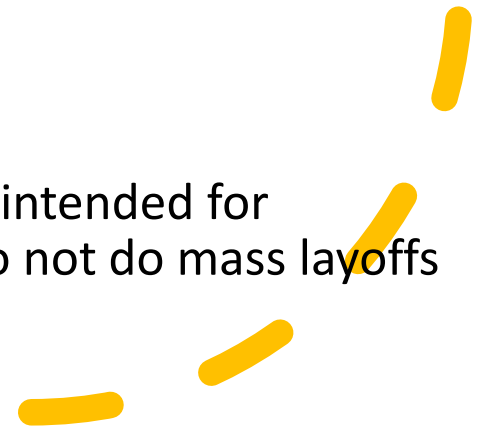
Yes and No. The amount of the loan forgiven at the end of the year will be determined by how many employees were retained on the company's payroll, up to 100 percent for full retention. There are safeguards built in to protect against employers gaming the program, as well as recognizing some employers will be forced to do temporary furloughs but bring their employees back on.

What is covered?

This bill allows firms to get a loan to cover up to 2.5 months of payroll and any new EIDL loan balances incurred because of Coronavirus but cannot exceed \$10 million.

How long does the program last?

The program is open until June 30, 2020, as it is intended for immediate payroll relief to ensure businesses do not do mass layoffs during this crisis.



Loan Forgiveness Section 1106



- Forgiven amounts will not be considered income for tax purposes!
- Borrower may be eligible to loan forgiveness on principal for the amounts spend on the following items during the 8-week period beginning on the day the loan was originated:
 - Payroll Cost
 - Interest on mortgage obligation (originated before 2/15/2020)
 - Rent on a business lease (originated before 2/15/2020)
 - Utility Payments (services that begin before 2/15/2020)
 - Additional Wages paid to tipped employees
- Any amounts not forgiven will be covered in the ongoing loan for a term of 10 years, not to exceed 4% interest with the 100% guarantee.

Loan Forgiveness reduced Section 1106



Reduction in Force Reduction

The covered period is the “8-week cover period” following the loan closing. Loan forgiveness will be limited to the percentage obtained by dividing:

The number of full-time equivalent employees during the 8-week period after the SBA loan closes

The number of employees on the payroll between February 15, 2019 and June 30, 2019

or average number of employees on the payroll between January 1, 2020 and February 29, 2020

* whichever is a better result for the applicant

Loan Forgiveness Reduced Section 1106

Example:

Applicant had an average of 20 full-time equivalent employees per month for the period of eight weeks after the SBA loan closes and 30 full-time equivalent employees between the period February 15, 2019 and June 30, 2019
o and 23 full-time equivalent employees between January 1, 2020 and February 29, 2020;

an SBA loan balance of total “Payroll Cost” \$150,000;

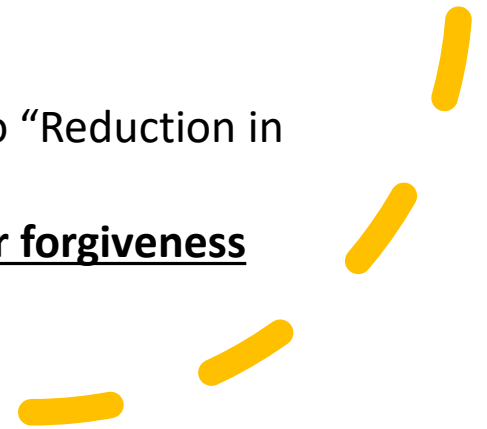
Total “Permitted Uses” of \$75,000 and \$20,000 of covered mortgage interest, rent and utility payments in “8 week Covered Period”.

o The most the applicant can exclude is \$95,000 (the Maximum Loan Forgiveness)

o However, the forgiveness is further limited to “Reduction in Force Reduction” 20/23

(87%) or \$82,650 of the loan will be eligible for forgiveness

(87% of \$95,000)



Loan Forgiveness Reduced Section 1106



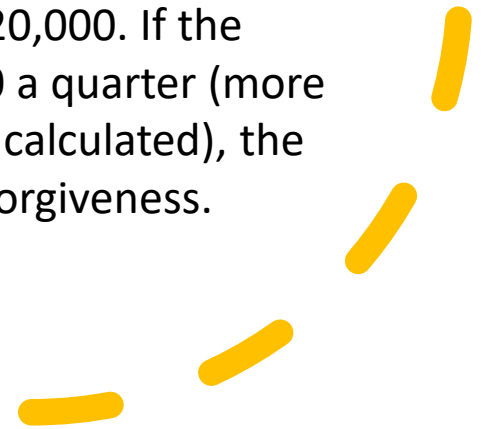
Reduction in Wages Reduction:

The Maximum Loan Forgiveness Amount shall be reduced by the amount of any reduction in total salary or wages of any “employee” during the “8-Week Covered Period” that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the 8-Week Covered Period.

