UNIVERSITY OF MINNESOTA EXTENSION

The Consolidated Appropriations Act, 2021: Effects on the Paycheck Protection Program (PPP) and Loan Forgiveness

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After months of negotiations, Congress passed a new COVID-19 relief bill as part of a larger end-of-year federal appropriations bill. The bill, known as the Consolidated Appropriations Act, 2021 (CAA), was passed in a late night legislative session on December 21, 2020. The president then signed the bill into law on December 27, 2020.

The law notably changed the tax treatment of the Paycheck Protection Program (PPP) with just a few days left in the calendar year. Other parameters of the law of importance to farmers and other small business owners include a second round of PPP loans, new funding for targeted Economic Injury Disaster Loan (EIDL) advances, an infusion of new dollars to the United States Department of Agriculture (USDA), and continuation of several COVID-19 related employee tax credits. Not connected directly to business finances, but likely relevant to many reading this, the law also includes a second round of Economic Impact Payments (EIPs) and funding for rural broadband and telehealth upgrades.

This article highlights major COVID-19 financial related provisions but does not provide a full comprehensive summary of the 5593 page law. Rob Holcomb outlines additional tax related content of the CAA in a blog post here.

Paycheck Protection Program (PPP)

The most time sensitive business planning news from this law affected PPP. For borrowers with employees, PPP expense deductions are now deductible on 2020 tax returns. For Schedule F filing farming and ranching sole proprietors/self-employed individuals, PPP Round 1 loans may now be based on gross income instead of net income, **but only if forgiveness has not yet been received**.

For PPP borrowers, the amount of their PPP loan (forgiven or reasonably expected to be forgiven) has been non-taxable gross income since PPP was created in the CARES Act last spring. However, the IRS stepped in this summer and said because income associated with PPP was tax-excluded they would not allow expenses associated with PPP to be deducted on 2020 federal taxes. This new law usurps the IRS's interpretation and very clearly states at the federal level **PPP expenses are tax deductible** (Division N, Title II, Section 276). This is welcome news for many PPP borrowers.

For sole proprietors without employees, owner's compensation is non-deductible to begin with, so the new law's treatment of PPP expenses should not affect their expense deductions. It is another new aspect of PPP of most interest to this category of PPP borrowers. A new provision (Division N, Title III, Section 313) allows **Schedule F** filing sole proprietors, independent contractors, or self-employed individuals to retroactively recalculate their Round 1 PPP loans based on their 2019 ***gross*** income, instead of their 2019 ***net*** income. If the PPP loan has been forgiven, there is an exception for recalculating. In other words, farmers and ranchers may not recalculate Round 1 PPP loans that are already forgiven. Pausing on forgiveness until more information is available may be recommended for Schedule F filing sole proprietors. Farmers and ranchers meeting the new qualifications will also be allowed to use the gross income calculations for PPP loans issued in the future. Annualized maximums remain at $100,000 per employee (Division N, Title II, Section 344). The annualized maximum typically applies to owner's compensation as well, with few exceptions.

Congress funded an additional $284.45 billion (Division N, Title III, Section 323) for a second round (or "second draw") of PPP for businesses with 300 employees or less. The final covered period date is March 31, 2021 for the second round (Division N, Title III, Section 343). The additional PPP funding brings the total appropriation for PPP to approximately $806 billion since the start of the program in April 2020. Farmers and other small business owners are generally eligible for the second round if they experienced "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 January 1, 2021 are eligible to utilize the gross receipts from the fourth quarter of 2020." (Division N, Title III, Section 311).

PPP Eligible Expenses

Payroll expense remains the principal eligible expense for PPP loans. To achieve 100% forgiveness, the taxpayer must spend 60% or more of their PPP loan proceeds on payroll expense during the 8-week or 24-week covered period. Moving forward, borrowers will have a flexible coverage period. In other words, the borrower can select the length of the coverage period (anywhere between eight and 24 weeks). The coverage period, however, must begin on the date the loan proceeds were distributed. Qualifying non-payroll expenses include business mortgage interest, business rent or lease, and business utility payments. All qualifying payments must have been paid or incurred during either the 8-week or 24-week coverage period.

Division N, Title III, Section 304 of the CAA also expanded the list of eligible expenses to include covered:

- Operations expenditure
    - "a payment 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."
- Property damage costs

    - "a cost related to property damage and vandalism or looting due to the public disturbances that occurred during 2020 that was not covered by insurance or other compensation."
- Supplier costs
    - "an expenditure made by an entity to a supplier of goods for the supply of goods that (A) are essential to the operations of the entity at the time at which the expenditures made and (B) is made or pursuant to a contract, order or purchase order-- (i) in effect at the time before the covered period with respect to the applicable covered loan; or (ii) with respect to perishable goods in effect before or at any time during the covered period with respect to the applicable covered loan."
- Worker protection expenditures
    - "an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration or guidance issued by a state or local government."

Applying for PPP Forgiveness

The taxpayer must apply for PPP forgiveness through the lender they used for the original PPP loan. The taxpayer should consult with their lender for additional guidance and provide requested documentation in a timely manner.

There are currently three forms to choose from when applying for PPP loan forgiveness, but this may change in the coming weeks as the SBA issues new guidance. SBA Form 3508 can still be used as a template for calculating forgiveness. Moving forward, SBA will not reduce the borrower's forgiveness by the amount of EIDL advance. The SBA forms 3508EZ and 35808S will require revisions from SBA.

