PPP1 Resubmit, PPP2 & ERTC Maximize What is Available

AO Webinar Series

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Topics of Discussion

- Changes the 12/27/20 Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) brought about
- Resubmittal of your First PPP Loan → Why do it?
- PPP2 → Do you qualify what do you do?
- Employee Retention Tax Credit (ERTC) → Better look at this again
- A Couple of Other Matters
- Q & A

Economic Aid Act (EAA) Highlights:

- Modification to First Draw PPP loan (PPP1) if eligible to receive an increase based upon the consolidated guidance
- If you didn't do PPP1, you still can
- Creation of a 2nd Draw Loan → PPP2 based on new rules
- Eliminated need to payback $10,000 EIDL grant through forgiveness
- Opened up the use of Employee Retention Tax Credit (ERTC)
- Memorialized in law nontaxability of PPP forgiveness and shut down IRS attempt to exclude deductions

Economic Aid Act (EAA) Highlights:

New Definition of Seasonal:

As defined in EAA, a borrower is a seasonal employer if:

1. Does not **operate** for more than 7 months in any calendar year or, (receipt of deposits not deemed operating)
2. During the preceding calendar year, it had gross receipts for any 6 months of that year that were not more than 33.33 percent of the gross receipts for the other 6 months of that year.
3. Determine maximum loan amount for purposes of the PPP by using the employer's average total monthly payments for payroll for any 12-week period selected by the seasonal employer beginning February 15, 2019, and ending February 15, 2020. HUGE

Sample Seasonal Computation

	Gross Sales 2019	6 months Lowest sales	Percentage lowest 6 months to total
Revenue All Sources			
January	$ 148,418		
February	$ 213,003		
March	$ 111,240		
April	$ 64,413	$ 64,413	
May	$ 72,823	$ 72,823	
June	$ 102,078		
July	$ 72,206	$ 72,206	
August	$ 145,113		
September	$ 142,673		
October	$ 80,757	$ 80,757	
November	$ 74,852	$ 74,852	
December	$ 52,093	$ 52,093	
	$ 1,279,668	**$ 417,144**	**32.60%**

Notes:

Lowest 6 months sales as a % of annual sales is 32.6% meets criteria of being under 33.3%

Confusing Nomenclature

- Is PPP2 and 2nd Draw the same thing?
- What do you call adding more amounts to your first loan, 2nd draw first loan, first loan amendment or revision?
- Is there an order you have to do this in?
- What form is used
- The Fact is the guidance was so poor, banks, consultants, everyone have been quite confused
- It is likely you will have to coach your bank on what you are trying to do and in the right sequence

PPP1 - Modification to First Draw

- Eligible to receive an increase based upon the consolidated guidance in the Interim Final Rule
- Full amount of a First Draw PPP Loan, including any increase, must be spent before the disbursement of a Second Draw PPP Loan (everyone should easily meet this)
- Most significant additions include:
  - More liberal measurement period, aids seasonal OCRs that had most payroll in fall or winter
  - Inclusion of all employee benefits including dental, parking, childcare, flexible spending plans, cafeteria plans
  - Now include Worker's Comp, just call is "Disability Insurance"
  - Don't Forget Tips this time!

Sample of Increase to PPP1

PPP Defined Payroll Cost for Computation	$	317,947.11
Average Monthly	$	105,982.37
Maximum Loan Calculation - New Rules (@2.5X)	$	264,955.93
Less: First Draw Proceeds	$	66,700.00
2nd Draw Proceeds	$	198,255.93

Parting Thoughts – Modification to First Draw

- Compute best 3 months of payroll, doesn't have to be what you first used
- Some banks/regional SBAs push back on work comp, but don't call it that, simply list as disability insurance, that's what it is incidentally
- Tips don't have to have been reported through payroll, you can use estimates of cash received by employees, just create a detailed worksheet that covers it
- Other entities, independent contractor, pass-through sole member, non-profits all have opportunities

PPP2 – Let's Do it Again!

- Loan Amounts of 2.5x the average monthly 2019 or 2020 payroll costs up to $2 million
- Some OCRs may qualify for 3.5x multiplier for businesses with NAICS codes starting with 72 (have to have reported as one, look on 941)
- Previously received a First Draw PPP Loan and will or has used the full amount only for authorized uses
- Has no more than 300 employees; and
- Can demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020

PPP2 Gross Receipts Test

SAMPLE OUTDOOR RECREATION COMPANY			
Computation of Revenue Decline from 2019 to 2020			
	Gross Sales 2019	**Gross Sales 2020**	**Percentage Change**
Revenue All Sources			
1st Quarter	$ 472,660.65	$ 380,402.49	-19.52%
2nd Quarter	$ 239,314.12	$ 118,285.80	-50.57%
3rd Quarter	$ 339,991.41	$ 440,560.88	29.58%
4th Quarter	$ 228,701.93	$ 377,581.88	65.10%
	$ 1,280,668.11	$ 1,316,831.05	
Notes:			
Just One Quarter must drop of 25% or more to meet criteria for 2nd Draw of PPP			

Employee Retention Tax Credit (ERTC)