Example:

Company receives a PPP loan. After the 8-week Covered Period, Company determines that its potential loan forgiveness amount is \$150,000.

Jim worked for the Company last year. Jim has a salary of \$80,000. During the first quarter of 2020, Jim’s salary was \$20,000. If the Company reduces Jim’s salary by more than \$5,000 a quarter (more than 25% based on most recent full quarter salary, calculated), the amount in excess of \$5,000 must reduce the loan forgiveness.



Loan Forgiveness Reduced Section 1106

Exemption for rehires:

For employees rehired that were terminated or furloughed between February 15, 2020 and approximately April 26, 2020 (30 days following enactment) no reduction in loan forgiveness is required as long as they are rehired prior to June 30, 2020 at their previous salary/wage rate. It doesn't have to be the same employee. They only look at the number of employees, not specific employee and amounts paid.

It is not clear whether the rehire reversal referenced above requires a total reversal in the reduction in force and a total reversal in the reduction in wages to get the benefit of this provision.



Loan Forgiveness Reduced Section 1106



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:

Reduction based on reduction of number of employees



**PAYROLL
COST**
Calculated
on page 2

X

Average Number of
Full-Time Equivalent
Employees (FTEs)
Per Month for the
8-Weeks Beginning
on Loan Origination

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Option 1:

Average number of FTEs per month from
February 15, 2019 to June 30, 2019

Option 2:

Average number of FTEs per month from
January 1, 2020 to February 29, 2020

For Seasonal Employers:

Average number of FTEs per month from
February 15, 2019 to June 30, 2019

Reduction based on reduction in salaries



**PAYROLL
COST**
Calculated
on page 2

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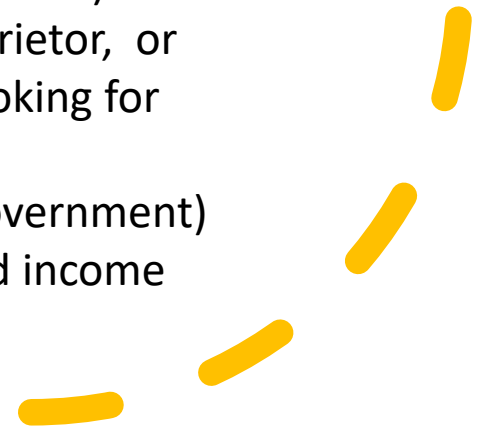
For any employee who did not earn during any pay period in 2019 wages at an annualized rate more than \$100,000, the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter.

small businesses, visit
[uschamber.com/co](https://www.uschamber.com/co)

What will Lenders be looking for?

Lenders will ask you for a good faith certification that:

- Was the borrower in operation before February 15, 2020 and had employees for whom they paid salaries and payroll taxes or paid independent contractors.
- The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations
- The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments
- Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here
- From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here (Note: There is an opportunity to fold emergency loans made between Jan. 31, 2020 and the date this loan program becomes available into a new loan)
- If you are an independent contractor, sole proprietor, or self-employed individual, lenders will also be looking for certain documents
- (final requirements will be announced by the government) such as payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietorship.



What will Lenders be looking for?

- Ø Completed Application
- Ø SBA Form 1919 or corresponding SBA Form 912, if applicable.
- Ø Articles of Incorporation/Organization of each borrowing entity
- Ø By Laws/Operating Agreement of each borrowing entity
- Ø All owners Driver's Licenses
- Ø Payroll Expense verification documents to include:
 - Ø IRS Form 940 and 941
 - Ø Payroll Summary Report with corresponding bank statement
 - Ø If a Payroll Summary Report is not available, Employee Pay Stubs as of February 15, 2020 (or corresponding period) with corresponding bank statement, and,
 - Ø Breakdown of payroll benefits (vacation, allowance for dismissal, group healthcare benefits, retirement benefits, etc.
- Ø 1099s (if Independent Contractor)
- Ø Certification that all employees live within the United States. If any do not, provide a detailed list with corresponding salaries of all employees outside the United States
- Ø Trailing twelve-month profit and loss statement (as of the date of application) for all applicants
- Ø Most recent Mortgage Statement or Rent Statement (Lease)
- Ø Most recent Utility Bills (Electric, Gas, Telephone, Internet, Water



What will Lenders NOT be looking for?

