

Hashing_it_Out

Community Discussions

Engage, learn and share with leaders
in crypto, blockchain and DLT.



CARES Act

- Access to Cash / Loans
 - Title 4 Loans (500Bn) → More than 500 Employees
 - PPP, EIDL, EEIG (350Bn) → Fewer than 500 Employees
- Tax planning opportunities
 - Income tax, payment deferral
 - Payroll tax relief
 - NOL modifications
 - Interest expense deductibility
- Other topics
- Q&A

Title 4 of CARES Act (Mid and Large Co's) – 500Bn.

- \$46 Bn in loans for Aviation Industry & National Security Businesses
- \$454 Bn in loans for other Mid- and Large size business
- Roll out through banks + Program managed by the Treasury & Fed Res
- Continued operations of the business are jeopardized
- Interest on 454 Bn. capped at 2%
- Intended to unlock \$2 to 4Tr. in private lending
- Treasury will require equity or senior debt positions in Aviation Ind
- No stock buy backs, dividends, executive pay increase + maintain 90% of workforce (in US)

What are the Main Differences Between the Loans?

	PPP	EIDL	EEIG
Maximum Loan	\$10 million or 2.5 x payroll	\$2 million	\$10,000
Terms	1% and 2 years maturity As of 4/2/2020	Up to 3.75% Up to 30 years	None
Basis of Loan Amount	Monthly Payroll Costs	Demonstrated Need	Request (subset of EIDL)
Funded By	Local Bank	SBA	SBA
Time to Funding	2 weeks (uncertain)	3-4 weeks (estimated)	3 days
Forgiveness	Yes (Partial to Full)	No	Yes
Personal Guarantee	No	Yes	No
Collateral Required	No	Yes	No
Application Requirement	Simple	Complex	Simple
Compliance Requirement	Complex	Simple	NA
Appropriate For	Capital to cover the cost of retaining employees, paying rent and utilities, interest on mortgage debt	Payroll and other operating expenses that could have been met had the disaster not occurred	An emergency infusion of cash to cover you right now; an advance against EIDL

PPP Requirements

Eligible Entities must meet the following:



Business Operational
on February 15, 2020



No more than 500
employees
(excludes independent
contractors in
calculation)



Current COVID-19
economic
environment makes
this loan request
necessary



Borrowers certify to
lenders, in good faith, to
use funds to retain
workers, maintain payroll
and other debt obligations;
including mortgage
interest payments, rent
under a lease agreement
and utilities

Loan Amount Calculation

- ❑ **Based on 12 months of "Payroll Costs"**
 - Divide sum by 12 = Average Monthly Payroll Costs
- ❑ **Multiply by 2.5 = The Product**
- ❑ **The Lesser of The Product of the final calculation or \$10.0m**

- ❑ **What is in the Payroll Costs?...**



Eligibility – Payroll Costs

❑ “Payroll Costs” include payments for:

- Salary, wage, commission, or similar compensation +
- Cash tips or equivalent +
- Vacation, parental, family, medical or sick leave + (exclude FFCRA Leave)
- Employer paid portion of the health care benefits (including premiums) +
- Any retirement benefit paid by company (e.g. 401k matching)
- Employer paid state or local tax assessed on compensation of employees (for example state unemployment tax)

❑ “Payroll Costs” exclude payments for:

- Compensation of an individual employee in excess of an annual salary of \$100,000
- 1099 contractors
- Taxes imposed or withheld as part of FICA, RRTA, or wages held at the source of income (Chapters 21, 22, or 24 of IRC)
- Compensation of an employee whose principal place of residence is outside the United States
- Qualified sick leave for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act
- Qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act

Loan Forgiveness

- **Maximum forgivable amount is equal to the amount spent in an 8-week period (after the loan origination date) on essential operating expenses (75/25):**
 - Payroll costs, rent, utilities, and interest payment on mortgages
 - Leases and mortgages needed to be in place before February 15, 2020
- **Amount forgiven will be reduced:**
 - Proportionately to any reduction in number of employees retained compared to number of employees existing in one of two testing periods, **AND**
 - If there is any reduction in an employee's wages greater than 25% during the most recent full quarter
- **Borrowers that rehire employees previously laid off and re-hired by June 30th will not be penalized for reduced payroll**
- **Amount unforgiven can be repaid over 2 years at a 1% interest rate, with deferred payments for at least 6 months from date of the loan**
- **Develop a strategy of when and how many you rehire and align that with furloughs or layoffs to maximize the benefit of the forgiveness**

The Simple Summary

- ❑ **Calculate your loan**
- ❑ **File your application**
- ❑ **Plan ahead...**
 - Develop a plan for usage of funds including a staffing plan
 - Manage compliance through tracking of your essential business operating costs



Income Tax Deferral + FICA Deferral

- Federal & State Income Tax – Auto Deferral to July 15
- Federal Payroll tax (FICA) – deferred to 2021 and 2022

