COVID-19 IMPACT ON SINGLE AUDITS

During the COVID-19 pandemic many organizations received some form of federal relief funding. The CARES Act and the American Rescue Plan provided a wide range of programs to assist governments and organizations with much needed funding. In some instances, the increase in funding has created additional audit requirements.

State and local governments and nonprofits who expend more than $750,000 of federal awards during their fiscal year are required to have a single audit. A single audit includes an audit of both the financial statements and the federal awards. The single audit is also referred to as an audit under the Uniform Guidance and is required to be performed in accordance with *Government Auditing Standards.* A single audit focuses on the compliance requirements and the internal controls for obtaining, operating, and reporting on federal grant programs. Many organizations will now be required to have a single audit for the first time due to the level of funding received due to the pandemic.

In some instances, commercial entities may be subject to a program audit which is similar in nature to a single audit as the federal government included this audit requirement as part of the terms and conditions of some of the COVID-19 funding. An example of this would be the Provider Relief Funds received by health care providers.

It is important to note that federal awards do not always come directly from the federal government. Monies can be received directly or through a pass-through agency such as a state or nonprofit organization. It is important for recipients to keep a record of the sources of funding to in order to accurately determine if a single audit applies to you.

The good news is that loans and funds obtained under the Paycheck Protection Program and the Employee Retention Credit Program are not subject to single audit. However, funding under the Coronavirus Relief Fund, Education Stabilization Fund, and loans under the Economic Injury Disaster Loan program are subject to single audit.

If you have any question related to federal funding you received and if the audit requirements apply to you, please contact your TBC Advisor today.

by: Stephanie Mumford, CPA, Partner

THE NYS COVID-19 SMALL BUSINESS RECOVERY GRANT PROGRAM

The NYS COVID-19 Small Business Recovery Grant Program offers approximately $800 million in funding for qualified small businesses and organizations. The businesses must have been in operation on or before March 1, 2019 and continue to operate as of the date of the application. The program is now accepting applications at:

Grant Amounts

Grant awards will be calculated based on a business's annual gross receipts for 2019 (subject to change by Empire State Development).

- Award is $5,000 / business if annual gross receipts: $25,000 – $49,
- Award is $10,000 / business if annual gross receipts: $50,000 – $99,:
- Award is 10% of gross receipts if annual gross receipts: $100,000 – $500,000:
- The maximum grant is $50,000

Eligibility

To qualify the small business must:

1. Have 2019 or 2020 Gross Receipts of between $25,000 and $500,000 per annum

2. Demonstrate positive net profit on 2019 Business Return ($1 or greater)
3. Demonstrate at least 25% loss in Annual Gross Receipts in a year-to-year gross receipt comparison as of December 31, 2020 to the same period in 2019.
4. Demonstrate that the total business expenses on the 2020 business income return are greater than the grant amounts.
5. Not have qualified for business grant assistance programs under the federal American Rescue Plan Act of 2021 or any other available federal COVID-19 economic recovery or business assistance grant programs, including loans forgiven under the federal Paycheck Protection Program, or are unable to obtain sufficient business assistance from such federal programs. However, the applicant will not be disqualified from this Program if they have received or been awarded any of the following federal assistance: (a) United States Small Business Administration ("SBA") Paycheck Protection Program loans totaling $100,000 or less; (b) COVID-19 Economic Injury Disaster Loan ("EIDL") Advance Grant of $10,000 or less; (c) COVID-19 EIDL Supplemental Targeted Advance Grant of $5,000 or less; or (d) SBA Shuttered Venue Operators Grant.
6. The applicant must submit a formal certification with NYS. A PDF copy of the Applicant Certification can be found here:

Taxability

NYS has passed a law (NYS Senate Bill S7230) providing an exclusion from NYS taxable income for the amounts received pursuant to the COVID-19 pandemic small business recovery grant program, to the extent includable in federal taxable income.

Ineligible Businesses

1. Landlords and passive real estate businesses
2. Businesses that received awards from the SBA Restaurant Revitalization Grant Program
3. All Non-Profits, Churches and other religious institutions
4. Government-owned entities or elected official offices
5. Businesses primarily engaged in political or lobbying activities
6. Illegal businesses or enterprises
7. Other industry or business types as specified by Empire State Development

Eligible Use of Grant Funds

The grants must be used for COVID-19 related losses or expenses incurred between March 1, 2020 and April 1, 2021. These include:

1. Payroll costs
2. Commercial rent or mortgage payments for NYS-based property (but not any rent or mortgage prepayments)
3. Payment of local property or school taxes associated with a small business location in NYS
4. Insurance costs
5. Utility costs
6. Costs of personal protection equipment (PPE) necessary to protect worker and consumer health and safety
7. Heating, ventilation, and air conditioning (HVAC) costs
8. Other machinery or equipment costs
9. Supplies and materials necessary for compliance with COVID-19 health and safety protocols
10. Other documented COVID-19 costs as approved by Empire State Development

Ineligible Uses of Funds

Grants awarded under the program may not be used to re-pay or pay down any portion of a loan obtained through a federal COVID-19 relief package for business assistance or any New York State business assistance programs.

Please contact your TBC Advisor to discuss whether your business qualifies for this program and other COVID-19 relief options.

by: Ben Henderson, CPA, Manager

CONSIDERATIONS FOR NONPROFITS IN RESPONSE TO THE PANDEMIC

In New York State alone there are thousands of not-for-profit organizations that employ over 1 million people and provide services to vulnerable children, adults and families. As a result of COVID-19 many of these organizations are facing a higher demand for their services. Some not-for-profits were already struggling financially before the pandemic and are now facing increasing demand for services along with unexpected expenses. Many organizations rely on contracts with New York State for funding as a major source of revenue. Due to issues at various state agencies many contracts have not been renewed or have been delayed. Not-for-profits also rely heavily on contributions from individuals and companies and in many cases donations have slowed down. Not-for-profits have been forced to come up with new ways of fundraising and many events have been cancelled or switched to a virtual platform. Meanwhile not-for-profits are still providing services without the funding.