- Personal Guarantee
- Collateral
- Ability to Repay
- Disclosure that the borrower was unable to obtain credit elsewhere

Find information here:

- <https://www.sba.gov/funding-programs/loans/paycheck-protection-program>



Emergency Economic Disaster Loan EIDL Section 1110



- The bill creates a new \$10 billion grant program, leveraging SBA's Office of Disaster Assistance infrastructure, to provide small businesses with quick, much needed capital.
- Small businesses, cooperative, ESOPS, private non-profits, independent contractors and the self-employed
- The borrower will be eligible to receive up to \$10,000 to cover immediate payroll, mortgage, rent, and other operating expenses while they wait for additional relief to be processed.
- Different Loan Terms than the PPP

Who is eligible?

- Independent contractors, the self-employed, private non-profits, and small businesses and medium sized businesses with up to 500 employees, including startups, cooperatives, and ESOPs.
- Complete application on the Website
- <https://www.sba.gov/page/disaster-loan-applications#section-header-0>



EIDL and PPP

- We believe there will be interplay but we are waiting for direct guidance from the SBA.
- Consider economic needs/ overlaps / speed of funding needed during application.



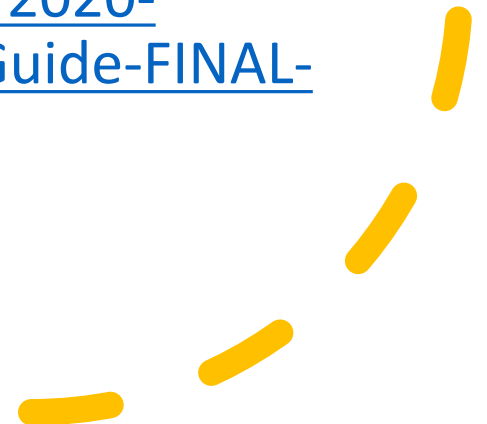
EIDL Express Bridge Loan Section 1110

Express Bridge Loan (Pilot)

- Complete the application on the SBA Website
- Could take up to 4 weeks
- First \$25,000 is disbursed within 5 business days
- Each applicant is assigned a case officer

Find information here:

<https://www.sba.gov/sites/default/files/2020-03/Express-Bridge-Loan-Pilot-Program-Guide-FINAL-3.25.20.pdf>



Immediate SBA Help



How quickly will grants be made?

The legislation requires SBA to disburse within 3 days of verifying the business's eligibility.

Are grant recipients eligible for other SBA programs?

Yes, businesses remain eligible for the paycheck protection program, disaster loans, and regular SBA-backed loans.



Current SBA Recipients

Section 1112

6-months of Principal and Interest Relief - Section 1112

Small businesses in industries heavily impacted by coronavirus—such as travel, tourism, and hospitality—are experiencing dramatic cash flow problems. The government is ultimately responsible for guarantees on these loans and has a vested interest in averting mass defaults.

To provide immediate relief to small businesses with SBA-backed loans, the bill would:

Provide small businesses with relief from SBA loan payments, including principal, interest, and fees, for six months;

Encourage banks to provide further relief to small business borrowers by enabling them to extend the duration of current loans beyond existing limits; and

Provide \$17 billion in relief to SBA borrowers.



Current SBA Recipients

Section 1112

Who is covered?

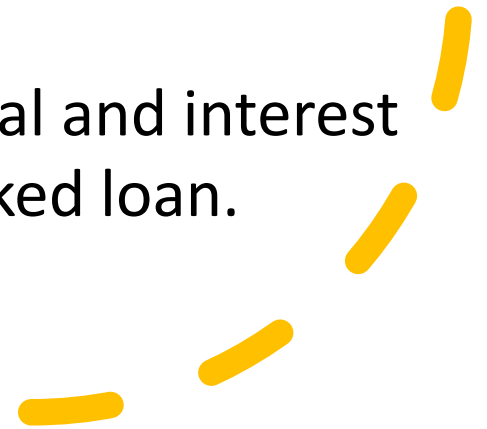
Current and new 7(a) and 504 borrowers, under current SBA eligibility requirements. Those include small businesses, sole proprietors, cooperatives, and ESOPs.

