Tax Implications of the EIDL, PPP, and CARES Act and Related HR Concerns

Presented by Rehmann for Small Business Administration of Michigan

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About Rehmann

Founded in 1941

130 Number of principals
900+ Number of associates

157 million Total revenue in 2019
Agenda

1. PPP Loan & Main Street Lending Program Updates
2. Tax Relief and Implications
3. HR FAQs
Government Resources | Small Business Administration (SBA)

**Paycheck Protection Program (PPP)**

- **$349 BILLION**
- $349 billion toward job retention and certain other expenses in key areas such as payroll, health insurance, mortgage interest, rent, and utilities from February 15, 2020 - June 30, 2020.

Eligible recipients may qualify for a loan up to $10 million determined by 8 weeks of prior average payroll plus an additional 25% of that amount.

**SBA Debt Relief**

- **$10 MILLION**
- The SBA Debt Relief program will provide a reprieve to small businesses as they overcome the challenges created by this health crisis.

Under this program:
- The SBA will also pay the principal and interest of new 7(a) loans issued prior to September 27, 2020.
- The SBA will pay the principal and interest of current 7(a) loans for a period of six months.

**Economic Injury Disaster Loans (EIDL)**

- **LOAN ADVANCE UP TO $10,000**
- In response to the Coronavirus (COVID-19) pandemic, small business owners in all U.S. states, Washington D.C., and territories are eligible to apply for an Economic Injury Disaster Loan advance of up to $10,000.

**SBA Express Bridge Loans**

- **ACCESS UP TO **$25,000** WITH LESS PAPERWORK**
- These loans can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing and can be a term loan or used to bridge the gap while applying for a direct SBA Economic Injury Disaster loan.
- Find an Express Bridge Loan Lender by connecting with your local SBA District Office at www.sba.gov.

**SBA Express Bridge Loans**

- **LOANS UP TO $2 million**
- The SBA’s Economic Injury Disaster Loan program provides small businesses with working capital loans of up to $2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing.

**Funds within 3 days**

- Funds will be made available within three days of a successful application, and this loan advance will not have to be repaid.
Paycheck Protection Program (PPP)

1. Loan Calculation
   - 2.5x average monthly payroll costs
   - Up to $10 million
   - Businesses & some non-profits with <500 employees (generally)
   - Self-employed individuals (Sch C filers) are eligible
   - Partners in partnership/LLCs are not eligible

2. Payroll Costs
   - Average based on prior twelve months (2019 or 12 ME 3-31-20)
   - Wages + health insurance + retirement benefits + state unemployment, less excluded costs
     - Does NOT include independent contractors
   - Excluded costs:
     - Excess salaries >$100,000 per person
     - Foreign compensation
     - COVID-19 sick & family leave payments

3. Banks’ Role
   - Administer funds, fully SBA guaranteed
   - Work with current bank; some accepting new relationships
   - Good faith assumption
   - Internal QC processes differ

4. Forgiveness Process
   - 8 week period post loan
   - Up to 25% used for mortgage interest/rent and utilities
   - At least 75% use for payroll costs
   - Employee wages don’t decrease by more than 25%
   - Rehire exemption if restore FTEs by June 30, 2020
   - First six months of payments deferred, then unforgiven portion & accrued interest converted to 24-month loan at 1%

Applications open through June 30, 2020 but as of yesterday (4/16/20) the initial $349 billion has been allocated.
Self-Employed PPP Applicants

1. Eligible Self-Employed Filers
   • Have or will file 2019 Form 1040 Sch C
   • In operation on or around February 15, 2020
   • Partners in partnership/LLCs CAN’T self-file

2. Payroll Costs
   • With Employees
     • Owner Sch C net profit up to $100,000; Plus
     • Employee wages (up to $100k) + health insurance + retirement benefits + state unemployment – COV-19 pmts
   • Without Employees
     o Up to $100,000 Sch C net profit
     o No owner health insurance or retirement benefits

3. Substantiation Required
   • 2019 Form 1040 Sch C
   • 2019 Form 1099-MISC(s) or proof of S/E income rec’d
   • 2020 invoice, bank stmt indicating biz operating 2-15-20

4. Forgiveness Considerations
   • Same 8 week measurement period
   • At least 75% payroll costs
     • Owner compensation based on 2019 Sch C
     • Employee payroll costs
   • Certain business expenses claimed on 2019 Sch C
     • Rent and utilities
     • Interest on mortgage and any personal property debts (equipment, business vehicles)
Main Street Lending Program | Dept. of Treasury

Overview
• $600 billion lending program launched April 9
• Applicant must have been in good financial standing prior to COVID-19
• Eligible even if took advantage of PPP loan
• Can be new or expansion of existing credit
• Borrower must attest to:
  • Make reasonable efforts to maintain payroll and retain employees
  • Not use proceeds to repay other debt
  • Refrain from repaying other debt, except mandatory principal payments, until Main Street Loan is repaid
  • Not cancel or reduce any other lines of credit
  • Will follow compensation, stock repurchase, and capital distribution restrictions under the CARES Act

Eligibility
• Have up to 10,000 employees, or
• Up to $2.5 billion in 2019 annual revenues
• Created or organized in the U.S. or under U.S. law
• Significant operations in the U.S.
• Majority of employees based in U.S.

