



NEW STIMULUS BILL CONVERSATION

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Conversation Topics

- Expansion of the Paycheck Protection Program (PPP)
- Treatment of Meal and Entertainment Expenses
- Expansion of the Employee Retention Credit (ERC)
- Extension of Family First Coronavirus Response Act (FFCRA)
- Other impactful components

BDO Leaders With You Today



Kevin Van Nortwick
Tax Office Managing
Partner

kvannortwick@bdo.com



Chad Estes
Tax Partner

cestes@bdo.com

Expansion Of The Paycheck Protection Program (PPP)

PPP Loan Eligible Expenses Are Deductible

- Forgiveness of PPP loan is not taxable income
- Expenses are now deductible for both funding rounds
 - No deduction shall be denied
 - No tax attributes shall be reduced, and
 - No basis increase shall be denied
- Prior IRS positions in Notice 2020-23 and Rev. Ruling 2020-27 no longer apply
- Still unclear as to timing of basis adjustments
 - Loan funds received vs loan forgiven



New Expenses That Can Be Forgiven

- Payroll costs can now include group life, disability, vision and dental insurance
- For first round loans that are not yet forgiven, non-payroll expense that are now eligible
 - Business software or cloud computing services that facilitate business operations
 - Uninsured costs related to property damage and vandalism or looting due to 2020 public disturbances
 - Payments for essential goods for which the borrower was obligated prior to the covered period or during the covered period for perishable goods
 - Operational or capital expenditures to comply with the COVID-19 national emergency (drive through window, air filtration system, sneeze guards, expansion of dining areas, health screening, PPE, etc.)
- Change is retroactive to the effective date of the CARES Act
- Non-payroll costs continue to be limited to 40% of forgiven loan funds



Eligibility For First Draw PPP Loan

- Small businesses that did not yet receive a PPP loan or qualifies for an increase in the original loan
 - An eligible entity that returns amounts or does not accept the full amount approved may reapply for an amount equal to the difference between the amount retained and the maximum amount
- Generally, the CARES Act rules apply
 - Small business per SBA size standards or special definition of 500 or less US employees
 - In business on February 15, 2020
- Application deadline is March 31, 2021 or exhaustion of funds

Eligibility For Second Draw PPP Loan

- Previous PPP loan recipients are eligible if they meet the new small business definition
 - Have or will spend the original loan funds prior to receipt of the 2nd draw
- Employees not more than 300 employees
 - Determined by location for NAICS 72 (Accommodation and Food Services), 511110 (Newspaper Publishers) and 5151 (Radio and Television Broadcasting)
 - Entities assigned a franchise status by the SBA
- Had at least a 25% reduction in gross receipts during any quarter of 2020 versus the same quarter in 2019
 - Can use quarterly financial statements or bank statements
 - Allowed to use annual receipts from 2019 tax return compared to 2020
 - Special provisions exist for entities not in business during 2019

Eligibility For Second Draw PPP Loan, continued

- **Necessity certification must be considered**
- Ineligible entities if:
 - Primary activity is political or lobbying activities including research, advocacy for public policy, political, strategy or self described as a “think tank”
 - Has ties to the People’s Republic of China or the Special Administrative Region of Hong Kong
 - Required to register under §2 of the Foreign Agents Registration Act of 1938
 - Received a grant under the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act



Maximum Second Draw PPP Loan

- Generally, 2.5 times the average monthly payroll costs calculated for the 12 months prior to the application or for the 2019 calendar year
- Limited to \$2 million/\$4 million for an affiliated group
- Special rule for NAICS 72 (Accommodation and Food Services)
 - 3.5 times the average monthly payroll costs
- Other special rules
 - Seasonal employers
 - New entities



Treatment Of Meal And Entertainment Expenses

Business Meal Deductions

- Businesses may deduct 100% of business-related restaurant meals during 2021 and 2022
 - Currently limited to 50% for business-related meals



Expansion Of The Employee Retention Credit (ERC)



ERC Agenda

- Reintroduction to the ERC
- Recent Stimulus Changes
 - Retroactive
 - Prospective
- Summary
- Action Plan



Reintroduction to the Employee Retention Credit

The Employee Retention Credit (ERC) was introduced as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was enacted on March 27, 2020 in response to the COVID-19 pandemic.

- Refundable credit against employment taxes monetized via payroll tax filings (941/7200)
- Applied to certain wages paid to employees between March 13, 2020 and December 31, 2020
- Credit equal to 50% of qualified wages up to \$10,000 in qualified wages per employee, for a maximum credit per employee of \$5,000

To be eligible for the ERC, an employer must meet at least one of the following tests

- The employer's operations were fully or partially suspended due to a governmental order related to COVID-19; or
- The employer incurred a decline in gross receipts of greater than 50% during a 2020 calendar quarter compared to the same calendar quarter during 2019

Reintroduction to the Employee Retention Credit (cont'd)

The definition of “qualified wages” for ERC purposes varies depending upon the employer’s average headcount in 2019

- 100 or fewer full-time employees: Qualified wages are wages paid to all employees
- Greater than 100 full-time employees: Qualified wages are wages paid to employees who are not performing services due to COVID-19

Additional provisions:

- The eligibility criteria noted above must be evaluated on a controlled group/affiliated group level
- Allocable health plan expenses are eligible for the ERC (subject to the \$10,000 qualified wage limitation)
- The ERC was not available to employers that received a Paycheck Protection Program (PPP) loan
- Other restrictions applied relating to the Families First (FFCRA) leave credit and the Work Opportunity Tax Credit (WOTC)

Employee Retention Credit - Retroactive Modifications Under the Consolidated Appropriations Act, 2021 (Sec. 206)

