



COVID-19 legislation update: Not-for-profit organizations

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PRESENTATION GOAL

- Provide an overview of the provisions of the recent COVID-19 legislation and how they may affect your organization.
- Give you control of your organization's financial position.

AGENDA

Above-the-line deductions

Adjusted Gross Income (AGI) threshold changes

Various provisions under the CARES Act

Family First Coronavirus Response Act (FFCRA)



Polling question

EMPLOYEE RETENTION TAX CREDIT

- What is it?
 - Refundable tax credit against applicable employment taxes for each calendar quarter
 - Equal to 50% of qualified wages per employee (maximum credit of \$5,000 per employee)
- Eligibility:
 - Full or partial suspension of operations; or,
 - Significant decline in gross receipts
- Qualified wages:
 - Less than 100 employees: all wages paid
 - Greater than 100 employees: wages paid to employees who are not providing services

EMPLOYEE RETENTION TAX CREDIT

Other important information:

- Credit is against the employer's share of Social Security taxes
- Qualified wages paid between March 12 and December 31, 2020
- Look at 2019 to determine total number of employees
- Total employees determined based on ACA Employer Mandate rules
- Qualified wages include health plan expenses
- Cannot participate in the Paycheck Protection Program (PPP)

ABOVE-THE-LINE DEDUCTIONS

- What is it?
 - \$300 deduction against AGI in 2020
 - Must be made in cash
 - Contributor doesn't itemize deductions
- Who are qualified charities?
Charities exempt under 501(c)(3) except DAFs, non-operating PFs, and supporting organizations

AGI THRESHOLD CHANGES

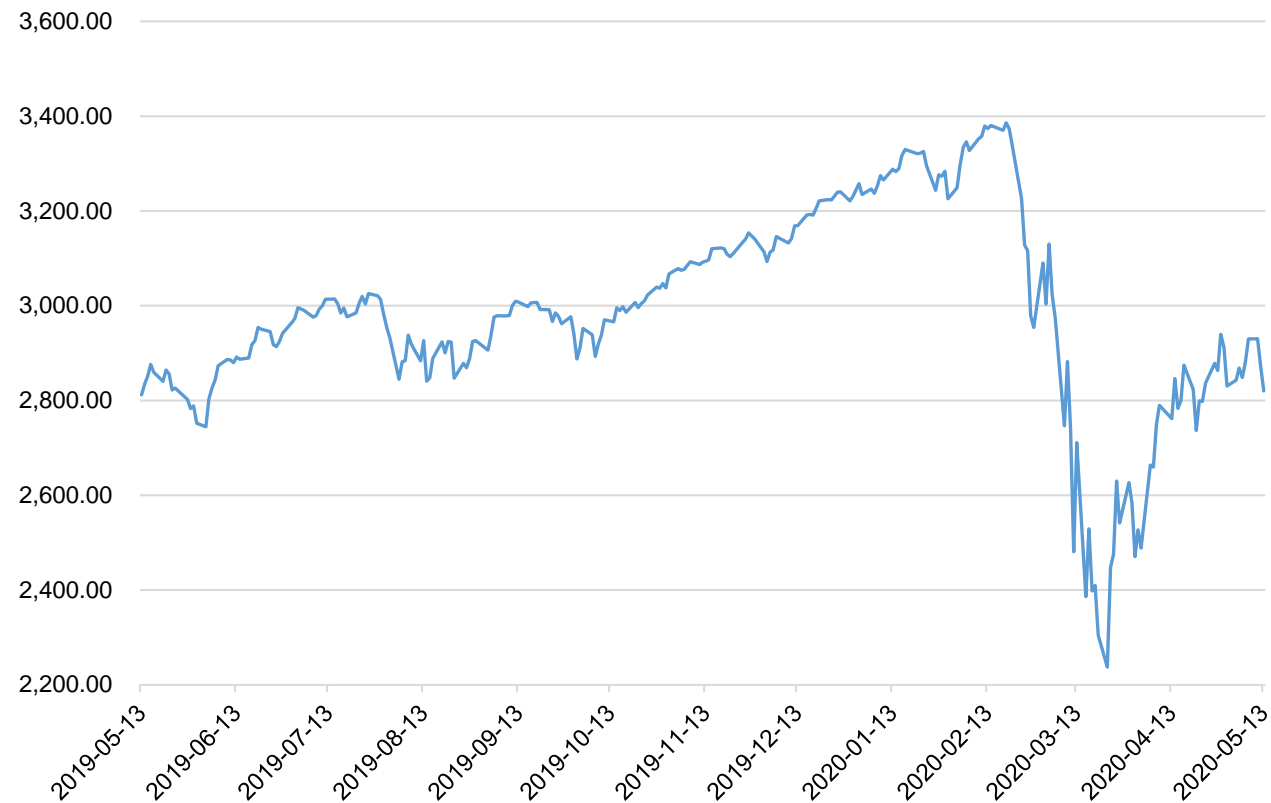
- Individuals:
 - Prior to CARES Act: Deduct up to 60% of AGI, with excess carrying forward for five years.
 - Under CARES Act: For 2020 only, can deduct up to 100% of AGI for cash gifts
- Corporations:
 - Prior to CARES Act: Charitable deductions capped at 10% of taxable income
 - Under CARES Act: Deduction limit increased to 25%