Some organizations are struggling to just keep their doors open. It's important to note that if not-for-profits are forced to close, state and local governments may have to fill in the gaps and provide services at a higher cost to taxpayers. This spring the Payroll Protection Program (PPP) provided some relief to those organizations that qualified however organizations had to be careful not to "double dip" as PPP funds could not be used for the same expenses that were being paid with other government funds.

Currently not-for-profits could be eligible to receive more help. There are now additional opportunities for a second draw and additional opportunities for a first draw PPP loan. The PPP loan program has been expanded to include some not-for-profits that were not previously eligible. Not-for-profits may also qualify for the employee retention credit which was extended to June 30, 2021 and is now available for employers even if they previously received, or will receive, a PPP loan. For 2021 the potential credit has increased and changes have been made to qualifying for the credit.

More information on PPP loans and the employee retention credit can be found at:

and

NYS PPP DEDUCTIBILITY

On January 13, 2021, New York State issued an update on tax conformity related to tax stimulus provisions passed by Congress throughout 2020. One significant change is related to the taxability of the Paycheck Protection Program (PPP) loan forgiveness income and the related deductibility of expenses paid with PPP funds. New York State has posted that the loan forgiveness income WILL NOT be taxable and the associated expenses WILL be deductible. All indications prior to this, including 2020 form instructions, required taxpayers to increase their NYS income by the forgiveness amounts in the year forgiveness was received by the SBA.

This is tremendous news for taxpayers and small businesses in New York State. For more information, you can link to the New York State Department of Taxation and Finance here

As always, please reach out to your TBC advisor with any questions.

COVID-19'S IMPACT ON STATE AND LOCAL GOVERNMENTS

The pandemic has had a huge impact on the economy. The impact has been far and wide affecting individuals and businesses. State and local governments have also been severely impacted. The pandemic has created significant declines in sales and other taxes and fees because consumption of goods and services have fallen. People are staying home which means that revenues from taxes and fees have been significantly lower than in any period in recent times. As an example there has been an increase in purchases of food at the grocery store, which typically are not subject to sales tax, versus spending at restaurants which is typically taxed more heavily. Not only are the restaurants suffering but the lack of tax generated on these sales is having a large impact on governments. No spending means no sales tax revenue at the state and local level. Revenues are down at a time where governments have encountered large unbudgeted costs in response to the pandemic. Governments have had to spend money on developing public safety standards, maintenance and materials, and large amounts of personal protective equipment.

General sales tax makes up, on average, about one quarter of state and local tax revenue. Federal aid may help offset some revenue losses that state and local governments have experienced in 2020. As the pandemic continues into 2021, and the economy remains depressed, local governments will need additional aid to avoid cutting services and raising taxes. The reality of the situation is that there will most likely be a greater need for services. Governments will likely be forced to confront tough budget choices for many years as a result of COVID-19. Expect to see budget cuts in education, adult and elderly care, and mental health support, to name a few.

To try and avoid deeper cuts, many state and local officials are trying a variety of strategies to be able to continue to deliver services. They include closely monitoring budgets, reducing expenditures, borrowing money, using reserves and increasing tax rates or creating new taxes or fee structures. Many state and local governments will have to turn to the federal government for assistance if the economy does not recover quickly enough.

For more information on this, please consult your trusted TBC advisor.

ECONOMIC AID ACT – EXPANDED PPP GUIDANCE

On January 6, 2021 the Small Business Administration ("SBA") issued two interim final rules ("IFR") related to the Paycheck Protection Program ("PPP") and the changes to the program made under the Economic Aid Act ("the Act"). The Act makes an additional round of PPP funding available through March 31, 2021. Businesses and self-employed individuals who had not previously taken a PPP loan may be eligible for a loan under the "first draw" program that was reinstated in the Act, while those who had already taken a PPP loan in 2020 may be eligible for a second round of funding under the "second draw" program. The IFRs address details on both the first draw and second draw programs, while also addressing a number of changes to the existing PPP rules relating to forgiveness and eligibility.

General Items

All first draw and second draw loans are 100% guaranteed by the SBA and do not require any collateral or personal guarantees. Loans will be eligible for forgiveness, subject to a number of requirements and limitations as outlined in previously issued PPP guidance. Loan balances that are not forgiven will have a maturity of 5 years and will be subject to interest at 1%. To be eligible for any PPP loans, the borrower's business must have been in operation as of February 15, 2020, the borrower must certify that due to current economic uncertainty the loan is necessary to support the business's ongoing operations, and the loan proceeds must be spent on eligible expenses.

First Draw Loans

First draw loans are dictated by the original PPP rules and requirements, except as outlined below in the "Changes Applicable to First Draw & Second Draw Loans" section. The items immediately below are shown to highlight the differences between the first draw and second draw loan programs:

- Maximum loan amount of $10 million (single corporate group limited to $20 million total)
  - Based on 2.5 months of average monthly payroll costs (and/or self-employment income) for all businesses regardless of industry
- Eligible businesses – same requirements as original PPP
  - Small business concerns (generally 500 or fewer employees but depends on industry, NAICS code starting with 72 or franchises with 500 or fewer employees per location), independent contractors, self-employed individuals, sole proprietors, certain tax-exempt entities

Second Draw Loans

Second draw loans are largely subject to the same general eligibility and forgiveness requirements as first draw and original PPP loans (subject to the "Changes Applicable to First Draw & Second Draw Loans" outlined below). The key items that differentiate the second draw loans are listed below.

