

At the end of 2020, a new law, the Consolidated Appropriations Act, 2021 (CAA, 2021) passed to provides additional relief related to the coronavirus (COVID-19) pandemic. This law includes a second draw of Paycheck Protection Program (PPP) loans budgeted at \$284 billion to be made available until March 31, 2021 and added additional \$3 billion to Provider Relief Funds. It contains significant enhancements to the employee retention tax credit enacted under the CARES Act and created Paid Sick Leave payroll tax credit for employees affected by COVID-19. It also allows businesses to deduct ordinary and necessary expenses paid from the proceeds of PPP loans.

2021 PPP Loan Eligibilities. In order to qualify for a PPP Second Draw Loan, a taxpayer must have taken out an Original PPP Loan. In addition, prior PPP borrowers must meet the following conditions to be eligible for the PPP Second Draw Loans:

- Employ no more than 300 employees per physical location;
- Have used or will use the full amount of their first PPP loan; and
- Demonstrate at least a 25% reduction in gross receipts in the first, second, or third quarter of 2020 relative to the same 2019 quarter. Applications submitted on or after Jan. 1, 2021 are eligible to utilize the gross receipts from the fourth quarter of 2020.

You contact the bank who serviced your original PPP loan to begin applying for new PPP loan, or you can start the new PPP loan with a new bank.

Borrowers may receive a PPP Second Draw Loan of up to 2.5 times the average monthly payroll costs in the one year prior to the loan or in calendar year 2019. However, borrowers in the hospitality or food services industries (NAICS code 72) may receive PPP Second Draw Loans of up to 3.5 times average monthly payroll costs. Only a single PPP Second Draw Loan is permitted to an eligible entity.

Like Original PPP loans, PPP Second Draw Loans may be forgiven for payroll costs of at least 60% (with some exceptions) and nonpayroll costs such as rent, mortgage interest and utilities of up to 40%. Forgiveness of the loans is not included in income as cancellation of indebtedness income.

Provider Relief Fund. Previous phases of Provider Relief Fund distributed funds for loss revenues attributable to COVID-19 and expenses attributed to COVID-19 from January to June 2020. The additional funding will provide grants for businesses impacted by COVID-19 during the later part of 2020. At the time of this memo, HHS has not published an official announcement of how or when a provider can apply for additional funding.

Employee Retention Tax Credit Enhancement. Under CARES Act enacted March 12, 2020, an employer is not eligible for the credit if the employer received a PPP loan. The CAA 2021 passed Dec 27, 2020 no longer prohibits an employer to claim the credit so long as PPP Loan proceeds were not used to pay wages for which they are requesting the credit (i.e. no double dipping – wages & health insurance premium paid in excess of amount of forgiven PPP loan will qualify for the credit). The tax credit can be claimed on Form 941 Employer's Quarterly Federal Tax Return.

The credit is up to 50% of the first \$10,000 of qualified wages (or \$5,000) an employer pays to each employee beginning March 13, 2020 to December 31, 2020. The credit amount is increased to 70% of qualified wages (i.e.: \$10,000 * 70% = \$7,000 for each employee) paid from January 1, 2021 to June 30, 2021.

To be eligible, an employer must either:

- Have its operations fully or partially suspended due to a governmental order during the calendar in question, or
- Suffer a significant decline in gross receipts. A significant decline between March 13, 2020 to December 31, 2020 meant a reduction of gross receipts equal to or greater than 50% of the gross receipts as compared to the same quarter in 2019. The credit is available until such quarter as gross receipts are 80% of the same quarter in 2019.
- Beginning Jan 1, 2021 through June 30, 2021, gross receipts test will be satisfied if an employer experienced a 20% reduction in gross receipt.

To claim the credit, an employer should file amended Form 941 employment tax return.

FFCRA Tax Credit through March 31, 2021. The National Paid Sick Leave and Family Leave implemented under Family First Coronavirus Response Act (FFCRA) which required employers to provide paid leave to employees ended December 31, 2020. Beginning January 1, 2021, a FFCRA payroll tax credit is available to reimburse employers who voluntarily offer paid leave to cover the cost of benefits paid to employees through March 31, 2021.

The FFCRA payroll tax credit did not change the qualifying reasons for employees to take Paid Sick Leave (i.e.: subject to quarantine law, experiencing COVID-19 symptoms while waiting for medical diagnosis, infected with COVID-19), or Family Leave (i.e.: caring for someone who is subject to quarantine law, caring for child if school is closed), nor the cap on the amount of pay employees are entitled to received (i.e.: maximum 80 hours of paid sick leave for all business size, and 12 weeks of expanded family leave for business with more than 500 employees). Please contact your payroll service provider to calculate this credit if you are eligible.

Tax Treatment of Expense Deduction and PPP Loan forgiveness. The CAA, 2021 provides that business expenses paid both from the proceeds of loans under Original PPP loans and PPP Second Draw Loans are tax deductible. PPP loan forgiven and EIDL advance grants are also not treated as taxable income.

If you require any assistance with PPP application, employee retention tax credit, or PPP forgiveness, please contact our office directly.