Some organizations are excluded: donor advised funds, non-operating private foundations, and supporting organizations.

ADDITIONAL CONTRIBUTION CONSIDERATIONS

Giftng of appreciated securities may drop off.

S&P 500
over last
twelve
months



PAYROLL TAX DEPOSIT DEFERRAL

- What is it?
 - Employer's portion of Social Security tax (6.2%) deferred from March 27 – December 31, 2020
 - Payments due: 50% December 31, 2021 and 50% December 31, 2022
 - As soon as PPP loans are forgiven, ability to defer payments ends.

UNRELATED BUSINESS INCOME

Proposed Regulations 106864-18, published 4/24/20

- Refine Notice 2018-67, taxpayer friendly
- Did not provide needed guidance on allocation of deductions, ordering rules for NOLs and charitable deductions, impact of CARES Act changes to NOLs
- Use of 2-digit NAICS designations instead of 6-digit
- Aggregate same activities in different geographic locations
- Investment activities aggregated, including partnership & S corp investments as well as debt-financed properties
- Pre-2018 NOLs to be used first
- All activities aggregated for purposes of the support tests for 501(c)(3) organizations



Polling question

SBA LOAN PROGRAMS

Paycheck Protection Program (PPP) Loans until June 30, 2020

- Loan equal to 2.5 times average monthly payroll for prior year (including health benefits and state taxes) - \$10 million max, 1% interest, 2 yr term
- Eligible: Up to 500 employees, 501(c)(3), 501(c)(19), Tribal businesses
- Ineligible: 501(c)(4) and 501(c)(6)
- All or portion of loan can be forgiven if certain parameters are met

Economic Injury Disaster Loans (EIDL) until December 31, 2020

- Max \$10,000 emergency advance (\$1k per ee), repayment not required
- Loan max \$2 million based on actual economic injury, 2.75% for NFPs, up to 30 yr term
- Eligible: Includes 501(c)(3), 501(c)(4), 501(c)(6) and 501(c)(19)
- Loan not eligible for forgiveness

Availability of funds is limited

FORGIVENESS OF PPP LOANS

PPP loans spent on allowable uses during 8-week period will be forgiven if at least 75% is spent on payroll costs, subject to the following reductions:

1. Decreases in FTE headcount
2. Decreases in salaries/wages of more than 25%

Note: Employees rehired and wages reinstated by June 30th do not count against forgiveness requirements.

