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CARES ACT

Frequently Asked Questions

PROTHRO, WILHELMI & COMPANY, PLLC

April 2020

PROTHRO, WILHELMI AND COMPANY, PLLC
CERTIFIED PUBLIC ACCOUNTANTS

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Paycheck Protection Program Loans

1. **Who is eligible for a Paycheck Protection Program Loan?**

    - Most businesses are eligible – including 501(c) (3) nonprofits, sole proprietorships, self-employed individuals, and independent contractors with 500 or fewer employees.
    - Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries.

2. **What information will lenders be looking for initially?**

    - Lenders consider if the borrower was in operation before February 15, 2020 and had employees or independent contractors to whom they paid salaries.
    - The borrower will need to provide pay-period specific payroll and employment documentation for 12 months (2019) or another 12-month period required by lender.
    - The borrower will need to have ownership information for any owners (both individual and business) who own 20% or more of the business.
    - The borrower will need to provide latest tax return(s) and various payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietor from 2019.
    - Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here.
    - From February 15, 2020 to December 31, 2020 the borrower has not received a loan duplicative of the purpose and amounts applied for here. (NOTE: There is an opportunity to fold emergency loans made between January 31, 2020 and the date this loan program becomes available into a new loan)

3. **What business expenses are covered by these loans?**

    - The proceeds of the loans can be used for the following:
        - Payroll costs, including benefits
        - Interest on mortgage obligations, for mortgages incurred before February 15, 2020
        - Rent, under lease agreements in force before February 15, 2020
        - Utilities, for which service began before February 15, 2020

4. **What amount can be received, or how much can I borrow?**

    - Loan amounts are the lesser of 2.5x the entity's average qualifying monthly payroll or $10 million.

5. **How soon can I apply?**

    - Applications are expected to be available with local financial institutions starting April 3, 2020.

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6. **How are these funds paid back?**

    - The interest rates for PPP loans will be, at a maximum, 4% and the maturity may be up to 10 years. All payments are deferred for at least 6 months; however, interest will continue to accrue over this period.

7. **Will any of the borrowed funds be eligible for forgiveness?**

    - Borrowers will be eligible for loan forgiveness for any funds spent during an 8-week period after the loan closing date on payroll, mortgage interest, rent, and utilities.
    - Principal payments on debt will not be eligible for forgiveness.
    - The amount eligible for forgiveness is reduced proportionally by any reduction in employees retained compared to the previous year and by the reduction in pay of any employee beyond 25% of the prior year's compensation.
    - Submission of documentation to the lender that details the use of funds is required for the loan to be eligible for forgiveness.

Economic Injury Disaster Loans

1. **Who is eligible for an Economic Injury Disaster Loan (EIDL)?**

    - Any business with 500 employees or less
    - Any individual operating under a sole proprietorship or as an independent contractor
    - Small agricultural cooperatives
    - Private, nonprofit organizations
    - Any cooperative, ESOP or tribal small business concern with not more than 500 employees

2. **What information is initially required?**

    - See the loan application here: *https://covid19relief.sba.gov/#/.*
    - Gross Revenues for the 12 months prior to the disaster date (1/31/2020)
    - Cost of Goods Sold for the 12 months prior to the disaster date (1/31/2020)
    - Non-profit Cost of Operation for the 12 months prior to the disaster date (1/31/2020)
    - Lost rents due to the disaster

3. **What business expenses are covered by these loans?**

    - The proceeds of the loan can be used for payroll, fixed debts, accounts payable, and other expenses that cannot be paid because of the effect of COVID-19.

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4. **What amount can be received?**

- EIDL loans are based upon a company's actual economic injury determined by the SBA (less any recoveries, such as insurance proceeds) up to $2 million. The interest rate on EIDL loans is 3.75% fixed for small businesses and 2.75% for nonprofits. Borrowers can also receive a $10,000 emergency cash advance within 3 days of submission of the application.

5. **How soon can funds be received?**

- The $10,000 emergency cash grant can be received approximately three business days after the application is received.

6. **How are these funds paid back?**

- The SBA will assess your financial situation and will set loan terms based on your needs and repayment ability. The EIDL loans have up to a 30-year term and amortization (determined on a case-by-case basis).

7. **Are these funds eligible for loan forgiveness?**

- If a borrower received the $10,000 emergency cash advance, it may not have to be repaid even if subsequentially denied an EIDL loan. All other loan proceeds in excess of the $10,000 advance will need to be repaid based on the agreed-upon terms.