- Maximum loan amount of $2 million (single corporate group limited to $4 million total)
  - Based on 2.5 months of average monthly payroll costs (and/or self-employment income)
  - Hospitality, Restaurants, and other businesses with a NAICS code starting with 72 – can use *5 months* of average monthly payroll
- Eligible businesses – same requirements as original PPP, *and:*
  - Must have previously received a PPP loan that has been or will be *fully used* (including any increase, see "Increasing an Existing PPP Loan" below) *for authorized purposes on or before* the disbursement date of the Second Draw Loan
  - Must have *300* or fewer employees (NAICS code starting with 72 or franchise – can have up to 300 employees per location)
  - Must have experienced a quarter-over-quarter revenue (gross receipts) reduction in 2020 versus 2019 of at least 25%
    - For simplicity, an annual reduction of at least 25% in 2020 versus 2019 is also acceptable if the business was in operation for all four quarters of 2019
    - Special rules apply for applicants not in business for all four quarters of 2019
    - First draw PPP loan proceeds are not included in calculating 2020 gross receipts
  - Cannot be primarily engaged in political or lobbying activities
  - Entities that have certain ties to the People's Republic of China or the Special Administrative Region of Hong Kong are not eligible
- Loan Application Requirements
  - SBA Form 2483-SD or the lender's equivalent
  - If the borrower is using 2019 expenses that were used in applying for their first draw loan they do not have to resubmit information to the lender
  - If loan is over $150,000 must submit documentation to establish reduction in revenue (I.e. tax forms, quarterly financials, bank statements); if loan is under $150,000 this documentation will be required prior to submitting a forgiveness application
  - If borrower's first draw PPP loan is under review by the SBA will not be issued a second draw loan until any issues are resolved

Changes Applicable to First Draw & Second Draw Loans

- Calculation of Loan Amount
  - Payroll costs used in calculating loan amount can be based on prior 12 months, 2019 calendar year, or 2020 calendar year
  - Payroll costs include employer contributions to employee group life, disability, vision and dental insurance

    - Sole proprietors – based on 2.5 months of 2019 *or* 2020 schedule C net income
        - If have employees, must use same year when calculating Schedule C net income and employee payroll
    - Partnerships – based on 2.5 months of payroll for employees plus 2.5 months' worth of 2019 *or* 2020 self-employment income for active general partners (less adjustments)
        - Must use same year when calculating employee payroll and partners' self-employment income
        - Partners *do not* file for PPP loans at personal level
    - Seasonal Employers – based on 2.5 months of average monthly payroll for any 12-week period between February 15, 2019 and February 15, 2020
- Eligibility
    - Recipients of a grant under the Shuttered Venue Operator Grant program are not eligible
    - Not eligible if business is permanently closed or business *or* owner is in bankruptcy
    - Publicly traded companies listed on an exchange are not eligible
    - Not eligible if the President, Vice President, head of an Executive department, or member of Congress (or spouse of any such person) controls or holds a 20% or more interest
    - Eligibility of 501(c)(6) organizations and other specific non-profit entities was expanded
- Covered Period– applies to new loans and existing loans if haven't yet applied for forgiveness
    - Begins on date loan proceeds are disbursed and ends on any date between 8 and 24 weeks after loan disbursement
    - Alternative covered period is eliminated
- Eligible Expenses– applies to new loans and existing loans if haven't yet applied for forgiveness
    - New eligible expenses (non-payroll)
        - Covered operations expenses: business software or cloud computing services to facilitate various aspects of business operations
        - Covered property damage expenses: property damage or vandalism related expenses due to 2020 public disturbances if not covered by insurance or otherwise reimbursed
        - Covered supplier expenses: payments to suppliers for goods that are essential to operations *and* made pursuant to a contract in place before the covered period (or in place during the covered period for perishable goods)
        - Covered worker protection expenses: adaptation of business activities to comply with Department of Health, CDC, and/or OSHA requirements related to sanitation, social distancing, or worker/customer safety
    - Self-employed individuals can only use proceeds on mortgage interest, rent, or utility expenses if they claimed or were entitled to claim a deduction for those expenses in 2019 or 2020 (whichever year was used in calculating loan proceeds)
- Forgiveness– applies to new loans and existing loans if haven't yet applied for forgiveness
    - Forgivable Payroll Costs
        - Include employer contributions to employee group life, disability, vision and dental insurance
        - Does not include any wages used in claiming an Employee Retention Credit
    - Streamlined forgiveness for loans under $150,000 – one page form
    - EIDL Advances (grants) issued under the CARES Act will not reduce PPP forgiveness
    - CARES Act reductions to forgiveness still exist, as well as safe harbors for restoring FTEs/salaries, business activity exception, and inability to rehire
        - Appears safe harbor date to restore FTEs/salaries is the last date of the covered period for new loans

Increasing an Existing PPP Loan

A borrower who has not yet received forgiveness may request an increase to the balance of their existing PPP loan if any of the above changes, or any changes previously issued, would result in a higher loan amount than the loan they originally received or accepted. The request for an increase must be submitted by the lender by March 31, 2021 and is subject to the availability of PPP funding. Examples of borrowers who may want to consider requesting an increase are:

- A partnership that did not include active general partners' self-employment income in the calculation of payroll costs

- A borrower that did not include employer contributions to employee group life, disability, vision and dental insurance in payroll costs
- A seasonal employer who calculated proceeds on a 12-week period between May 1, 2019 and September 15, 2019 but would have calculated higher average payroll costs based on a different 12-week period between February 15, 2019 and February 15, 2020
- A borrower who returned all or a part of the funds, or did not accept the full loan for which it was approved

Note: The above outlines the key provisions that will have widespread applicability. There are a number of additional provisions that may apply to certain businesses. Please consult your tax advisor.

