

Maximizing Your PPP Benefits and Employer Tax Credits

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In 2020, Congress passed a flurry of COVID-19 related legislation designed to help employers retain and pay their employees and stay in business. This relief has been offered primarily in two forms:

- **Paycheck Protection Program (PPP):** PPP loans have been made available to qualifying small businesses to help them stay afloat and retain and pay as many of their employees as possible. A business receiving a PPP loan can then apply to have the loan forgiven; that is, whatever portion of the loan was used for qualifying payroll and expenses.
- **Employer tax credits:** Additional employer tax credits have been made available to help employers cover the cost of sick and family leave for employees, employees who need to care for someone with coronavirus (including a child whose school or daycare is closed due to the coronavirus), and retaining employees when operations have been partially or fully suspended due to government orders during the pandemic.



Understanding and taking full advantage of these benefits within the parameters stipulated in the legislation can be challenging for small-business owners. At SWC, we're here to help.

In this SWC singlette, we provide an overview of the COVID-19 pandemic relief programs for which your business may be eligible. When preparing your business tax returns this year, your accountant or CPA should be asking you for copies of payroll tax returns and should be initiating additional consultations with you to see if you are eligible for any of the new employer tax credits. We say *should* because that's how we handle this at SWC.

Wait! Before You File Your 2020 Tax Return, Read This

Don't rush to file your 2020 tax returns. Consult with us first for three important reasons:

1. Both the PPP and the new employer tax credits provide potentially significant benefits for your business, and we want to make sure you reap the maximum benefit.

2. The new employer tax credits cannot be claimed on the same payroll being used for the PPP loan forgiveness. When completing your tax return and submitting documents for PPP loan forgiveness, you need to be sure you're not confusing the two benefits.
3. Your state may not follow *all* the federal guidelines. We can help ensure that your state taxes account for any differences.

If you feel pressured to file your 2020 tax returns and are uncertain about any of the details related to the PPP or new employer tax credits, we strongly encourage you to file for an extension. With that recommendation in mind, it's important that you take the time to consult with your tax advisor.

Sorting Out PPP Rounds 1 and 2

Congress provided two rounds of PPP loans – one in the spring of 2020 and another near the end of 2020. If you have taken advantage of the PPP, you should understand the rules and the differences between the two rounds (or “draws.”)

Important: The Coronavirus Aid, Relief and Economic Security (CARES) Act, enacted in March 2020, was silent on whether expenses paid with the proceeds of first draw PPP loans could be deducted. The IRS took the position that these expenses were nondeductible. However, the Consolidated Appropriations Act, 2021 (CAA, 2021), enacted at the end of 2020, provides that expenses paid from the proceeds of both first and second draw PPP loans *are* deductible. This is not necessarily the case with all states as some have not conformed yet to the Federal rules. As a result, this could mean higher taxable income on your state income tax return.

PPP Round 1: First Draw

In March 2020, the CARES Act was enacted. In part, this Act authorized the Small Business Administration (SBA) to make loans available to qualified businesses under certain circumstances. The provision established the PPP, which provided up to 24 weeks of cash-flow assistance through 100 percent federally guaranteed loans to eligible recipients. Businesses could apply to have the loans forgiven to the extent their proceeds were used to maintain payroll during the COVID-19 pandemic and to cover certain other expenses.

An *eligible recipient* may have a PPP loan forgiven in an amount equal to the sum of the following costs incurred and payments made during the covered period:

- Payroll costs
- Interest (but not principal) payments on any covered mortgage obligation (for mortgages in place before Feb. 15, 2020)
- Any payment for any covered rent obligation (for leases that began before Feb. 15, 2020)
- Covered utility payments (for utilities that were turned on before Feb. 15, 2020)
- Any covered operations expenditure
- Any covered property damage cost
- Any covered supplier cost
- Any covered worker protection expense

Covered period. Your covered period would normally have been the 24-week period beginning on the date you took out the loan (and ending no later than Dec. 31, 2020, if that was before the

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expiration of the 24-week period). If you received a PPP loan before June 5, 2020, you could elect a shorter eight-week covered period. If you did not elect the eight-week period and instead used the longer 24-week period, you had to maintain payroll levels for the full 24 weeks to be eligible for loan forgiveness. If you didn't make an election, the 24-week period applies.

Recipient verification. An eligible recipient seeking forgiveness of indebtedness on a covered loan must verify that the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered lease obligation, or make covered utility payments.

Cancellation of indebtedness income. The reduction or cancellation of indebtedness generally results in cancellation of debt (COD) income to the debtor. However, the forgiveness of PPP debt is excluded from gross income for tax purposes. Your tax attributes (net operating losses, credits, capital and passive activity loss carryovers, and basis) would not generally be reduced on account of this exclusion.

PPP Round 2: Second Draw Loans

At the end of 2020, a new law was enacted that provides for additional pandemic-related relief. This law, the Consolidated Appropriations Act, 2021 (CAA, 2021), includes a second draw of PPP loans and allows businesses to deduct ordinary and necessary expenses paid from the proceeds of both rounds of PPP loans.

The CAA, 2021 permits certain smaller businesses who received a PPP loan and experienced a 25 percent reduction in gross receipts to take a PPP Second Draw Loan of up to \$2 million.