Unforgiven portion: Repaid over 2 years at 1.0% interest

ALLOWABLE USES FOR PPP LOANS

- Payroll costs, including:
 - employee salaries, commissions, or similar compensations
 - group health care benefits
 - paid vacation, parental, sick, medical, or family leave
 - allowances for dismissal or separation
 - retirement benefits
 - state or local tax assessed on the compensation of employee
- Payments of interest on any mortgage obligation, but not prepayment or payment of principal amounts
- Rent (including rent under a lease agreement)
- Utilities
- Interest on any other debt obligations incurred before February 15, 2020.

Not allowable: Salaries and wages over \$100k annually, sick and family leave wages covered under Families First Coronavirus Response Act

UNANSWERED QUESTIONS REGARDING PPP LOAN FORGIVENESS

- How are full-time equivalent employees (FTEs) determined?
- Are eligible payroll costs determined on a cash, accrual, or some other basis?
- Do bonuses or increases in compensation count as payroll costs?
- Do discretionary retirement plan contributions count as payroll costs? What if these amounts are paid at year-end?
- What if the 8-week period ends midway through a pay period?

REDUCTION IN FORGIVENESS BASED ON FTE REDUCTION

1

Company chooses between two baseline periods:
a. February 15, 2019 – June 30, 2019
b. January 1, 2020 – February 29, 2020

2

Divide (1) average number of FTE employees in 8-week period after loan origination by (2) average number of FTE employees in baseline period from Step 1

3

If the quotient in Step 2 is less than 1, forgivable expenses are reduced proportionately

Note: Employees rehired by June 30, 2020, do not count against forgiveness requirements

REDUCTION IN FORGIVENESS BASED ON FTE REDUCTION

What happens if an employee who was laid-off or furloughed elects not to return?

- An employer must provide:
 - Written offer to rehire in good faith
 - Offer to rehire for the same salary/wage and hours
 - Document the employee's rejection of the offer

REDUCTION IN FORGIVENESS BASED ON FTE REDUCTION

1

ABC Company headcount:

- | | |
|--|----------------|
| a. February 15, 2019 – June 30, 2019 | 120 FTE |
| b. January 1, 2020 – February 29, 2020 | 100 FTE |

2

Divide number of FTE employees in 8-week period after loan origination **(75)** by number of FTE employees in baseline period **(100)**

$$\begin{aligned} 75 \div 100 \\ = 75\% \end{aligned}$$

3

Multiply ratio calculated in Step 2 by the amount of PPP loans spent on eligible uses.

$$\begin{aligned} \$1 \text{ million} \times 75\% \\ = \$750,000 \end{aligned}$$

REDUCTION IN FORGIVENESS BASED ON PAY REDUCTION

Salary reductions over 25% will count against loan forgiveness

Excludes employees with annualized pay greater than \$100,000

Note: Wages reinstated by June 30, 2020, do not count against forgiveness requirements

Example:

Company reduces salaries on March 1, 2020, from \$70,000 to \$50,000 for five employees. Loan forgiveness reduction:

$\$20,000 \text{ per employee} \times \text{five employees} = \$100,000$ that won't be forgiven.

TAXABILITY OF PPP LOAN FORGIVENESS

- Loan forgiveness isn't taxable income
- IRS: Expenses covered by loan forgiveness are not tax deductible
- Stay tuned for updates



Polling question

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFRCA)

Paid Sick and Family Leave Credits: The basics

- Employers with fewer than 500 employees
- Effective for leave paid on or after April 1, 2020
- Tax credit for amounts paid, up to certain limits
- Sick Leave – up to 80 hours paid at regular rate
 - Up to \$511 per day; or
 - 2/3 of the regular rate, up to \$200 per day
- Family Leave – up to 10 weeks paid at 2/3 regular rate, up to \$200 per day
- Exception: health care providers and emergency responders
- Expires December 31, 2020

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFRCA)

Allowable reasons for Paid Sick and Family Leave:

- I. Subject to a Federal, State, or local quarantine or isolation order;
- II. Advised by a health care provider to self-quarantine;
- III. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- IV. **Caring for an individual who is subject to an order described in I or II above;**
- V. ***Caring for a child of such employee if the school or place of care of the child has been closed, or the child care provider of such child is unavailable due to COVID-19 precautions; or***
- VI. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.