New Loan Borrowing Limits
• Lesser of:
  • $25 million, or
  • No more than 4x borrower’s 2019 EBITDA when added to existing and undrawn debt

Expanded Loan Borrowing Limits
• Lesser of:
  • $150 million,
  • 30% of borrower’s existing and undrawn debt, or
  • No more than 6x borrower’s 2019 EBITDA when added to existing and undrawn debt

Loan Terms
• Minimum loan size of $1 million
• Four-year maturity
• Adjustable rate of Secured Overnight Financing Rate (SOFR) + 250-400 basis points
• Amortization of principal and interest deferred for one year
• Prepayment permitted without penalty
Deadline & Payment Postponement

- Due date for filing Federal income tax returns and making Federal income tax payments due April 15, 2020, is automatically postponed to July 15, 2020

- There are no limitations on the amount of payments that can be postponed

- Interest, penalties, and additions to tax for failure to file or failure to pay, will not be assessed on any applicable postponed payment amount from April 15, 2020 through July 15, 2020

- On April 9th, Notice 2020-23 came out expanding relief to all taxpayers that have a filing or payment deadline falling on or after April 1, 2020 and before July 15, 2020
Individual Tax Provisions

Recovery Rebate

- $1,200 for single individuals or $2,400 for married couples filing a joint return
- $500 per qualifying child
- Subject to income phaseouts based on adjusted gross income:
  - Single: $75,000 - $99,000
  - Head of Household: $112,000 - $136,500
  - Married Filing Joint: $150,000 - $198,000
- Based on 2018 return or 2019 return if already filed
- IRS developing “Get My Payment” tool to check payment status and upload bank account information
Individual Tax Provisions

Retirement Plans

- Waiver of 10% early withdrawal penalty for eligible amounts up to $100,000
- Withdrawn amounts can be recontributed within three years without regard to any contribution limitations
- Loans up to lessor of $100,000 or the present value of their vested benefits
- Temporary waiver of required minimum distributions for 2020

Charitable Contributions

- Above-the-line deduction for up to $300 of contributions
- Income-based limitations temporarily lifted for 2020

Student Loans Paid by Employers

- Up to $5,250 income exclusion for employees
Employee Retention Credit

Refundable payroll tax credit up to 50% of eligible wages paid from March 13, 2020 to Dec 31, 2020 by an eligible employer

Eligible Employer

• Carrying on a trade or business during 2020
• Demonstrate operations were impacted by COVID-19 government orders or have to have a greater than 50% reduction in quarterly gross receipts

Qualified Wages

• Limited to $10,000 wage expense per employee
• Employers with 100 or fewer employees: all wages paid to all employees during any qualified quarter
• Employers with more than 100 employees: wages paid to employees for time that they are not providing services due during any qualified quarter
Employee Retention Credit

Claiming the Credit

• Applies first against the employer’s portion of the 6.2% FICA tax, but any excess is refundable
• Employer can claim in advance by reducing payroll tax and other withholding deposits
• Form 7200 can be filed to claim any excess credit in advance

Restrictions

• Employers that receive a Payroll Protection Loan are not eligible for the credit
• Does not include wages included in the paid sick leave credit or family medical leave credit enacted by the FFCRA
• Does not include paid wages taken into account for family medical leave credit under Section 45S
• Does not include wages for which employers take Workers Opportunity Tax Credit
Employer Payroll Tax Deferral

- Employers can defer paying its 6.2% share of FICA taxes on payroll paid from March 27, 2020 to Dec 31, 2020
- Amount deferred due: 50% by Dec. 31, 2021 and 50% by Dec. 31, 2022
- Self-employed individuals can defer 50% of the social security tax on net earnings from self-employment income
- Employers that receive loan forgiveness under the Payroll Protection Program are not eligible to defer payroll taxes after their lender has issued a decision to forgive their loans.
  - PPP filers can defer from March 27th thru the forgiveness issuance date.