8. **If I get an EIDL and/or an Emergency Economic Injury Grant, can I get a PPP loan?**

- Whether you have already received an EIDL unrelated to COVID-19 or you receive a COVID-19 related EIDL and/or Emergency Grant between January 31, 2020 and June 30, 2020, you may also apply for a PPP loan. If you ultimately receive a PPP loan or refinance and EIDL into a PPP loan, any advance amount received under the Emergency Economic Injury Grant Program would be subtracted from the amount forgiven in the PPP. However, you cannot use your EIDL for the same purpose as your PPP loan. For example, if you use your EIDL to cover payroll for certain workers in April, you cannot use PPP for payroll for those same workers in April, although you could use it for payroll in March or for different workers in April.

Individual Rebates and Other Provisions

1. **Who is eligible for individual rebates?**

- Any individual (with a valid Social Security Number), excluding:

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- Nonresident alien individuals
- Any individual that will be listed as a dependent on another individual's 2020 tax return
- An estate or trust

2. How much can an individual receive based on income level and marital status?

- A single taxpayer can receive $1,200 if his adjusted gross income is $75,000 or below.
- A married taxpayer filing a joint return can receive $2,400 if their adjusted gross income is $150,000 or below.
- A taxpayer filing as head of household can receive $1,200 if his adjusted gross income is $112,500 or below.
- A qualifying taxpayer can also receive $500 for each qualifying child. (16 years old or younger)
- The total rebate amount is reduced (but not below zero) by 5% for any income that exceeds the phase-out threshold.
  - For example, a $100 overage in income will result in a $5 reduction in the total rebate.
- Adjusted gross income is based upon the most recently filed tax return. You'll see your number on line 8(b) of your 2019 Form 1040 (line 7 of your 2018 Form 1040)

3. Do I need to file anything to get my check?

- Generally, you won't need to do anything. The Treasury will advance your check based on your most recently filed tax return. According to the new law, the IRS is going to look first to your 2019 tax return to compute the payment. If no 2019 return has been filed, however, the IRS will use your 2018 return instead. (If you receive Social Security and don't need to file a return, the IRS will send you a payment based on your Form 1099-SSA.

4. Will these rebates be taxable or required to be repaid on the 2020 return?

- No, the rebate is treated like other refundable tax credits, such as the child tax credit or earned income tax credit, and not considered taxable income.

5. How and when will I receive payment?

- According to Treasury Secretary Steven Mnuchin, households should begin receiving their rebate in late April or early May.
- Your two ways to receive your rebate are by direct deposit or a paper check. The IRS will use the information from your tax return to send the direct deposit or physical check.
- Within 15 days after they make the payments, they will send out a letter to each household. It will include the amount of the payment and how it was made. The notice will also include

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a phone number for the appropriate point of contact at the Internal Revenue Service (IRS) if you didn't receive the payment.

6. What are the special rules for the use of retirement funds?

- The CARES Act provides that the 10% early distribution penalty does not apply to any coronavirus-related distribution up to $100,000, in aggregate, between January 1, 2020 and December 31, 2020. A coronavirus-related distribution is one made to an individual: 1) who is diagnosed with COVID-19, 2) whose spouse or dependent is diagnosed with COVID-19, or 3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary. Taxpayers will have 3 years from the time of distribution to repay these funds, without penalty. The 20% mandatory federal withholding is optional.

OPTIONAL PROVISIONS THAT MAY BE ADOPTED BY A 401(K) PLAN

- The 401(k) loan limit is increased to the less-er of 100% of the vested account balance or $100,000 for loans made on or before September 23, 2020.
- Existing 401(k) loan payments due from March 27, 2020 through December 31, 2020 may be delayed for up to one year for qualifying individuals.

PROVISIONS THAT WILL BE ADOPTED BY A 401(K) PLAN

- In addition to the Secure Act that raised the RMD (required minimum distribution) age from 70.5 to 72 for 2020, the CARES Act allows for RMDs to be waived in 2020, even those attributable to 2019.

7. What are the delays in payment and filing deadlines for individual tax return provisions?

- The Federal income tax returns and payments due on April 15, 2020 have been postponed until July 15, 2020.

8. What is the $300 above-the-line charitable deduction?

- The CARES Act allows an individual to make a cash contribution of up to $300 to certain qualifying charities and deduct the contribution "above-the-line" in computing adjusted gross income. Thus, the taxpayer receives the deduction in addition to the standard deduction. This above-the-line deduction is here for 2020 and beyond, but is available only to a taxpayer who does not itemize their deductions.

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9. **What is Modification of limitations on individual cash charitable contributions during 2020?**

   - The provision increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25% of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

10. **What are exclusions for certain employer payments of student loans?**

    - The provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to $5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.
    - The law also allows individuals to stop making payments on federal student loans through September 30, 2020, without incurring penalties or late fees. In addition, no interest will accrue on federal student loans during this period. Further, the government is temporarily suspending garnishments to collect on federal student loans.