Polling question

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFRCA)

Paid Sick and Family Leave credits: Frequently asked questions

- What other costs can be included in the credit?
- When is the “fewer than 500 employee” count determined?
- What is regular rate of pay?
- Who is a health care professional?
- If my organization employs health care professionals, what should we do?
- Can an employer pay leave above the credit limit?
- Can employees use regular PTO to make-up for lost wages?

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFRCA)

Paid Sick and Family Leave credits: How do we take the credit?

- Reduce deposit of employment taxes
- What is included in “employment” taxes
- Complete Form 7200 for advanced credit
- Reconciliation occurs on quarterly Form 941

CARES ACT: RETIREMENT PLAN PROVISIONS

What retirement plan changes are in the CARES Act:

- Required Minimum Distribution (RMD) waiver for 2020
- For those participants impacted by COVID-19
 - Up to \$100,000 distribution related to COVID-19
 - 10% early withdrawal penalty waiver
 - Pay taxes ratably over three years
 - Can repay distribution within three years
 - Participant loan changes
 - Maximum loan limit increased to \$100,000/100% of account balance between March 27th and September 23rd
 - Due date for repayments can be delayed for one-year
- Plan amendment not required until December 31, 2022 (for calendar year plans)

CARES ACT: STUDENT-LOAN RELIEF

Does your organization offer student loan repayment benefits?

- CARES Act permits the following tax free benefits:
 - Up to \$5,250 to be tax-free in 2020 only
- Other employer tax-free benefits – Sec 127 Educational Assistance
 - Exclude up to \$5,250 per employee annually
 - Must have a written plan
 - Graduate or undergraduate courses
 - Not required to be job-related

CARES ACT: UNEMPLOYMENT BENEFITS

What changes were made to unemployment benefits?

- Most not-for-profits are “direct reimbursement”
 - Federal government will pay 50% of benefits from March 13 through December 31, 2020
- Changes to benefit structure for 2020
 - Extends unemployment benefits by 13 weeks
 - Fully paid by the Federal government
 - Excludes employees who can telework
- Additional \$600 is added to normal unemployment benefits
 - Through July 31, 2020
 - Fully paid by the Federal government

COVID-19: WHAT ELSE CAN AN EMPLOYER DO TO ASSIST EMPLOYEES?

Three approaches to help employees during COVID-19 challenges:

- Section 139 – Qualified Disaster Relief payment
 - Must have Federally declared disaster
 - Tax-free benefit
- Leave sharing arrangements
 - Employees donate leave to a bank to be used by other employees
- Employee Emergency Assistance Program
 - Assistance to employees who experience financial hardship/crisis
 - Written program
 - Confidential process for “grants” to affected employees

ADDITIONAL RESOURCES

BLOG

[“Funding for Paycheck Protection Program”](#)

BLOG

[“Paycheck Protection Program FAQs”](#)

BLOG

[“The CARES Act: Implications for Businesses”](#)

BLOG

[“Employee retention credits for employers subject to closure”](#)

WEBCAST

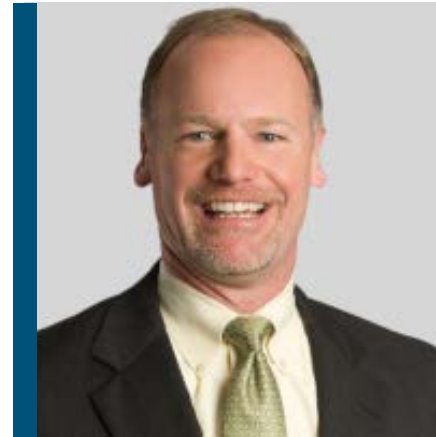
[“CARES Act 1 – The Paycheck Protection Program”](#)

[BERRYDUNN COVID-19 RESOURCE CENTER](#)

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