CONGRESS PASSES COVID-19 RELIEF PACKAGE AND TAX EXTENDERS

The Consolidated Appropriations Act, 2021 (the Act) was passed by Congress on December 21, 2020, and has been sent to the President for his signature. This Act, consisting of 5,593 pages, incorporated a significant number of changes and enhancements to the CARES Act and existing tax law. Among the most anticipated items in the Act is the treatment of expenses paid with PPP funding that has been or will be forgiven.

PAYCHECK PROTECTION PROGRAM AND EMPLOYEE RETENTION CREDIT

PPP Deductibility Approved
The Act clarifies that eligible PPP expenses ***will*** be deductible for federal tax purposes, thereby making the PPP proceeds nontaxable as originally intended.

Since eligible expenses paid with PPP proceeds are deemed tax deductible expenses and the forgiveness received will be considered nontaxable debt relief, the Act provides for a double benefit that reverses the IRS' and Treasury's previous guidance on the deductibility of qualified expenses. Any portion of PPP proceeds that are not forgiven will continue to be treated as a loan and subject to the repayment terms of the loan agreement.

Specific items to note regarding taxability and deductibility are as follows:

The following income is deemed to be **nontaxable**:

1. PPP loan forgiveness under the first and second round.
2. EIDL advances received.
3. Payment of debt relief principal and interest under the CARES Act and SBA debt relief programs mentioned below.

The following amounts are **deductible**:

1. Expenses paid with EIDL advance funds.

The following amounts affect **basis**:

1. Basis **increases** for PPP forgiven funds, EIDL Advance funds, debt relief principal and interest payments
2. Basis **decreases** for expenses paid with PPP forgiven funds

****Note that the above considerations relate to federal tax law. Additional guidance is needed from the states to determine the tax consequences from a state tax law perspective.*

Expanded list of items the PPP funds may be spent on:

1. Covered Operations Expenditure – business software or cloud computing service that facilitates business operations, product or service delivery, the processing of payment or tracking of payroll expenses, human resources, sales and accounting functions, or accounting or tracking of supplies, inventory, records and

expenses.
2. Covered Property Damage Cost – a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation.
3. Covered Supplier Cost – goods or supplies that are essential to the operations of the entity pursuant to a contract or purchase order made at the time of the loan application. If for perishable goods, made at any time during the covered period.
4. Covered Worker Protection Cost – operating or capital expenditure to facilitate the adaptation of the business activities of an entity to comply with published COVID-19 guidance.
5. Payroll costs will now include group life, disability, vision and dental insurance.

Repeal of the deduction for the EIDL Advance. The EIDL Advance (up to a $10,000 grant) will no longer decrease the forgiveness amount. For those who have already received forgiveness, the SBA is ordered to make those applicants whole. ***It should be noted that payroll costs must still comprise at least 60% of all eligible PPP expenses to receive full forgiveness.***

Simplified Forgiveness Application
A simplified loan application for those applicants who received up to $150,000 will be developed. The application will be one page with certifications that the applicant complied with all applicable laws and regulations. Additional documentation needed to support the application will be limited. The SBA has been instructed to provide specific guidance to taxpayers within 10-days of the Act becoming law.

PPP Second Draw Loans
The Act includes a second round of Paycheck Protection Program loans available for application until March 31, 2021. These loans are available to eligible entities who:

1. Have 300 or less employees,
2. Have used or will use the full amount of their first PPP loan, and
3. Demonstrate at least a 25% reduction in gross receipts during any quarter in 2020 as compared to the same 2019 quarter.

Loan amounts are based off of 2.5 times the average monthly payroll costs (based on one year before the loan was made or 2019). For entities in accommodation or food service (NAICS code 72) the amounts are based off of 3.5 times the average monthly payroll costs. The maximum loan is $2 million.

Loan proceeds must be used for payroll and covered mortgage, rent, utilities, operations, property damage, supplier costs, and worker protection costs. Payroll must be 60% of the total cost allocation to receive full forgiveness. The limits on FTEs and wage/salary reduction from the first round of PPP loans still apply, but so do the existing safe harbors.

The covered period now allows for at least 8-weeks or up to 24-weeks but ending not later than 24-weeks after receipt of PPP proceeds. This allows recipients to select any period of covered weeks necessary to achieve forgiveness, for instance a recipient may select a 15-week covered period.

Seasonal employers now have the option of selecting any 12-week period between February 15, 2019 and February 15, 2020 for computing average total monthly payroll costs.

Employee Retention Tax Credit
The CARES Act created the employee retention tax credit (ERC) for eligible employers and was calculated based on 50% of the first $10,000 of qualified wages paid to an employee during an eligible quarter capped at $10,000 of eligible wages for the year. The employer must have had its operations fully or partially suspended by a government order, or a significant decline in gross receipts.

Under the Act, an eligible employer was expanded to include those employers that have 500 employees or less which is a significant increase from the CARES Act threshold of 100 employees. The Act increases the credit percentage from 50% to 70% of qualified wages. Qualified wages are increased from $10,000 per year per employee to $10,000 per quarter per employee. Additionally, the Act reduces the 50% drop in gross receipts to

20%, on a quarter-over-quarter basis.