Is eligibility expanded for this program?

No, this uses current, long-standing eligibility criteria.

How does it work?

The SBA will pay a borrower's principal and interest for the next 6 months on an SBA-backed loan.



Employee Retention Tax Credits (ERTC)

Employers get refundable payroll tax credit equal to 50% of the “qualified wages” paid from March 13, 2020 through December 31, 2020 if

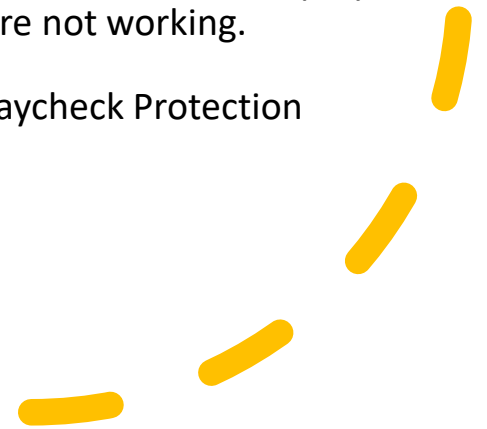
1. operations were fully or partially suspended, due to COVID-19 related shut-down order, or
 2. gross receipts declined by more than 50% when compared to the same quarter in 2019.
- NOTE: (1) similar to FFCA, tax credit “only” applies to SSN taxes, and (2) Deposit Guidance

Qualified Wages

1. For employers more than 100 full-time employees, qualified wages if paid to employees NOT providing services due to COVID-19 (actual shutdown)
2. For employers with 100 employees or less, all wages paid to employees are considered qualified.

Qualified Wages are capped at \$10,000 per employee, and so, Tax Credit is capped at \$5,000 per employee, which is 50% of \$10,000. Employers with more than 100 employees, wages are capped at what employee was paid prior 30 days before not working.

Tax Credit is not available for Employers taking 7(a) SBA Loan (“Paycheck Protection Program”)



Employer Tax Deferments

- Social Security Taxes (6.2%) due between May 27, 2020 and January 1, 2021 are subject to payment deferral.
- 50% of deferred taxes will be due by December 31, 2021 and 50% of deferred taxes will be due by December 31, 2022.
- Same deferral applies to 50% of such taxes incurred by self-employed



ERTC and Deferral vs. PPP

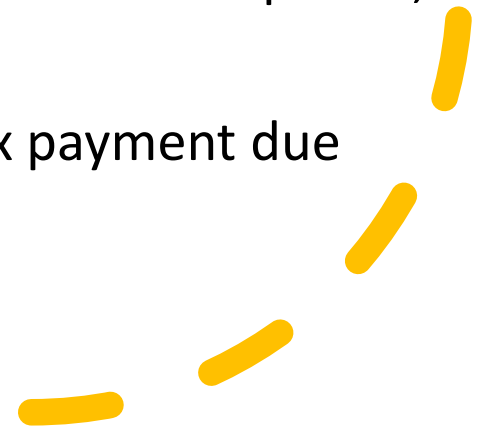
Questions and Answers

- Should I do EIDL or PPP?
- If PPP load will not be made available for 30 + days, how should I manage payroll and other expenses?
- Can you defer Payroll Tax and have PPP?
- Who can help me make this decision?
- Should I furlough or lay off?



Recovery Rebates

- \$1,200 for individual taxpayers / \$2,400 for joint filing taxpayers
 - PLUS \$500 for each dependent child
 - Rebate starts phasing out at \$75,000 individual / \$150,000 joint filers (AGI)
 - Phases out at \$5 per \$100 of excess over such thresholds
 - Fully phased out at \$99,000 individual / \$198,000 joint filers with no children. Phase out increases by \$10,000 for each child.
- AGI based on 2018 tax return numbers unless individual has filed 2019 tax return
- IRS Notice 2020-18 postponed filing deadline from April 15, 2020 to July 15, 2020.
- Notice 2020-17 had previously delayed tax payment due date April 15, 2020 until July 15, 2020.



Loan Forgiveness and COI

Generally, cancellation of debt results in income for the borrower to the extent of the cancelled or forgiven debt.

However, debt cancelled or forgiven pursuant to Payment Protection Program by SBA in CARES ACT will NOT be considered income to the taxpayer.