The following changes apply to the ERC as if they were enacted originally as part of the CARES Act

PPP Loan Eligibility

- Old rule: An employer that receives a PPP loan is not eligible to claim the ERC
- New rule: Employers that receive a PPP loan may be eligible to claim the ERC in 2020 and 2021

Impact to PPP Loan Recipients

- Payroll costs funded by forgiven PPP loans are not eligible for the ERC. Similarly, ERC qualified wages cannot be considered payroll costs eligible for PPP forgiveness
- Pending SBA guidance, If an employer elects to designate wages for PPP forgiveness rather than the ERC, and the PPP payroll costs are not forgiven, then the employer may still treat the amounts as qualified wages for ERC purposes

Employee Retention Credit - Prospective Modifications Under the Consolidated Appropriations Act, 2021 (Sec. 207)

The following changes apply to periods beginning January 1, 2021 through June 30, 2021

Credit Availability

- Old rule: The ERC is applicable to qualified wages paid between March 13, 2020 and December 31, 2020
- New rule: The ERC is applicable to qualified wages paid through June 30, 2021

Employer Eligibility under Gross Receipts Test

- Old rule: The employer incurred a decline in gross receipts of greater than 50% during a 2020 calendar quarter when compared to the same calendar quarter during 2019
- New rule: The employer incurred a decline in gross receipts of greater than 20% during a 2021 calendar quarter when compared to the same calendar quarter during 2019. In addition, a safe harbor allows the employer to use the preceding calendar quarter's gross receipts when applying the test

Employee Retention Credit - Prospective Modifications Under the Consolidated Appropriations Act, 2021 (Sec. 207) (cont'd)

The following changes apply to periods beginning January 1, 2021 through June 30, 2021

Full-time Employee Threshold

- Old rule: 100 or fewer full-time employees on average in 2019: Qualified wages are wages paid to all employees. Greater than 100 full-time employees on average in 2019: Qualified wages are wages paid to employees who are not performing services due to COVID-19
- New rule: Replaces “100” with “500” above

Credit Amount

- Old rule: \$5,000 maximum credit/employee in 2020. Equal to 50% of up to \$10,000 of qualified wages and health plan expenses for wages paid March 13 - December 31, 2020.
- New rule: \$14,000 maximum credit/employee in 2021. The ERC is equal to 70% of up to \$10,000 in qualified wages and health plan expenses per quarter

Employee Retention Credit - Summary of Changes

Key Takeaways:

- Employers that received a PPP loan, who were previously prohibited from claiming the ERC, may now be retroactively eligible for 2020. Those who receive a PPP loan in 2021 may also be eligible.
- Wages used for ERC can not be used to obtain PPP Loan Forgiveness (and vice-versa).
- For 2021:
 - The gross receipts eligibility threshold for Q1 and Q2 of 2021 is a 20% decline compared to the same calendar quarter in 2019
 - There is an increased credit rate of 70% of qualified wages up to \$10,000 per employee per quarter (\$14,000 maximum credit per employee)
 - The full-time employee threshold for determining “qualified wages” based on all wages paid to employees is 500 or fewer full-time employees (up from 100 threshold in 2020)

ERC Action Plan for PPP Borrowers

- Investigate Employee Retention Credit that are now available to PPP borrower
- Evaluate whether the Company meets the “Eligible Employer” requirements for the ERC
 - Was business operation interrupted due to government orders?
 - Did quarterly gross receipts decline by at least 50% compared to same quarter in 2019? (20% decline for 2021 quarters)
 - Keep a close eye on controlled group/affiliated group requirements (different from SBA affiliation rules)
- Determine qualifying wages and allocable health plan expenses
 - Identify the periods considered an eligible employer, and the wages paid that would be eligible depending on the Company’s # of full-time employees.
 - Perform a concurrent analysis using your PPP Loan Forgiveness records to ensure no overlap between qualifying wages and those paid with forgiven loan proceeds.

Form 941 for 2020: Employer's QUARTERLY Federal Tax Return
Department of the Treasury — Internal Revenue Service

950120
OMB No. 1545-0029

Report for this Quarter of 2020
(Check one.)

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Go to www.irs.gov/Form941 for instructions and the latest information.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: Answer these questions for this quarter.

1 Number of employees who received wages, tips, or other compensation for the pay period including: June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4) 1

2 Wages, tips, and other compensation 2

3 Federal income tax withheld from wages, tips, and other compensation 3

4 If no wages, tips, and other compensation are subject to social security or Medicare tax Check and go to line 6.

	Column 1	Column 2
5a Taxable social security wages	<input type="text"/>	<input type="text"/>
5a (i) Qualified sick leave wages	<input type="text"/>	<input type="text"/>

Extension Of The Family First Coronavirus Response Act (FFCRA)



FFCRA Extensions

- Extended through March 31, 2021 on a voluntary basis
 - Paid emergency sick leave
 - Paid emergency child-care leave
 - Any related credits
- FFCRA leave is no longer mandatory, but employers that provide FFCRA leave from January 1, 2021 through March 31, 2021 may take a federal tax credit for providing such leave

Other Impactful Components



Other Impactful Components

- Charitable contribution deduction of cash donations up to \$300 for individuals that do not itemize deductions
- The suspension of the 60% AGI limitation under the CARES Act for qualifying cash contributions was extended through 2021
- Income threshold used to compute unreimbursed medical expense deductions is permanently reduced from 10% to 7.5%
- Certain credits and incentives extended through 2025
 - New Markets tax credit
 - Work Opportunity tax credit
 - Empowerment Zone tax incentives
 - Exclusion from gross income of discharge of qualified principal residence indebtedness