Taxpayers may now also claim the ERC and receive a PPP loan. However, any wages used to compute the ERC are deemed not to be eligible forgiveness under PPP. Additional guidance is needed to determine if the ERC may be received on eligible wages incurred during 2020 for which PPP proceeds were not used to pay. Should this be the case, employers may want to review their 2020 payroll and compute their eligible credit and apply for that credit on their fourth quarter payroll returns. It should be noted that if you received the ERC you are not allowed to use those same wages to receive credits through other provisions of the Internal Revenue Code such as the increasing research credit, work opportunity credit, and employer wage credit. The Act extends the ERC through July 1, 2021.

Payroll Tax Deferral
On August 8, 2020, the IRS issued Notice 2020-65, which allows for the deferral of certain payroll tax obligations for the period of September 1, 2020 through December 31, 2020. Specifically, this notice allowed for the deferral of the employee portion of social security tax if the amount of bi-weekly compensation was less than $4,000 (determined on a per pay period basis).

As originally issued, the payroll taxes deferred during this period were due to be paid during the period of January 1, 2021 through April 30, 2021, with the full amount being paid back before May 1, 2021 to avoid interest and penalties. Under the new Act, the deferred taxes are to be paid ratably during the period of January 1, 2021 through December 31, 2021, giving taxpayers an additional 8 months over which they can spread the payment. Under the new Act penalties and interest will not begin to accrue until January 1, 2022.

INDIVIDUAL INCOME

Additional 2020 Recovery Rebate
In addition to the Economic Impact Payment (EIP) previously received by qualifying individuals under the CARES Act in March 2020, the Act introduces an additional EIP consisting of $600 per taxpayer ($1,200 for married filing joint) plus an additional $600 per each dependent child under the age of 17. Like the first EIP, eligibility is based on an income limitation of $150,000 for jointly filing taxpayers, $112,500 for head of household filers, and $75,000 for single and all other eligible filers. The payment would be reduced $5 for every $100 of income in excess of those thresholds. Taxpayers eligible to be claimed as a dependent on another's return are not eligible to receive a payment.

Treasury has announced that these stimulus checks are expected to come out as soon as next week and will be based on the taxpayer's 2019 filing information. As with the first EIP, these payments are not included in gross income for tax purposes. Instead, they are treated as an advance against a credit that eligible taxpayers will claim on their 2020 tax return.

If upon filing the 2020 return, the actual credit calculated (based on 2020 numbers) exceeds the advance payment received (i.e., the EIP), the taxpayer will be allowed to claim an additional refundable credit for the balance. If upon filing the 2020 return, the actual credit calculated (based on 2020 numbers) does not exceed the advance payment, the taxpayer may keep the advance payment and no reimbursement to the IRS is required. Taxpayers who were deceased prior to January 1, 2020, will not be eligible to receive the EIP. Congress explicitly stated this in the Act as there was confusion regarding EIPs made to deceased taxpayers in the first round of funding.

Earned Income and Child Tax Credits
To account for the potential diminished earnings of low-income earners in 2020 due to the pandemic, the Act provides for a special "lookback" provision. This provision will allow eligible taxpayers the option of using the earned income amount from their 2019 tax return to compute their eligible credit. Thereby potentially increasing their refundable credit in 2020 even if their earned income decreased.

Unemployment
The CARES Act provided for pandemic unemployment assistance for certain covered individuals who were unable to work due, directly or indirectly, to the COVID-19 pandemic, including self-employed individuals, independent contractors and others who don't qualify for state benefits. Under the CARES Act, covered individuals were

eligible to receive assistance for up to 39 weeks, with the program set to expire on December 31, 2020. Under the new Act, these benefits are extended through March 14, 2021 and covered individuals are now eligible for up to 50 weeks of assistance. In addition, individuals who are eligible for the pandemic unemployment benefits as of March 14, 2021 but have yet to collect their full benefits may continue to collect benefits through the earlier of the date they receive the full 50-week benefit or April 5, 2021.

Similar revisions will be seen for the pandemic emergency unemployment compensation program under the Act. Under the CARES Act, those who qualified for state benefits but exhausted those benefits were eligible for an additional 13 weeks of coverage under this program, with the program set to expire on December 31, 2020. Under the Act, individuals will be eligible for an additional 24 weeks of coverage beyond the state benefits (for a total of 50 weeks of coverage) through March 14, 2021. Those who are eligible for this benefit as of March 14, 2021 but have yet to collect their full benefits may continue to collect benefits through the earlier of the date they receive the full 24-week benefit or April 5, 2021.

The Act also reinstates the emergency increase in unemployment compensation benefits that was originally provided in the CARES Act and had expired as of July 31, 2020. The new Act offers $300 in additional unemployment compensation per week, compared to the $600 offered under the original program, and will be paid for weeks beginning after December 26, 2020 through March 14, 2021.

Charitable Contributions

Taxpayers who do not itemize their deductions can still benefit from making a charitable donation to a qualified organization. For tax years 2020, taxpayers can deduct a qualified contribution up to $300 for married and single as an above the line charitable deduction. For tax year 2021 married taxpayers receive an increased deduction amount of up to $600.

For Taxpayers who itemize, the expanded charitable contribution threshold was extended through tax year 2021. This means eligible taxpayers may deduct their charitable contribution up to 100% of their AGI.

TAX EXTENDERS

In conjunction with the passage of additional Coronavirus relief, the Act also extended many provisions that were set to expire on December 31, 2020. These extenders are a welcome addition to the Act for taxpayers. While not encompassing, the following highlights a few of the more prominent extenders.

Permanent Provisions

The following provisions were made permanent in the tax code after years of being temporary and having to be extended with new legislation. This provides for more certainty for many taxpayers.