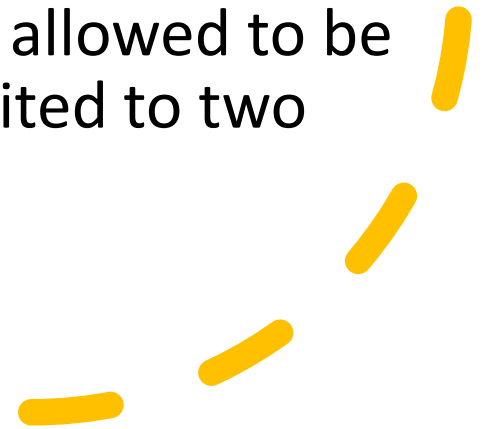
NET OPERATING LOSS “NOLs”

The TCJA of 2017 ended the practice of carrying back NOLs to prior tax years, but allowed for such NOLs to be carried forward indefinitely.

CARES Act allows for NOLs recognized after date of TCJA through the end of the year (so tax years, 2018, 2019, and 2020) to be carried back 5 years.

Businesses will be able to amend or modify tax returns to offset gains dating back to the 2013 tax year in order to take advantage of the carryback.

Under the law prior to Care Act, only farming, casualty, or disaster related NOLs are allowed to be carried back, and the carryback is limited to two years.



Interest Expense Limitation

The TCJA of 2017 limited the deductibility of business interest for individuals with gross revenue in excess of a threshold amount, which for 2020 was approximately \$26 million.

Under the TCJA, business interest deduction was limited to the sum of (1) business interest income, (2) 30 percent of the adjusted taxable income of the taxpayer, and (3) the floor plan financing interest of the taxpayer for the taxable year.

The last element, floor plan financing, applies to dealers of self-propelled motor vehicles designed for transporting persons or property on a public street, highway, or road; boats; or self-propelled farm machinery or equipment.

The CARE Act increased (2) to 50% of the adjusted taxable income of the taxpayer.



Qualified Improvement Property

This was a technical correction to an error in the TCJA of 2017, but it will be a welcome site to many property owners. The new provision accelerate cost recovery (depreciation deductions) for so-called “qualified improvement property.”

Qualified Improvement Property is any improvement made to an interior portion of an existing non-residential building that is not:

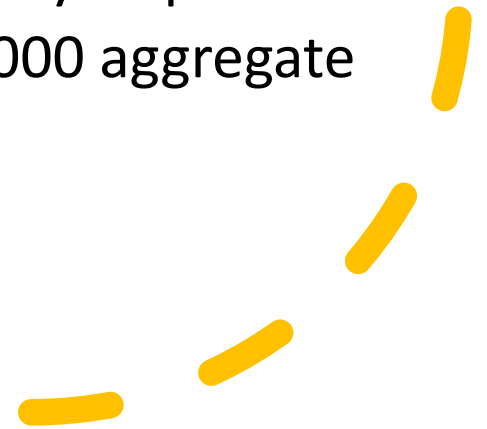
- (a) enlargement of the building
- (b) an elevator/escalator, or
- (c) internal structural components.

Prior to CARES Act, qualified improvement property was required to be depreciated over 39 years. Under CARES Act, such property can be fully deducted currently.

This applies retroactively to 2018 and 2019 tax years.

Adding Limitations to FFCA

- CARES Act amended language in FFCA to make it clear that employers are not required to pay more in Paid Sick leave or Emergency FMLA wages than the applicable credit under FFCA.
- Under the Emergency Paid Sick Leave Act, employers are only required to pay \$511 per day / \$5,110 aggregate or \$200 per day / \$2,000 aggregate per eligible employee
- For Emergency FMLA, employers are only required to pay \$200 per days in sick wages / \$10,000 aggregate per eligible employee.



Advance Refunding of Credits

- CARES Act added statutory authority for Treasury to advance the tax credit refundable to the employer because the employer paid Sick Paid Leave or Emergency FMLA wages pursuant to the FFCA.
- Treasury will produce instructions and forms for claiming such advance of the credit.



Resource Guides

Employer Guides/Samples

- <https://www.highflyerhr.com/covid-19-updates/>

SBA Loan Resources

- <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

S.3548 - CARES Act

- <https://www.congress.gov/bill/116th-congress/senate-bill/3548/text>

H.R. 6201

- <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>



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