Additionally, PPP borrowers under $150,000 may use a new simplified forgiveness process, (Division N, Title III, Section 307). Many farmers and main street business owners fall into this smaller loan category.

The author anticipates that the record retention requirements will remain in place from the first round of PPP loans. Based on current rules, the taxpayer should retain the forgiveness calculations and any other supporting documents for six years after the date the loan is forgiven or paid in full regardless of the form used.

Based on the text of the new law, the Small Business Administration (SBA) will begin issuing new rules, regulations and forms for PPP Round 2 and other PPP changes in the coming weeks.

Economic Injury Disaster Loans (EIDL)

Congress extended the EIDL program and the EIDL Emergency Advances. The EIDL Advance (the grant-like portion of the loan that does need to be paid back) <u>**no longer reduces PPP**</u>

forgiveness amount (Division N, Title III, Section 333). A borrower may achieve full PPP forgiveness and retain the full amount of the EIDL Advance, if applicable. Congress also replenished the EIDL Advance fund at an additional $20 billion (the EIDL Advance fund previously ran out of money in July) (Division N, Title III, Section 331). The new round of EIDL Advances will be targeted at small businesses experiencing a more than 30% economic loss located within low-income communities, enable a qualifying business to receive the full maximum EIDL Advance amount of $10,000 (Section 331) and extend the program through December 31, 2021 (Section 332). Finally, the law clarifies EIDL Advances, as well as certain loan forgiveness authorized in the CARES Act, are non-taxable income (Section 278).

Nutrition and agricultural relief

Congress allocated an additional $13 billion additional dollars for agricultural ad-hoc financial relief programs in response to COVID-19. Approximately $11 billion of that is earmarked for a supplemental Coronavirus Food Assistance Program payments, e.g. a CFAP 3, and other payments related to farm, ranch, food, timber, and fisheries programs (Division N, Title VII, Section 751). CFAP payments will utilize agricultural production categories developed for CFAP 2, including price trigger crop, flat rate crops and sales production. Poultry and livestock contract growers will be eligible for payments this time. Timber producers are also included. The remainder of the $13 billion total for agriculture includes specialty crop block grants, local agricultural markets funding, new training programs, dairy buying, adjustments to Dairy Margin Coverage (DMC), and livestock processing upgrades (Division N, Title VII, Sections 752-765). An additional $28 million is explicitly to support existing state department of agriculture farm stress programs (Division N, Title VII, Section 766). Further announcements from USDA in the coming weeks or months will likely clarify the distribution of this $13 billion allocation.

Furthermore, Division N, Title VII, Sections 701-732 expands Covid-19 nutritional assistance programs into 2021. This is funded through an additional multi-billion dollar allocation.

Employee sick leave

March 2020's Families First Coronavirus Response Act (FFCRA) required most businesses to offer paid COVID-related sick leave to employees. Farmers and small business owners are not exempt from providing COVID-19 sick leave to their employees, although many owners with less than 50 employees are exempt from providing ten-weeks of paid expanded paid family medical leave act (FMLA). In return, qualifying business owners can recoup paid COVID-19 sick leave in the form of a dollar-for-dollar tax credit. For sole proprietors and self-employed individuals that need sick or family leave, the law allows for recoupment of an equivalent credit for lost owner's compensation via their Schedule F or C. In the new law passed December 2020, Congress extends the FFCRA's paid sick and family leave through March 31, 2021 (Division N, Title II, Section 286).

Stimulus checks to individuals

While not specifically related to business management, most Americans can look forward to a second round of COVID-19 stimulus checks. The Treasury will process stimulus checks, also called Economic Impact Payments (EIPs), similarly to the first round that were issued in Spring 2020. The payments are tax credits for 2020 issued as an advance and, therefore, preemptively based on 2019 tax returns. According to the House Committee on Appropriations, "the credit is $600 per taxpayer ($1,200 for married filing jointly), in addition to $600 per qualifying child. The credit phases out starting at $75,000 of modified adjusted gross income ($112,500 for heads of household and $150,000 for married filing jointly) at a rate of $5 per $100 of additional income (Division N, Title II, Section 272-273)." Compared to the payments issued in April, these EIPs are less per each qualifying adult, but slightly higher for each qualifying child.

Rural broadband and telehealth

Funding for broadband focuses on minority, underserved, and rural areas. For example, rural broadband ($1 billion specifically for tribal governments and an additional $300 million for underserved areas including non-tribal rural areas) and telehealth ($250 million) were both funded (Division N, Title IX, Sections 901-906).

Remember, for more information on tax-related provisions of the law, see our companion post covering employee retention credits, net operating loss adjustments, tax credits for extended mandatory employee COVID-19 related sick leave, and other associated provisions. Congress has passed the longest piece of legislation in history, analysis and interpretation of the law will be ongoing. Furthermore, federal agencies will soon begin issuing associated rules and regulations related to the new legislation that will affect our interpretation. More analysis will be added in the coming weeks.

Source information used for analysis of the CAA included The House Committee on Appropriation's H.R. 133 – Division-by-division summary of COVID-19 relief provisions, as well as the final bill text as passed. PPP information sources from the US Treasury's Interim Final Rules and the SBA's PPP webpage. The content of this fact sheet was taken from the Agricultural Business Management (ABM) blog. Here is the link to the ABM blog.

This information is educational in nature and is not tax or legal advice.