Corporate Credit for Prior-Year Minimum Tax

- Allows corporate taxpayers to accelerate recovery of remaining credits
PPP Loan Tax Implications

• Cannot utilize the Employee Retention Credit if PPP loan obtained

• Cannot defer employer payroll taxes if PPP loan obtained and loan forgiveness is granted

• Any portion of the loan forgiven will be excluded from cancellation of indebtedness income

• Unclear as to allowability for tax deductions for the portion of underlying costs such payroll and rent used to determine the loan forgiveness

• Unclear as to the impact on basis for partnerships or corporations

Net Operating Loss (NOL) Modifications

• Carryback NOLs up to five years
• Applies to 2018, 2019 & 2020
• 80% taxable income limitation is suspended until 2021

Excess Business Loss Limitation Suspension

• Noncorporate loss limitation rules suspended until 2021
• Applies to 2018, 2019 & 2020

Business Interest Limitation Modifications
- Limitation increased from 30% to 50% of adjusted taxable income
- 2019 adjusted taxable income can be used for 2020 limitation calculation

Qualified Improvement Property (QIP) Technical Correction
- QIP is now 15 year property eligible for bonus depreciation
- Applies to property placed in service after Dec. 31, 2017

Corporate Charitable Contribution
- Income-based limitations increased from 10% to 25%
Workforce Strategies for Employers
Business leaders considered options that best balance the business with employee needs and safety.
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**FFCRA | Emergency Paid Sick Leave and Emergency FMLA**

- Effective April 1 to December 31
- Non-enforcement March 18 to April 17

**CARES | Paycheck Protection Program**

- Applications processed by June 30
- Re-Hiring: You have until June 30 to restore your full-time employment and salary levels
- Covered period February 15 to June 30

**CARES | Pandemic Unemployment Assistance**

- Effective January 27 to December 31
- Workers can access benefits for a maximum of 39 weeks and will be eligible for retroactive benefits

**CARES | Pandemic Unemployment Compensation**

- Eligible individuals will get an extra $600 each week through July 31. Payments date back to the eligibility date or the date your state signed an agreement to provide the benefits—whichever is later.

**CARES | Pandemic Emergency Unemployment Compensation**

- Provides an additional 13 weeks of state UI benefits, which will become available after someone exhausts all their regular state UI benefits. All but eight states offer 26 weeks of UI benefits.
After Paycheck Protection Program
3 CARES ACT UNEMPLOYMENT PROGRAMS

The Federal Pandemic Unemployment Compensation (FPUC) program provides an extra $600 a week in benefits.

The Pandemic Emergency Unemployment Compensation (PEUC) program extends eligibility for unemployment benefits by up to an additional 13 weeks.

The Pandemic Unemployment Assistance (PUA) program provides unemployment benefits to independent contractors, gig workers and the self-employed.

Source: SHRM
The CARES Act does not change the basic structure of the existing UI system. Rather, it adds five key features to the existing UI system:

1. Expands the eligibility for UI benefits for COVID-19-related reasons
2. Adds 13 additional weeks of eligibility (for up to 39 weeks of benefits)
3. Adds a flat $600 to the WBA (known as “Federal Pandemic Unemployment Compensation”)
4. Encourages states to loosen certain restrictions on UI such as the one-week waiting period and looking-for-work requirements
5. Supports both existing and the creation of work-share programs (also called “short-term compensation” programs)
1. Been diagnosed with COVID-19 or are experiencing symptoms of COVID-19 that require a medical diagnosis.
2. A member of their household has been diagnosed with COVID-19.
3. Providing care for a family member or member of their household who has been diagnosed with COVID-19.
4. A member of their household for which they have primary caregiving responsibility is unable to attend school or another facility that has been closed as a direct result of the COVID-19 public health emergency and because of this closure they are unable to work.
5. Unable to work because of a quarantine imposed as a result of the COVID-19 public health emergency.
6. Unable to work because they have been advised to self-quarantine by a health care provider.
7. Scheduled to start a job but are unable to do so as a result of the COVID-19 public health emergency.
8. Become a “major support for a household” because the breadwinner in the household has died as a direct result of COVID-19.
9. Quit their job as a direct result of COVID-19.
10. The individuals place of employment is closed as a direct result of the COVID-19 public health emergency.
Federal Pandemic Unemployment Compensation (FPUC)

If the individual is eligible to receive at least one dollar ($1) of underlying benefits for the claimed week, the claimant will receive the full $600 FPUC.

**Eligible for ≥ $1 → $600**

If the individual’s earnings for the week exceed the weekly benefit amount (WBA), then the individual receives $0 in regular UC benefits for that week even though the person is otherwise eligible for regular UC. In such case, the employee also does not receive the $600.

**Not eligible for WBA → $0**
Will my employees come back to work?
Fearful employee(s) & Savvy employee(s)
Who has the first question?