PPP & Tax Provisions in Latest Stimulus Bill

On December 27, 2020, the President signed the Consolidated Appropriations Act of 2021, a new stimulus package intended to further extend financial relief to both businesses and individuals.

Following are some of the highlights:

1) **Deductibility of PPP-Funded Expenses**
The legislation provides that expenses paid for with proceeds from a PPP loan that is either forgiven or expected to be forgiven are deductible. This reverses previous guidance from the Treasury and IRS, which disallowed such deductions. Please note that California has not conformed to this amendment to the federal law, so such expenses remain non-deductible for California tax purposes.

2) **Expansion of Eligible PPP Expenses**
The bill expands the type of expenses for which both existing and new PPP loans can qualify for forgiveness, but only for PPP loans that have not yet been forgiven. In addition to payroll, rent, mortgage interest, and utilities, PPP proceeds may now also be used for the following:

   - Covered worker protection and facility modification expenditures, including personal protective equipment, to comply with COVID-19 federal health and safety guidelines
   - Expenditures to a supplier of goods that are essential at the time of purchase to the business's current operations
   - Payments for any business software or cloud computing service that facilitates business operations; product or service delivery; the processing, payment, or tracking of payroll expenses; human resources; sales and billing functions; or accounting or tracking of supplies, inventory, records, and expenses
   - Costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or otherwise compensated

   Note that there has been no change to the requirement that at least 60 percent of PPP loan proceeds be used for payroll expenses.

3) **Additional PPP Loans**
   - Businesses that have experienced at least a 25% decline in gross revenues for a quarter in 2020 compared to the same quarter in 2019 and have 300 or fewer employees (including part-time and seasonal) can apply for a new round of PPP loans.
   - The maximum loan amount is the lesser of $2 million or 2.5 times the borrower's average monthly payroll in either (a) the one-year period prior to the date on which the loan is made or (b) calendar year 2019. Borrowers in the hospitality business (typically restaurants and hotels) are generally permitted to use a multiplier of 3.5 instead of 2.5.

- This second round of PPP loans is available not only to first-time qualified borrowers but also to borrowers that previously received a PPP loan. However, a borrower that previously received a PPP loan must also show that they either have used or will use the remaining proceeds from the first loan before the second loan is disbursed.
- For this latest round of PPP loans, borrowers are able to choose the length of their covered period (the time borrowers have to use the funds to qualify for forgiveness) as long as it is at least 8 weeks and not longer than 24 weeks. This will provide some flexibility over how a borrower handles potential reductions in workforce once the PPP funds are used up.
- The deadline to apply is the earlier of March 31, 2021 or until the $284 billion in allotted funds is used up.

4) **Ability to Request Increase in Original PPP Loan Amount Due to Updated Regulations**
Borrowers whose PPP loans have not yet been forgiven can also submit supplemental PPP loan requests in all cases where their original PPP loan amount would have been higher due to new rules that have been released since they originally applied. For example, this would benefit partnerships that applied for a loan before guidance came out to clarify that self-employed earnings of the partners could be included in the calculation of the maximum loan amount. This also applies to borrowers who returned all or a portion of their original loans, or took reduced loans to qualify for other benefits that are no longer limited for PPP recipients, such as the Employee Retention Credit.

5) **PPP Loan Forgiveness**
   - The legislation provides for simplified forgiveness for PPP loans of $150,000 or less whereby the borrower certifies to the lender on a one-page application the number of employees retained because of the loan, the estimated amount of loan proceeds spent on payroll costs, and total loan value. No additional information will be required to be submitted, but the borrower must attest that they will retain relevant records for at least 4 years from submission of the loan forgiveness application.
   - EIDL advances will no longer reduce the amount of PPP loan forgiveness.

6) **Miscellaneous Tax Provisions**
The legislation also includes a number of miscellaneous tax provisions, including the following:
   - Employee Retention Credit:
     - Allows PPP borrowers to claim the credit, but specifies that wages paid with forgiven PPP debt are excluded from computation of the credit (CARES Act previously prevented PPP borrowers from taking the credit)
     - Extends the payroll tax credit through June 30, 2021 (previously set to expire December 31, 2020)
     - For credits claimed after 2020: increases the credit from 50% to 70% of qualified wages, revises the $10,000 qualified wage limitation to apply per quarter, and eases eligibility by defining a period of significant decline as a

quarter in which gross receipts are less than 80% (up from 50%) of gross receipts for the same quarter in 2019

For a review of the criteria for this credit and how it works, see our previous summary of the tax provisions under the CARES Act at https://www.ntllp.com/tax-provisions-in-the-cares-act/.

- Extends the following tax provisions relating to charitable contributions through 2021:
  - For individuals who itemize: 100% AGI limitation for cash contributions (does not apply if made to a donor-advised fund or a non-operating private foundation)
  - For individuals who don't itemize: $300 deduction ($600 for married couples) of cash contributions
  - For corporations: 25% ATI limitation for cash contributions

- Temporarily allows for 100% deductibility (up from 50%) of business meals provided by a restaurant and paid or incurred in 2021 and 2022 (The 50% limitation continues to apply for California tax purposes.)

- Permanently changes the threshold on medical expenses to 7.5% of adjusted gross income (was scheduled to be 10% of AGI in 2021)