11. **What Expanded Unemployment Benefits are available?**

    - The CARES Act increases unemployment compensation benefits significantly, providing an extra $600 per week for up to four months, over and above state unemployment benefits. The expansion generally applies to those who can't work as a direct result of COVID-19.The law generally provides temporary full federal funding of the first week of unemployment benefits through December 31, 2020, for states that opt to pay recipients as soon as they become unemployed, rather than requiring a one-week waiting period. Further, it provides an additional 13 weeks of unemployment benefits through year end, generally for those who remain unemployed after state unemployment benefits are no longer available.
    - The law also creates a temporary Pandemic Unemployment Assistance program through the end of the year. The program generally will extend unemployment benefits to workers who traditionally don't qualify for them — meaning self-employed individuals, independent contractors, those with limited work histories and others.

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Business Provisions

1. What are the delays in payment and filing deadlines?

- Filing and payment requirements for businesses from April 15, 2020 have been postponed until July 15, 2020.

2. Am I eligible for an Employee Retention Payroll Tax Credit?

- Employers that receive paycheck protection loans under the CARES Act are eligible for an Employee Retention Payroll Tax Credit if such loans are forgiven under CARES Act provisions.
- Entities are only eligible for the Employee Retention Payroll Tax Credit if one of the following occurs:
    a. Their operations sustain full or partial closure during any calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19
    b. There is a significant decline in gross receipts for any calendar quarter
        i. Receipts have been considered as "significantly declined" if gross receipts for the calendar quarter are less than 50% of the gross receipts from the corresponding calendar quarter from the prior year.
        ii. After a quarter with a 50% declined, each subsequent calendar quarter is considered "significantly declined" until there is a calendar quarter in which gross receipts are at least 80% of the gross receipts from the corresponding calendar quarter from the prior year.
    c. Eligible employers are allowed a credit against applicable employment taxes for each calendar quarter in an amount equal to 50% of the qualified wages of an employee for such calendar quarter.

    The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

3. How are employers eligible for Deferral of Employer Payroll Taxes?

- Deferral of Employer Payroll Taxes are effective as of the date of the CARES Act enactment March 27, 2020.

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- Employers that receive paycheck protection loans under the CARES Act are not eligible for the payroll tax deferral if such loans are forgiven under CARES Act provisions.
- Employers and self-employed individuals would be able to defer payments of 6.2% of employee wages of social security payroll taxes.

- The provision requires that the deferred taxes be paid over a two-year period with half the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

4. How has the deductibility of interest expense temporarily increased?

- Prior to the Act, business interest deductions were limited to the sum of:
  - The business interest income for such year;
  - 30% of the adjusted taxable income of the taxpayer; and
  - The floor plan financing interest of such taxpayer
- If the taxpayer was unable to take the business interest deduction, it could be carried forward. For tax years 2019 and 2020, the business interest deductions are limited to the sum of:
  - The business interest income for such year;
  - 50% of the adjusted taxable income of the taxpayer; and
  - The floor plan financing interest of such taxpayer.

5. What is the Bonus Depreciation Technical Correction for Qualified Improvement Property?

- The corrected bonus depreciation rules now allow taxpayers to claim 100% bonus depreciation with respect to "qualified improvement property."

6. What modifications for net operating losses are available?

- The CARES Act amends Section 172 of the Internal Revenue Code to allow corporate NOLs arising in a taxable year beginning after December 31, 2017 and before January 1, 2021, to be carried back to each of the five taxable years preceding the taxable year of the loss. No election is required to carry back such NOLs.
- This carryback right can be extremely valuable, considering the maximum corporate tax rate applicable to tax years ending before 2018 was 35%, which is much higher than the current 21% corporate rate.

- **<u>Modification of rules relating to net operating loss (NOL) carrybacks</u>**
  Currently, the law does not allow NOLs to be carried back to preceding tax years.
  The CARES Act modifies the law to allow NOLs from 2018, 2019 and 2020, to be permitted to be carried back for up to five years. As was previously the case, a taxpayer will be permitted to forgo the carryback, and instead carry the loss forward.

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- **<u>Modification of limitation on losses for non-corporate taxpayers</u>**
  The TCJA created code section 461(l) which provides that the amount of "net business loss" an individual may use in a year to offset other sources of income is capped at $250,000 (if single; $500,000 if married filing jointly). Any excess loss is converted into a net operating loss.

  The CARES Act, however, suspends Section 461(l); not only for 2020, but retroactive to January 1, 2018. As a result, a taxpayer who had a loss limited by the provision in 2018 or 2019 can file an amended return to claim a refund.

- **<u>Qualified Improvement Property</u>**
  Qualified improvement property technical correction, allowing qualifying interior improvements of buildings to be immediately expensed rather than depreciated over 39 years.

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