- Reduction in medical expense deduction floor. This provision allows individuals to deduct unreimbursed medical expenses that exceed 7.5% of AGI instead of 10% for years beginning after December 31, 2020.
- Energy efficient commercial buildings deduction (Section 179D). This provision allows an increased deduction for buildings that meet above-industry standards of energy efficiency in the year they are placed in service. The energy efficiency standards are updated and the deduction rate is indexed to inflation for years beginning after December 31, 2020.
- Benefits provided to volunteer firefighters and emergency medical responders. This provision excludes from income certain state and local benefits for volunteer firefighters and first responders for years beginning after December 31, 2020.
- Transition from deduction for qualified tuition and related expenses to increased income limitation for lifetime learning credit. After 2020, this provision repeals the qualified tuition deduction and replaces it by increasing the phase-out limits on the Lifetime Learning credit to match the American Opportunity Credit.
- Railroad track maintenance credit (Section 45G). This provision provides short line railroads a tax credit for their expenditures on rail line maintenance. The credit rate was reduced from 50 percent to 40 percent for taxable years beginning after December 31, 2022.
- Craft Beverage Modernization Act. These provisions make the reduced excise rates for small brewers and distillers permanent. The provisions also make improvements to the administration of the lower rates and tightens anti-abuse rules.

Temporary Provisions

The following provisions have been extended through December 31, 2025:

- New Markets Tax Credit IRC 45D
- Work Opportunity Credit
- Qualified personal residence indebtedness which allows for a discharge of up to $2,000,000 of mortgage principle to be forgiven tax-free has been amended to limit the discharge to $750,000 for joint filing taxpayers or $375,000 for a single taxpayer.
- Employer payments of student loans. This payment was historically only for tuition and other education assistance items such as books and materials. Under the CARES Act employers were given the ability to provide $5,250 per year to employees to assist with their student loan repayments.
- Expensing rules for certain productions of qualified film, television and live theatrical productions

The following provisions have been extended through December 31, 2021:

- Deductibility of mortgage insurance premiums on a qualified residence
- Health insurance credits for eligible individuals
- Nonbusiness energy property credit – improvements to a home are still capped at $500 lifetime
- Section 45(L) energy efficient home credit for builders

BUSINESS DEDUCTION AND CREDIT PROVISIONS

Charitable Contributions

For Corporations the Act extends the ability to deduct charitable contributions up to 25% of taxable income. Another enhancement of the Act is allowing Corporate taxpayers to deduct up to 100% of a qualified charitable donation made to a qualified organization in a qualified disaster area.

100% Business Meal Deduction

For tax years 2021 and 2022 the deduction for eligible business meals is now 100% which is an increase from the previous 50%. Meals may be deducted in full provided they are paid or incurred during 2021 or 2022 and are from a restaurant and can be dine in, take out, or delivery. Entertainment expenses continue to be generally non-deductible.

Residential Rental Property

For those taxpayers who made an eligible election to opt of IRC Section 163(j), the ADS life has been adjusted to a 30-year life for all residential rental property regardless of when it was placed in service. Prior to this Act, the ADS life for this type of property was 40-years if it was placed in service prior to January 1, 2018. This change in recovery period could provide substantial depreciation adjustments for 2020.

Low Income Housing Credit

The Low Income Housing Credit now provides for a new minimum credit rate of at least 4% related to the acquisition and housing of bond-financed developments.

OTHER RELIEF

Disaster Relief Provisions

The Act specifically states that COVID-19 is not a qualified disaster pursuant to the Robert T Stafford Disaster Relief and Emergency Assistance Act. The Act does continue to allow for qualified disaster distributions of retirement funds up to $100,000. The retirement distribution income may be includable over a 3-year period. In addition, the Act increased the maximum eligible loans a taxpayer may take out against a qualified retirement fund from $50,000 to $100,000.

Shuttered Venue Operators

A live venue operator or promoter, theatrical producer, or live performing arts organization operator, a relevant museum operator, a motion picture theatre operator, or a talent representative may receive a grant to pay for payroll, rent, utilities and protective equipment. Eligible entities in the first 14 days of program must have a 90% decrease in revenues, 70% decrease in revenues in the following 14 days and then at least 25% decrease in

revenues thereafter.

Debt Relief Program
Resumes the payment of principal and interest on small business loans guaranteed by the SBA under the 7(a), 504 and microloan programs. The SBA will pay the principal and interest for 3 additional months starting 2/2/2021 and for an additional 5 months if the entity has a NAICS code starting in 61, 71, 72, 213, 315, 448, 451, 481, 485, 487, 511, 512, 515, 532, or 812. The monthly payment is limited to $9,000.

IRS RELEASES UPDATED PPP GUIDANCE – NO DEDUCTION FOR EXPENSES IN 2020 IF FORGIVENESS IS EXPECTED

On **November 18, 2020**, the IRS issued Revenue Ruling 2020-27 and Revenue Procedure 2020-51. The revenue ruling denies a deduction for PPP qualified forgiveness expenses if the taxpayer reasonably expects to receive forgiveness of the PPP loan regardless of whether the taxpayer has submitted a forgiveness application by the end of 2020. This pertains to expenses that qualify as eligible forgiveness expenses under the Cares Act (PPP-Forgiveness Application and FAQs) and paid during the covered period, including payroll costs, interest on a mortgage, rent payments and utility costs.

Though the IRS previously determined that no deduction is allowed for an eligible expense that is otherwise deductible if the payment of the eligible expense results in forgiveness of a covered loan (see Notice 2020-32 PPP – Tax Treatment of Wages and Other Qualifying Expenses Paid), Rev. Rul. 2020-27 provides clarity, through two situational examples, on the treatment of expenses for taxpayers who have not yet received a forgiveness decision.

- Situation 1 involves a taxpayer who received a PPP loan, paid eligible expenses during the covered period, and applied for PPP forgiveness prior to December 31, 2020.
- Situation 2 involves a taxpayer who received a PPP loan and paid eligible expenses in 2020 but did *not* apply for forgiveness by December 31, 2020.

