



PPP Loan Updates 10/16/2020

The Payroll Protection Plan looks vastly different today than it did when it was first introduced six months ago. In its different variations PPP has morphed into its current form that should offer most, if not all, hospitality driven businesses full forgiveness.

Forms 3508 and 3508EZ go a long way toward getting over the initial hump of forgiveness by allowing hospitality organizations to point to federal and local government mandates to show that their business activity has been greatly reduced or, in some scenarios, completely halted as a result of the Covid-19 pandemic.

But, “Winter is Coming” to New England, and how the pandemic will change is anyone’s guess. We may be confronting a perfect storm as the 24-week period ends no later than December 31, 2020, and we are heading into the winter months without the ability to utilize any additional relief funds.

While there had been talk of an additional stimulus package with a potential second round of PPP funds, it appears that the parties are content to hold pat until after the election, which is right around the corner. Treasury Secretary Mnuchin has even recommended businesses apply for forgiveness without waiting for additional legislation.

Even though legislation, PPP, and any future stimulus is in a holding pattern, there have been two significant developments in the last month.

The first is that there is a new PPP forgiveness application form, Form 3508S. This form is for PPP borrowers that have a loan of \$50,000 or less. It is a one-page form that asks primarily for certifications. Without giving false hope, Form 3508S is the easiest way to gain forgiveness. There are certain stipulations to use the form, though, and you should get with your advisor to confirm that you would be eligible to use it.

The second development circles around “change in ownership” and the process that must occur in these situations. There are three definitions of change in ownership:

1. At least 20% of the stock or interest of a PPP borrower is sold or transferred, including to an affiliate or an existing owner of the entity.
2. Sells or transfers at least 50% of its assets; or
3. Merged with or into another entity.

If any of these situations occur, then the following needs to occur:

- The PPP Borrower must notify the PPP Lender of the transaction and provide the lender with the documentation of the transaction. The PPP Lender must sign off
 - There is specific verbiage that needs to be included in the documentation



Qualified Improvement Property

Many restaurateurs have and will continue to reconfigure restaurant space, kitchens, lobby's and entryways to conform with COVID-19 social distancing and safety guidelines. These investments, albeit necessary can be costly. Fortunately, the CARES Act includes a retroactive correction to the legal language of the Tax Cuts and Jobs Act (TCJA). The correction allows business owners to depreciate this qualified improvement property (QIP), that has been placed in service after the TCJA became law, in a much quicker pace.

Specifically, the correction allows 100% first-year bonus depreciation for QIP that's placed in service in 2018 through 2022. That's because QIP placed in service after 2017 is now eligible for a 15-year cost recovery period instead of a 39-year cost recovery period.

QIP is generally defined as any improvement to an interior portion of a nonresidential building that's placed in service after the date the building was first placed in service.

QIP includes the installation or replacement of drywall, ceilings, interior doors, fire protection, mechanical electrical and plumbing, and other items.

However, QIP does *not* include any expenditures attributable to:

- The enlargement of the building,
- Any elevator or escalator, or
- The building's internal structural framework.

If you have performed major reinvestment or additions to your building, a cost segregation study would be highly advantageous for you.

If your business will be unprofitable this year due to the COVID-19 crisis, deductions for 100% first-year bonus depreciation can create or increase a net operating loss (NOL) for 2020.

Some businesses that used a 39-year recovery period for QIP may instead opt to depreciate QIP over 15 years rather than claiming 100% first-year bonus depreciation. This could be a smart move if, for example, you expect tax rates to be higher in the future or if your business operates as a pass-through entity (such as a partnership, limited liability company or S corporation) and taking 100% bonus depreciation will cause you to miss out or reduce the deduction for qualified business income (QBI). Your tax advisor can advise you about the pros and cons of claiming bonus depreciation vs. depreciating QIP over 15 years.

- There are specific lender forms that must be filled out
- In some instances, the SBA needs to sign off on the transaction. This will be driven by the PPP lender, as they make that determination.

Remember, the PPP borrower is still responsible for all performance, obligations, certifications, and documentations of the PPP loan. The selling of the business does not relieve you in any way from the PPP loan process.

We recommend that if you are selling a business to place the proceeds of the sale in the amount of the PPP loan plus a year's worth of interest in an escrow account. Once the PPP loan is forgiven, that money can then be released to the seller at that time.

As in all things, please consult with your advisors and lenders before making any decisions.

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Businesses should be aware of the potential tax implications of PPP loans

If your business was fortunate enough to receive a Paycheck Protection Program (PPP) loan taken out, you should be aware of the potential tax implications.

Generally speaking, the reduction or cancellation of non-PPP indebtedness (debt) results in income known as "Cancellation of Debt" income to you, the debtor, which may affect a debtor's tax bill. However, as spelled out in the "Cares" Act, the forgiveness of PPP debt is excluded from gross income.

What is important to note is that on April 30, 2020, the IRS issued Notice 2020-32, which provides that borrowers cannot deduct otherwise deductible expenses that they paid using funds from a PPP loan that was subsequently forgiven. In effect, the IRS eliminated the tax benefit of PPP loan forgiveness.

However, the IRS's position on this issue has been vastly criticized and some members of Congress have argued that the denial of the deduction for these expenses is inconsistent with intent of the program and the spirit of true forgiveness. Congress may pass new legislation directing the IRS to allow deductions for expenses paid with PPP loan proceeds. We are watching this very closely and will update you as we hear more information on this topic,

All this uncertainty impacts tax planning, particularly estimated tax payments and extension payments for 2020. Please contact your tax advisors and make certain that you are having discussions relating to the taxability of PPP funds.



IRS clarifies position on PPP loan expenses

Please remember: Covid-19 pandemic is an unprecedented event and the PPP loans are a unique response to this crisis. Therefore, there is no prior precedent for taxability and the IRS is establishing its rationale for its decision.

The IRS has issued a ruling this week that clarifies its position that expenses paid with PPP loan funds will not be deductible. The IRS's position is defined from a series of previous court cases. In each of these cases, a private individual or organization issued loans to other individuals who fully reimbursed those loans. The courts ruled in those cases that the expenses paid with those loans were not deductible.

The IRS states in its ruling that PPP loan borrowers who have a reasonable expectation of loan forgiveness are similar to those borrowers in the earlier court cases who were not permitted to deduct expenses from their loans that were fully reimbursed.

Therefore, taxpayers that received a PPP loan and paid or incurred certain otherwise deductible expenses may not deduct those expenses in the taxable year in which the expenses were paid or incurred if at the end that taxable year the borrower reasonably expects to receive forgiveness of the covered loan. Even if the application for forgiveness was not submitted by the end of the taxable year, these expenses are disallowed if taxpayers reasonably believe the PPP loan will be forgiven.

What does this mean for you:

1. If expenses are indeed to be taxable, it will be taxable in tax year 2020.
2. The IRS is solidifying its case as to why those expenses will not be deductible and we are more informed of their arguments.
3. You only disallow expenses on what you reasonably believe will be forgiven.

As always, please consult with your trusted financial advisor about how this impacts you. Our business and tax advisors are available to answer questions for you.

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