CARES Act – Tax Benefits

- Companies and others can now CB net operating losses from 2018 2019 and 2020, also non calendar 2017 can CB that loss 2 years
- Repeal of AMT for prior years pre TCJA – allowing the company to get 100% refunds vs the old 90% limit on NOLs against AMT
- Change to interest expense limitation in 2019 and 2020 from 30% to 50% (means may need to amend prior year return to increase losses)
- Change to business expensing of assets not cover in the original tax reform act which will allow companies to generate larger NOLs to potentially carry back
 - Can amend the 2018 return to increase loss
 - May be able to instead file a auto 3115 method change to do a catch up on the 2019 return

Business Interest Expense Limitations - §163(j)

- Applies to taxable years beginning in 2019 and 2020
- Generally increases prior 30% of Adjusted Taxable Income Threshold to 50% of Adjusted Taxable Income
 - Does not apply to Partnerships in 2019. Instead, partners may deduct 50% of their distributive share of the partnership's Excess Business Interest (expense) in 2020 without regard to §163(j). Thus, for partners in partnerships, the benefit of these provisions will be felt in 2020.
- Includes an election to use 2019 Adjusted Taxable Income for tax years beginning in 2020 (rather than their 2020 Adjusted Taxable Income)
- Note – may not be relevant for Taxpayers that have elected out of §163(j) by making an Electing Real Property Trade or Business Election

Section 382 – Overview

- Applies to C corporation that have a tax attribute carryforwards (“loss corporations”)
- Enacted to stop the trafficking of tax attributes (e.g., net operating losses, credit carryforwards, etc.)
- Applies when a loss corporation has undergone a “change in ownership,” which occurs when new shareholder(s) acquire more than 50% of the value of a corporation’s stock over a three year look-back period (much more complicated than this in reality).
- Once a change occurs, the utilization of the tax attributes are subject to an annual limitation which currently has two components:
 - “Base” annual limit = pre-change equity value of the company multiplied by the Sec. 382 “applicable federal rate” in effect in the month of the ownership change. Sec. 382 AFR for April 2020 is 1.63%.
 - “Deemed Recognized Built-in Gains” as allowed under Notice 2003-65.

Section 382 – Problems We’re Currently Seeing

- In the current environment, the combination of a decline in company values along with the need to raise money can create Section 382 “change in ownership” problems.
- Further compounding the issue are:
 1. Current low interest rates that post-ownership change annual limits are based on (the Sec. 382 applicable federal rate; 1.09% in April and dropping fast), and
 2. Newly enacted proposed regulations (issued January 2020) that, once issued as final, will eliminate the benefit of Notice 2003-65 (utilization of “deemed recognized built-in gains”).
- Both factors will have a significant effect on the annual utilization of tax attributes following a Section 382 “change in ownership.”

Transfer Pricing & R&D Credits

How can companies streamline and identify cost-effective solutions to manage their transfer pricing risks and compliance?

- Transfer pricing policies for routine entities that receive “guaranteed profits”
 - Consider adjusting the transfer pricing to lower guaranteed returns to limited risk distributors, contract manufacturers, and service providers
 - what costs should be included in the compensation formula
 - whether and how much of a mark-up should be applied
 - Limited risk entities operate at break even
 - Charging out service fees for COVID-19 related expenses
- R&D Credits to Offset Payroll Tax (6.2%)

California Localities

- **SF Tax and License Fee Deferrals on Filing and Payment due dates**
 - Deferral of Business Taxes and License Fee - <https://sftreasurer.org/covid19>
- **Deferral of Business Taxes for Small Businesses**
 - Quarterly estimated tax payments of the Gross Receipts Tax, Payroll Expense Tax, Commercial Rents Tax, and Homelessness Gross Receipts Tax that would otherwise be due on April 30, 2020, are waived for taxpayers or combined groups that had combined San Francisco gross receipts in calendar year 2019 of \$10,000,000 or less. These quarterly estimated tax liabilities must instead be paid along with annual tax payments for tax year 2020, which will generally be due by March 1, 2021.
 - These bills are typically mailed in late March, but businesses with 2019 gross receipts of \$10,000,000 or less will receive a letter instead of a bill.

Other Items

- **Tumbling Valuations**
 - 409a valuations for tax purposes out of date (worthless stock options)
 - Lose NOLs if triggers change of ownership
- [Grants Library \(by state\)](#)
- **Digital Dollar & CARES**

COVID-19

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Cash Controls & Crisis Management

We answer the question, "How do I stay in business given market volatility?"

Government Aid & Access

We answer the question, "How do I access government assistance?"

HR & Remote Workforce Enablement

We answer the question, "How do I manage my employees?"

Internal & External Communications

We answer the question, "How do I manage what is being shared about the pandemic?"

Industry Solutions

We answer the question, "How do I solve for issues specific to my industry?"

armaninollp.com/articles/covid-19-resource-center