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report

Closing 2020 with Some Good News:
Paycheck Protection Program Corrections and Additional Funding

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2020 was a heck of a year, wasn't it? Like many businesses nationwide, our firm went remote overnight. Offices sent their employees home, restaurants converted to mostly take-out and delivery, checkout counters suddenly had Plexiglas, tenants agreed to only essential repairs, and families and friends gathered virtually. Many industries saw an immediate shock to their operations, and real estate was no exception. Leases and loans were renegotiated, rents were deferred or reduced and some tenants went out of business.

In March 2020, Congress passed the Paycheck Protection Program (PPP) as part of the CARES Act, and while good intentioned, the haphazard guidance and lack of clarity on the PPP loan created a host of problems.To close the gap on prior guidance and to extend further aid, Congress passed the Consolidated Appropriations Act on December 21st, 2020 which was signed into law by the president on December 27th, 2020. This legislation includes the much awaited correction for the deductibility of expenses associated with the PPP proceeds, another round of PPP funding and many other useful tools for businesses as we head into the New Year. Apparently, lawmakers only had a few hours to review the 5,593-page bill before taking a vote, so what could possibly go wrong this time?

Problems with the Original Paycheck Protection Program

The pandemic caused an incredible disruption to an otherwise booming economy. As Coronavirus cases continued to rise over the summer, so did the number of shut downs. To incentivize employers to keep employees on the payroll, the PPP created government loan funds administered by the Small Business Association and divvied up by the banks. If businesses spent the majority of those funds on payroll, they could be approved to receive full forgiveness for the loan. Additionally, businesses could use the proceeds to pay for ancillary expenses such as mortgage interest, rent and utilities. The deal was sweet, but the details were bitter. Think of it as the privatization and expansion of unemployment compensation. Guidance changed constantly, even on the basics like how much of the proceeds had to be spent on payroll costs. Initially, the legislation had no requirements on how much of the funds needed to go to payroll as opposed to other costs eligible for forgiveness. Later, we were told 75% had to be spent on payroll and subsequently it changed to 60%.

PPP Loan Forgiveness and Expense Deductibility

The CARES ACT did not specifically address how the associated expenses funded with PPP proceeds would be handled. Though, it seemed they would not be subject to tax upon forgiveness. A few months into dealing with the PPP, the IRS issued guidance that indicated because the PPP loan forgiveness was nontaxable income, the corresponding expenses should be nondeductible to prevent a "double dipping". Let's think about that for a minute… doesn't that ultimately make the PPP forgiveness taxable? As you may imagine with many businesses already struggling to meet expenses and wading through the complexities of the program, this was an unwelcome surprise. Fortunately for taxpayers, this was corrected in the eleventh hour as part of the Consolidated Appropriations Act which made expenses paid for with forgiven PPP loans deductible.

A Fresh Round of PPP Funds

The Consolidated Appropriations Act provides for $284 billion in funding to the Small Business Association for first and second PPP loans to businesses. For any eligible business that received a first PPP loan, they may be able to apply for a second one if they can demonstrate a reduction in revenue of 25% in any 2020 quarter as compared to the same quarter in 2019. In addition, second time borrowers must have less than 300 employees and have used or will used the full amount of their first PPP loan. As with the first round, the maximum loan for any borrower is $2 million. First time borrowers with fewer than 500 employees and eligible for other SBA 7(a) loans will be eligible. This includes sole proprietors, independent contractors, self-employed individuals and non-profits. The same costs eligible for loan forgiveness under the original PPP remain eligible under this new round, namely payroll, rent, mortgage interest and utilities. The eligible costs were also expanded to include the following:

- Costs incurred for the protection of workers or to modify or adapt facilities in order to comply with federal health and safety guidelines resulting from COVID-19
- Costs to suppliers that are essential to the borrower's current operations
- Certain business software or cloud computing services related to product/service delivery, payroll, human resources, sales, inventory, supplies or accounting.

With the expanded funding and modification of the previous program, it appears the interpretation of laws and guidance has only just begun for borrowers and their advisors.

Simplified Application for Certain Borrowers

After numerous modifications to the application process, there is a now a streamlined process for those with PPP loans of $150,000 or less. Under this new process, borrowers must sign and submit a certification that is one page or less and includes:

- The number of employees retained because of the loan
- Total loan proceeds spent on payroll costs
- Total loan amount

While the application process does not require supporting documents to be supplied, borrowers must retain the relevant records for four years in the event of an audit or review.

What Does the Future Hold?

If the past is any indication, there will be many more questions that arise as we get through the first quarter of 2021. In the meantime, the PPP loan will continue to be a lifeline for many struggling businesses. While real estate has not yet been hit as hard as originally anticipated, property owners and ancillary businesses should weigh the benefits of applying for this next round given the remaining uncertainty.

Eric Freeman is a Tax Senior Manager for BeachFleischman PC. He has a Master of Accounting with a focus in tax and he is a licensed CPA in Arizona. He has spent most of his career specialized in the real estate industry and partnership taxation by providing consulting, planning and tax preparation services. Eric offers a unique perspective to the real estate industry from his own experiences of owning and managing real estate investments. He can be reached at efreeman@beachfleischman.com.