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COVID-19 RESOURCE UPDATE

AUGUST 19, 2020



Summary:

Thought we forgot about you, right?
WRONG! We were just waiting to have something worth writing about.

And thanks to our Executive Order-er In Chief, we have it.

What's going on with PPP loans? A lot, if Congress could agree on, well, anything.

Stay safe and well everyone.

IN THIS ISSUE:

**PAYROLL TAX
DEFERRAL?**

PPP LOAN UPDATE



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Regulatory Updates 8/19/20

New Developments:

- There are many hot topics right now, so let's dive right into the most recent items.
 - Executive Order on Payroll Tax Deferral
 - President Trump's head-scratcher of an Executive Order on Payroll Taxes states that the *employees* share of Social Security taxes be *deferred*, beginning Sept 1, 2020, through December 1, 2020, for workers earning up to \$104K per year.
 - Note that this is a *deferral*, meaning it has to be paid back eventually.
 - Trump did say that *if* gets re-elected he *may* permanently forgive these deferred amounts. Are you feeling confident with that statement?
 - Many questions loom:
 - Are employers *required* to stop withholding these employee taxes?
 - Do employees have the right to opt-out of this?
 - If my payroll taxes are deferred, when would I have to pay them back? In a lump sum? Over time? Would it come out of my paycheck? Be paid back with my tax return?
 - What about year end bonuses? What if I leave my job before year end? What if the company goes out of business?
 - *Most Importantly* - does anyone really have the discipline to *not* spend the extra money they'd find in their paycheck and save it so they could eventually pay it back?
 - What does this mean for Social Security funding, especially considering the CARES act already provided an option for *employers* to defer their payroll taxes?
 - This one seems bad on many fronts for many people. Probably the reason it had zero support in any house of Congress.
 - All we can say for now is to sit tight and wait for more clarification, and don't assume yet that you have to stop withholding employees social security taxes on September 1.

Regulatory Updates 8/19/20

Paycheck Protection Loans

- On the Paycheck Protection Loan Front, there have been recent clarifications (not all are good), and there have been new ideas floated in Congress (many of which *are* good).
 - Unfortunately, since Nancy and Mitch couldn't find their happy place, all the items that could have done a lot of good for a lot of people will have to wait until Congress comes back from their summer break.
 - **Some of the good ideas include:**
 - A second round of PPP loans for borrowers who had a reduction of gross receipts vs. prior quarters (one side wanted the reduction to be 50%, the other 35%).
 - Loans under \$150,000 would not be required to submit a forgiveness application, but would receive full forgiveness if the borrower attests to a good faith effort to comply with the PPP loan requirements.
 - Reduced documentation for loans between \$150,000 and \$2M.
 - Expanded list of permitted expenses such as cloud computing, property damage from riots, and personal protection equipment.
 - Borrowers could choose the end date of their covered period, as long as the date is more than 8 weeks after loan funding and prior to December 31, 2020.
 - Expanded eligibility for 501(c)(6) organizations.
 - New loan program for business located in low income census tracts.
 - Those would have been good and simplified things. Instead...
- Clarifications that have *actually* happened include:
 - Forgiveness is not permitted on health care and retirement benefits accelerated from periods outside of the covered period.
 - Health insurance costs for 2% or more owners of an S-Corp (and their family members) are not counted towards forgiveness if already included in gross wages.
 - Forgiveness for an owner's retirement plan contributions are limited to 20.833% of the 2019 contributed amount.
 - Compensation to partners in a partnership is eligible for forgiveness the payments are made during the Covered Period (not based on K-1 income).
 - Transportation has been "clarified" as "transportation cost of utilities". Huh?

Regulatory Updates 8/19/20

Paycheck Protection Loans

- Limits on forgiveness of *owner-employee cash compensation* has been the hottest topic.
 - Apparently there was concern in Congress that without these limits, business owners would fire their employees and use the PPP funds to pay only themselves. A pretty cynical view, especially since owners *don't want to have to do all the work themselves* and highly value their employees. Regardless, the new rules are listed on the next page, to spare those of you who don't want a dive into the deep weeds.
- *So, what does this all mean and what should I do?*
 - We recommend waiting to apply for forgiveness, for a few reasons:
 - If the proposed changes relating to automatic forgiveness happen, it will be *far easier* to go through the forgiveness process. This could save you time, headache, and cost in the long run. And you may not have to turn over piles of documentation to the bank.
 - If you think you may have reductions in forgiveness due to reduced FTE, you should absolutely wait.
 - You have until **December 31, 2020** to re-hire and avoid the reductions.
 - You have **10 months** after your covered period to even file for forgiveness.
 - It is possible to spend your way out of these reductions by using a 24-week covered period.
 - Say your loan amount was \$200,000 and you spent all of that in 12-weeks.
 - If you go 12 more weeks, you'd spend another \$200,000 (presumably).
 - If you had FTE reductions, the reductions would come of the \$400,000 total that you spent.
 - You'd need roughly 50% or more FTE reductions before getting below your loan amount (and for forgiveness it's the lessor of that calculation, your loan amount, or your payroll cost spend divided by .60 that determines the forgiveness that you get).
 - And you're probably too busy home-schooling your kids anyway!
 - Do some planning to see where the numbers are falling for you, but you certainly don't have to rush to the bank to get your forgiveness application done.

Regulatory Updates 8/19/20

Paycheck Protection Loans

- You really want to know the detailed rules on owner-employee compensation? Something is wrong with you. OK, here you go:
 - C Corps:
 - Forgiveness = the lower of \$20,833 (\$15,385 if using an 8-week Covered Period) or 2019 cash compensation divided by 12, then multiplied by 2.5.
 - S Corps:
 - Forgiveness = same as C Corps, but...
 - If you include amounts for employer contributions for health insurance in Gross Wages (for 2% or more S Corp owner-employees), then you can't double dip and include those contributions again when adding on health insurance costs to total payroll costs for forgiveness.
 - Look to see how your company handles this issue in their payroll.
 - Self-employed Schedule C or F filers:
 - Forgiveness = the lower of 20,833 (\$15,385 if using an 8-week Covered Period) or 2019 *Schedule C net profit (or net farm profit on Schedule F)* divided by 12, then multiplied by 2.5.
 - Separate payments for health insurance, retirement, and state and local taxes are not eligible for loan forgiveness (seems unfair).
 - General Partners:
 - Forgiveness = the lower of \$20,833 (\$15,385 if using an 8-week Covered Period) or 2019 *net earnings from self-employment (Schedule K-1, box 14a, multiplied by .9235)* divided by 12, then multiplied by 2.5,
 - Separate payments for health insurance, retirement, and state and local taxes are not eligible for loan forgiveness (again seems unfair).
- Clear as mud right?
 - It's like someone telling you how to put together an Ikea desk. In Swedish.

Hang in there folks. There is light at the end of this tunnel.