Eligible entities. To qualify for a PPP Second Draw Loan, a business 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 percent 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 use the gross receipts from the fourth quarter of 2020.

Eligible entities include for-profit businesses, certain non-profit organizations, housing cooperatives, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural cooperatives.

Loan terms. 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.

Gross receipts and simplified certification of revenue test. Businesses that borrow PPP Second Draw Loans of no more than \$150,000 may submit a certification, on or before the date the loan forgiveness application is submitted, attesting that the eligible entity meets the applicable revenue (gross receipts) loss requirement.

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

Please contact our office (with any questions regarding PPP loan forgiveness and any tax implications related to a PPP loan.

New Employer Tax Credits

Many businesses that have been severely impacted during the COVID-19 pandemic are eligible for two new employer tax credits:

- The credit for sick and family leave
- The employee retention credit

Credit for Sick and Family Leave

Eligible employers are entitled to receive a credit in the full amount of the required sick leave and family leave, plus related health plan expenses and the employer's share of Medicare tax on the leave, for the period of April 1, 2020, through Dec. 31, 2020.

The refundable credit is applied against certain employment taxes on wages paid to all employees. Eligible employers can reduce federal employment tax deposits in anticipation of the credit. They can also request an advance of the paid sick and family leave credits for any amounts not covered by the reduction in deposits. The advanced payments will be issued by paper check to employers.

The credit for sick and family applies to the following three situations:

- **Paid sick leave credit (employee unable to work):** An employee who is unable to work (including telework) due to coronavirus quarantine or self-quarantine or who has coronavirus symptoms and is seeking a medical diagnosis, is entitled to paid sick leave for up to 10 days (up to 80 hours) at the employee's regular rate of pay, or, if higher, the federal minimum wage or any applicable state or local minimum wage, up to \$511 per day, but no more than \$5,110 in total. The employer can also get credit for health plan expenses and the employer's share of Medicare tax.
- **Paid sick leave (employee caring for someone with coronavirus):** An employee who cannot work because he or she is caring for someone with coronavirus or caring for a child because the child's school or daycare provider is closed or unavailable due to the coronavirus, is entitled to paid sick leave for up to two weeks (up to 80 hours) at two-thirds the employee's regular rate of pay or, if higher, the federal minimum wage or any applicable state or local minimum wage, up to \$200 per day, but no more than \$2,000 in total. The employer can also get credit for health plan expenses and the employer's share of Medicare tax.
- **Paid family and medical leave (to care for a child due to daycare or school closure):** An employee who is unable to work because he or she is caring for a child whose school or daycare provider is closed or unavailable due to the coronavirus, is also entitled to paid family and medical leave equal to two-thirds of the employee's regular pay, up to \$200 per day up 10 weeks (50 days), but no more than \$10,000 total. This can be combined with the sick leave credit to cover a total of 12 weeks (60 days). The employer can also get credit for health plan expenses and the employer's share of Medicare tax.

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The Employee Retention Credit

Eligible employers can claim the *employee retention credit* – a refundable tax credit equal to 50 percent of up to \$10,000 in qualified wages (including health plan expenses), paid after March 12, 2020 and before Jan. 1, 2021.

And in related news, the U.S. House of Representatives recently passed H.R.1319 (the American Rescue Plan Act of 2021), which as part of its \$1.9 trillion in additional relief to address the continued impact of COVID-19, seeks to extend the Employee Retention Credit through Dec. 31, 2021. If the U.S. Senate votes in agreement, the American Rescue Plan Act of 2021 will be sent to the President for approval.

Eligibility: To be eligible for the employee retention credit, you must meet one of the following criteria:

- Your business must have fully or partially suspended operations during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19.
- Your business must have suffered a significant decline in gross receipts compared to 2019 – a 50 percent reduction for 2020 or a 20 percent reduction in 2021 (Q1, Q2).

Amount of Credit: The refundable credit is capped at \$5,000 per employee and applies against certain employment taxes on wages paid to all employees:

- Up to 50 percent of wages for the first \$10,000 wages/employee up to \$5,000 per employee
- 2021 (Q1/Q2) up to 70 percent of first \$10,000 wages (\$7,000/quarter/employee, up to \$14,000 total)

Eligible employers can reduce federal employment tax deposits in anticipation of the credit. They can also request an advance of the employee retention credit for any amounts not covered by the reduction in deposits. The advanced payments will be issued by paper check to employers.

If all this information about PPP and new employer tax credits is making your head spin, don't worry – we're here to help and to make sure you get all the COVID-19 relief benefits you are entitled to as a small-business owner and taxpayer. Visit our website [Contact page](#) to request an appointment or schedule an appointment online

Disclaimer: *The information in this singlette about Paycheck Protection Program (PPP) benefits and employer tax credits is provided for general informational purposes only and may not reflect current financial thinking or practices. No information contained in this singlette should be construed as financial advice from the staff at Stees, Walker & Company, LLP (SWC), nor is this the information contained in this singlette intended to be a substitute for financial counsel on any subject matter or intended to take the place of hiring a Certified Public Accountant in your jurisdiction. No reader of this singlette should act or refrain from acting on the basis of any information included in, or accessible through, this singlette without seeking the appropriate tax and/or financial planning advice on the particular facts and circumstances at issue from a licensed financial professional in the recipient's state, country or other appropriate licensing jurisdiction*



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