The ruling holds that taxpayers in both Situations 1 and 2 may not deduct the eligible expenses in 2020 on the basis that the taxpayers in both situations have “a reasonable expectation of reimbursement.” Furthermore, “the reimbursement, in the form of a covered loan forgiveness, was foreseeable.”

Rev. Proc. 2020-51 provides a safe harbor for eligible taxpayers to claim a deduction in the 2020 taxable year if their request for forgiveness is denied, in whole or in part, or if the taxpayers never request forgiveness for their PPP loans.

It is unknown yet how States will handle this IRS guidance. Additional consideration should be given to state tax authorities with respect to PPP guidance and related treatment of expenses.

Taxpayers should consider how this ruling may impact their business and consult with their TBC advisor about tax planning opportunities before year-end.

PPP – LOAN FORGIVENESS/UPDATES

In recent weeks, the SBA has issued various interim final rules and Frequently Asked Questions (FAQ) regarding the PPP loan program. Additionally, there have been discussions between the Treasury Department and various

Congressional representatives regarding possible changes to the program. We are currently watching any developments closely. We are providing updates below regarding the PPP program and loan forgiveness information as the information is known to us on August 17, 2020.

PPP Program Now Officially Closed

The SBA is no longer accepting PPP applications for loans as of August 8, 2020. Though the program was initially set to expire on June 30th, Congress passed an extension in early July to give borrowers until August 8th to apply.

PPP Forgiveness Applications Platform

The SBA has provided borrowers with the choice of two different application forms, the Form 3508 or 3508EZ. Additionally, the SBA allows for lenders to create their own application. Form 3508EZ is a simplified form to be used by self-employed individuals without employees, businesses who did not reduce the number of employees, hours worked, and/or salary or wages paid to employees, or those businesses who did not reduce salary or wages and were unable to be open due to compliance with a federal government order. You can find the applications and instructions as follows:

Form 3508 Application Form 3508 Instructions

Form 3508EZ Application Form 3508EZ Instructions

The SBA opened its PPP Forgiveness Platform as of August 10th, enabling lenders to begin submitting forgiveness decisions for approval. While *lenders,* not borrowers, are responsible for submitting the information to the SBA, borrowers are directly impacted as their forgiveness determination cannot be finalized until the SBA receives and approves the lender's forgiveness determination. Lenders are required to make a decision regarding the forgiveness, and submit such decision to the SBA, within 60 days of receipt of the borrower's forgiveness application. The SBA then has 90 days to review and remit the forgiveness amount plus accrued interest to the lender on the applicant's behalf.

We continue to encourage borrowers to discuss the loan forgiveness process with their lenders, as many lenders are opting not to file forgiveness applications as they await Congressional action that may simplify the PPP forgiveness requirements. In addition, depending on the borrower's circumstances it may be beneficial to postpone filing the forgiveness application in order to maximize forgiveness.

Forgiveness FAQs

The SBA has recently issued a series of FAQs specifically relating to PPP loan forgiveness. A number of the FAQs provide welcome answers to questions that have plagued both borrowers and lenders since the program was first announced in the spring. Below we have highlighted a number of the key issues addressed, though for additional guidance the full list of FAQs can be found HERE.

General Loan Forgiveness

- Lenders may accept *scanned copies* of signed loan forgiveness applications and the supporting documents required to meet loan forgiveness documentation requirements. Borrowers should consult with their specific lenders to determine their policies for gathering the required signatures and documentation.
- As addressed in previously issued guidance, a borrower who submits its loan forgiveness application within 10 months of the end of the covered period will not be required to make any payments on the loan until the SBA makes a determination regarding the loan forgiveness amount. The lender is responsible for informing the borrower of the SBA's decision and the date on which the borrower's first payment is due, if any.

Payroll FAQ

- In addition to salaries and wages, borrowers can receive forgiveness for lost tips, commissions, bonuses and hazard pay paid to employees during the covered period, to the extent total annualized cash compensation per employee doesn't exceed $100,000.
- Only the portion of healthcare benefits paid or incurred by the borrower and not the employee are eligible for loan forgiveness. Forgiveness will not be granted for healthcare benefits paid during the covered period for

insurance coverage in a future period. In other words, a borrower cannot artificially inflate payroll costs by prepaying healthcare benefits during the covered period.
  - Note: in a recent update to the Payroll Protection Program Loan FAQs the SBA clarified that payments for healthcare benefits include insurance premiums as well as vision and dental benefits.
- The employer portion of contributions to employee retirement plans paid or incurred during the covered period will be eligible for loan forgiveness. Forgiveness will not be granted for contributions accelerated from outside of the covered period.
- In determining forgiveness, owner-employees and self-employed individuals are capped at $20,833 ($15,385 if using the 8-week covered period) of payroll compensation across all businesses in which they have an ownership stake. The determination of owner compensation is dependent on the entity type – see the FAQs for more detail on the calculations for each type of entity.

Nonpayroll Costs

- Interest expense on unsecured credit is not eligible for forgiveness. Only interest expense on business mortgages (secured by real or personal property) are eligible for forgiveness.
- Lease payments on a lease that existed prior to February 15, 2020 that expired and was renewed on or after February 15, 2020 are eligible for forgiveness.
- Mortgage interest payments on a mortgage that existed prior to February 15, 2020 and was refinanced on or after February 15, 2020 are eligible for forgiveness.
- The CARES act stated that payments "for a service for the distribution of… transportation" were covered utility payments. The FAQs clarify that this refers to transportation utility fees assessed by state and local government. Based on the FAQs it does not appear that gas and other transportation-related expenses will qualify for loan forgiveness.
- Electricity bills in their *entirety* are eligible for loan forgiveness if paid or incurred during the covered period. This includes supply charges, distribution charges, and other taxes and fees.