- The ERTC is a refundable payroll tax credit that was enacted as part of the CARES Act in March 2020. The credit from the CARES Act is equal to 50% of payroll-related costs over the eligible period up to a maximum credit of $5,000 per employee for 2020. Prior to enactment of the EAA on Dec. 27, 2020, an employer was not eligible for the ERTC if it obtained a PPP loan.
- The EAA expanded the ERTC for six months into 2021 with several changes, including allowing companies that obtained PPP loans to benefit from the ERTC—even retroactively to 2020.
- It also expanded the definition of a small employer from 100 or fewer employees to 500 or fewer employees. It increased the credit as a percentage of qualified wages from 50% to 70%, resulting in a credit up to a maximum of $7,000 per employee for each of the first two quarters in 2021 (or $14,000 total per employee). It altered the definition of a significant revenue decline to be less than 80% of gross receipts for the same quarter in 2019, and it increased the maximum wages that can be used for the credit.

Employee Retention Tax Credit (ERTC)

To qualify for the ERTC, a company must meet either of the following tests, but not both;

1. The company must have been fully or partially impacted by government orders implemented to mitigate the spread of COVID-19 (Quite Subjective), or
2. The company experienced a significant decline in gross receipts for a quarter. (For 2020, this begins in the quarter with a 50% decline in gross receipts as compared to the same quarter in 2019 and ends with the first quarter following the quarter in which they are greater than 80% of gross receipts as compared to the same quarter in 2019; for 2021, instead of a 50% decline, only a 20% decline in gross receipts as compared to the same quarter in 2019 is necessary, and there is an election to use the immediately-preceding quarter instead of the current quarter).

Employee Retention Tax Credit (ERTC)

Q. Do I have to physically shut down locations to be considered impacted by government orders?

A. It's a common misconception that a company must be fully shut down to be considered impacted by government orders. To determine if a company is eligible for the ERTC, we would consider a partial or full impact due to a governmental order. This may be straightforward for a business that was not allowed to be open for a period of time under a state or local order. In many instances, however, you should consider if operational hours were limited due to a government order; or if your business was impacted by your suppliers suspending business partially or fully due to a governmental order, resulting in supply chain disruptions for your business; or if certain aspects of your business could not be carried out due to orders limiting certain activities while other activities continued. To qualify, the impact on your business of such government orders must be more than nominal—but this is based on facts and circumstances, as it is not defined Companies can generally think of the impact on their business during 2020 and then work backwards toward finding the cause of that impact and whether it was related to a government order.

ERTC - How Do You Do It?

- All claimed as a tax credits on form 941
- Will require filing amended returns for quarters in 2020
- Plan for 2021 in conjunction with PPP2
- If you use a payroll service, bookkeeper or CPA this is pretty easy. If you do these yourself, well…
- Remember you don’t need taxable income to claim, if you qualify, you will get tax refunds regardless of income

ERTC & PPP Forgiveness

The IRS just issued a notice that clarifies ERTC. The Notice provides that an employer that received a PPP loan is deemed to have elected not to take the ERC for the amount of payroll costs reported on the PPP forgiveness application up to (but not exceeding) the minimum amount of payroll costs sufficient to support the amount of PPP loan forgiveness. Any qualified wages that are not included in the PPP payroll costs, or that exceed the amount of the PPP forgiveness amount, are still eligible for the ERTC, as an election is not deemed to have been made for those qualified wages. **HUGE**

ERTC & PPP Forgiveness - Example

ORC had a $200,000 PPP loan and reported $250,000 of eligible payroll costs on its PPP forgiveness application is deemed to have made an election out of the ERC for the $200,000 (up to the amount of the forgiveness), but the remaining $50,000 that exceeds the PPP loan amount is not deemed to have been elected out of ERC and remains eligible for ERC.

BUT if already filed for PPP forgiveness and did not include other eligible expenses on its PPP forgiveness application, the deemed ERC election cannot be reduced by the amount of eligible expenses that could have been claimed but were not claimed on the PPP forgiveness application.

For example, an employer that had a $200,000 PPP loan and showed $200,000 of payroll costs and no other eligible expenses on its forgiveness application is deemed to have elected out of the ERC with respect to the $200,000, even though it may have had $70,000 of other eligible expenses that could have been reported on the PPP forgiveness application.

Take Away – Consider ERTC before filing for forgiveness

ERTC & PPP Forgiveness – Maximize!!

They have expanded what can be included in the 40% non payroll expenses qualifying for forgiveness, many ORCs take easy way out and just use all payroll for forgiveness

BUT

If you plan this right, you can still achieve 100% forgiveness AND also maximize the utilization of the ERTC, at $5k per employee it adds up ($14k in 2021!). Plus this above the line, no income tax on receipt of credits

A Few Items

- In all ends March 31, there is still time but act now!
- Don't be in a hurry for forgiveness application, let it shake out
- AO Tool Kit for today posted to AO's site
  - Full IFR
  - Select Guidance on PPP1 & PPP2
  - SAMPLE OUTDOOR RECREATION COMPANY-Payroll Computation-New Rules Excel Template
  - Today's Presentation
  - Visit SBA's site greatly improved
  - https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/first-draw-ppp-loans

Q & A

Thanks

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