

Congress has passed a \$900 billion coronavirus relief bill which will be attached to the \$1.4 trillion omnibus spending bill to fund the federal government for the 2021 fiscal year (the Consolidated Appropriations Act of 2021). The bill extends and modifies many provisions of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) passed in March.

The Paycheck Protection Program (“PPP”)

Second Draw Loans

The bill renews \$284 billion of funding for the Paycheck Protection Program (PPP). The PPP provides forgivable loans to first and second time small business borrowers. To qualify for a second loan, businesses must have fewer than 300 employees and at least a 25% drop in gross receipts in a 2020 quarter compared to the same quarter in 2019. Second loans are based on 2.5 months of average annual payroll and are limited to \$2 million. For NAICS Code 72 entities, which generally include restaurants and hotels, the loan limit is the lesser of \$2 million or 3.5 months of average annual payroll rather than the standard 2.5 months.

Deductibility of PPP Funded Expenses

The bill clarifies that businesses can deduct expenses paid with forgiven PPP loan proceeds. This applies to both existing loans and new loans and is not subject to limitations. The IRS had previously concluded that such expenses would not be deductible.

Simplified Forgiveness Application Process for Loans up to \$150,000

The bill provides a simplified forgiveness application limited to a one-page document listing the loan amount, the number of employees retained, and the amount of the loan spent on payroll for loans up to \$150,000. The bill notes this does not reduce the requirement of the borrower to maintain required documentation, nor does it remove the SBA’s ability to audit the loan.

Economic Injury Disaster Loan (“EIDL”) Advance No Longer Deducted from Forgiveness

Borrowers that also received a cash advance through the EIDL program also will no longer have to deduct the advance from their PPP loan forgiveness amount.

Expansion of Qualifying Expenses

The bill expands the definition of qualifying expense for which loan proceeds can be used. These now include expenses such as covered property damage, supplier costs and worker protection expenditures.

Employee Retention Credit (“ERC”)

Employers who receive or have received PPP loans can qualify for the ERC with respect to wages that are not paid with forgiven PPP proceeds. Under the CARES Act businesses had to choose between the PPP and ERC.

The bill extends the applicable period for the ERC through July 1, 2021 and provides a more generous credit. For the period starting January 1, 2021, the refundable tax credit will now be for up to \$7,000 per employee per quarter (under the CARES Act, the maximum credit had been limited to \$5,000 per employee per year).

To qualify for the ERC, employers must show that gross receipts for the calendar quarter are less than 80% of the gross receipts for the same calendar quarter in 2019 or it experienced a full or partial suspension of operations during the quarter due to a governmental order. Employers may also elect to test gross receipts against the immediately preceding quarter’s gross receipts to demonstrate eligibility.

The definition of a large employer (which have higher burdens for qualifying for the ERC) has been redefined to include businesses with 500 employees as opposed to the current definition of 100 employees.

100% Deduction for Business Meals Provided at a Restaurant

The bill expands the deduction for business meals provided at a restaurant from 50% to 100% for 2021 and 2022.

Other Central Provisions

- Stimulus checks of up to \$600 per person and child in the household. The size of that benefit would be phased out for people who earned more than \$75,000 (\$150,000 married filing jointly) in 2019 and

disappear altogether for those who earned more than \$87,000 (\$174,000 Married filing jointly);

- An 11-week extension of additional federal unemployment benefits of \$300 per week on top of normal state and federal unemployment benefits;
- \$82 billion in funding for colleges and schools;
- \$10 billion in childcare assistance;
- \$63 billion for vaccine distribution, testing and tracing, and other health-care initiatives;
- \$25 billion in rental assistance and extension of the eviction moratorium through January 31, 2021;
- \$45 billion for transit agencies, airlines, airports, state departments of transportation, the motor coach industry, and Amtrak;
- Child Tax Credit & Earned Income Tax Credit would use 2019 income to determine an individual's credit eligibility for the 2020 tax year, due to potential decreased income in 2020.

Tax Extenders

In addition, extenders to tax provisions set to expire at the end of the year were included as part of the bill. This year, the extenders include (among others):

- Look-through rule for controlled foreign corporations
- New Markets Tax Credit
- Work Opportunity Tax Credit
- Exclusion from gross income of mortgage forgiveness
- Empowerment zone tax incentives
- Employer credit for paid family and medical leave
- Exclusion for certain employer payments of student loans (a CARES Act provision)
- Expensing rules for certain productions
- The health insurance tax credit
- Renewable energy credits