Loan Forgiveness Reductions

1. A seasonal employer who elected to use a 12-week period between May 1, 2019 and September 15, 2019 to determine the maximum PPP loan amount must use the same 12-week period in calculating loan forgiveness reduction (for reduced FTEs and/or reduced salaries and wages).
2. A borrower does not need to reduce loan forgiveness for a reduction in FTEs if the borrower can show a *documented* inability to rehire individuals who were employed on February 15th and an inability to hire "similarly qualified" individuals by December 31st. In calculating the "FTE Reduction Exception" on the forgiveness application, the borrower should include all employees for which they meet this exception, regardless of whether the employee's annualized salary was in excess of $100,000.
3. For purposes of calculating the loan forgiveness reduction related to a more than 25% reduction in salary or hourly wage, the borrower should only take into account decreases in salaries or wages and should not include other forms of compensation (i.e. health benefits, retirement, etc.).

EIDL

1. The SBA will reduce a borrower's forgiveness amount for any EIDL advance that was received (up to $10,000). If a borrower received an EIDL advance in excess of its PPP loan proceeds, the borrower will not be eligible for any PPP loan forgiveness.

Interim Final Rule – Appeal Procedures

Earlier this week the SBA issued an Interim Final Rule to outline the process a PPP borrower must follow in order to appeal an SBA decision through the SBA Office of Hearings and Appeals (OHA). Decisions that a borrower may want to appeal include an SBA finding that the borrower was ineligible for a PPP loan, that the borrower used PPP proceeds for unauthorized uses, and/or that the borrower is not eligible for full or partial PPP loan forgiveness.

This process only applies to final decisions made by the SBA and cannot be used by a borrower to appeal a

decision made by a lender. If a borrower wishes to appeal a lender decision relating to loan forgiveness, the borrower may ask the SBA to review that decision but it will not be reviewed by the OHA. Further, if the SBA issues a decision that is in agreement with the lender's forgiveness decision (notwithstanding adjustments for any EIDL advances), the borrower may not appeal the decision.

PPP – LOAN UPDATES

The US Treasury and Small Business Administration (SBA) have posted various updates to the PPP loan program over this week. These updates integrate the new Paycheck Protection Program Flexibility Act of 2020 (PPPFA) with previously issued guidance. You can find more information about this act HERE. Highlights of the new provisions are noted below. As always, please contact TBC with any questions or concerns.

New Applications

The SBA has posted a revised PPP forgiveness application to reflect the PPPFA changes along with a new streamlined EZ application. Most notably, the EZ application may be used for borrowers who meet any of the following criteria:

1. A sole proprietor without employees.
2. A borrower meeting the following criteria:
    1. The borrower did not reduce annual salary or hourly wages of any employee by more than 25% between the covered period and 1/1/2020 to 3/31/2020, AND
    2. The borrower did not reduce the number of employees or the average paid hours of employees between 1/1/2020 and the end of the covered period. This calculation ignores reductions related to the inability to rehire or refusal to work by an employee.
3. A borrower meeting the following criteria:
    1. The borrower did not reduce annual salary or hourly wages of any employee by more than 25% between the covered period and 1/1/2020 to 3/31/2020, AND
    2. The borrower is unable to operate during the covered period at the same level of business activity as before 2/15/2020, due to compliance with HHS, CDC, or OSHA related to the maintenance of standards of sanitation, social distancing, or other work or safety requirement.

PPP-Forgiveness-Application-3508EZ

PPP-Loan-Forgiveness-Application-Form-EZ-Instructions

3245-0407-SBA-Form-3508-PPP-Forgiveness-Application

PPP-Loan-Forgiveness-Application-Instructions

Changes in provisions

The following details have been changed or confirmed with the updated guidance.

1. FTE Safe harbor calculation – the Full time equivalent employee count must be restored to the 2/15/2020 level by the earlier of 12/31/2020 or the date of the forgiveness application for the safe harbor to apply. Previously the restoration date was 6/30/2020.
2. Owners – Owner compensation is maxed at $20,833 (or $15,384 for those borrowers who elect the 8 week period). This is inclusive of retirement and health insurance. The additional limit of total forgivable compensation can't exceed 2.5/12 of 2019 amounts still applies.
3. A sole proprietor without employees will get full forgiveness.
4. Employee max compensation will be $46,154 (24 weeks of annualized 100,000) plus health, retirement, and state unemployment. If the client elects the 8 week rule, then the max is still $15,385.

5. Owner compensation replacement (self-employed individuals) for the 24 week period is $20,833 (2.5 months/12months) and for the 8 week period $15,385.

Other Considerations

Elected 8 week Period vs 24 Week Period

A borrower that received a PPP loan prior to June 5, 2020 may elect to use an 8 week covered period instead of the new 24 week period. While the 24 week period allows borrowers to spread eligible costs throughout a longer period thereby increasing their total forgiveness amounts (subject to limitations), borrowers should consider whether the 8 week period may be more advantageous for other reasons. Certain reasons may include:

1. PPP loan proceeds have been spent, or are expected to be spent, throughout the 8 week period.
2. Borrowers have maintained FTE levels throughout the 8 week period (i.e., did not reduce salary or headcount during the 8 week period) but are uncertain whether FTE levels can be maintained for the remainder of 2020.
3. More information is required to calculate FTE levels under the 24 week period.

Disclaimer: This post was current as of the date of posting. Any changes made to the law or regulations since original posting has not been incorporated. Please view the recent postings for current information or contact us directly with any questions.
