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Newsletter November 2020

The SBA Issues a Simplified PPP Loan-Forgiveness Application

Article Highlights:

- Paycheck Protection Program Loans
- Forgiveness Application
- The Small Business Administration (SBA)
- The Paycheck Protection Program Flexibility Act
- SBA Forgiveness Form 3508
- SBA Forgiveness Form 3508EZ
- SBA Forgiveness Form 3508S

If you are the owner of a small business that obtained a Paycheck Protection Program (PPP) loan, you are most likely aware that the loan can be partially or totally forgiven if you used the loan proceeds for the required purposes. Loan forgiveness is not automatic and must be applied for. The borrower must submit a request to the lender or, if different, the lender that is servicing the loan, which then must make a decision upon the amount of forgiveness within 60 days.

The request must include documents to verify the number of full-time-equivalent (FTE) employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. The borrower must certify that the documents are true and that the borrower used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments.

The whole process of obtaining a PPP loan and applying for forgiveness has been complicated from the start, with guidance from the Small Business Administration (SBA) and the IRS coming in dribs and drabs; for a while, it seemed that the rules were modified every week. The original forgiveness application provided by the SBA was horrendously complicated, and one almost needed an accounting degree to figure it out. It required the applicant to complete numerous complicated side computations and did not provide any corresponding worksheets.

To clarify the process, Congress stepped in and passed the Paycheck Protection Program Flexibility Act. As part of that legislation, the SBA was required to simplify the forgiveness application. In response, the SBA did somewhat simplify SBA Form 3508, the original forgiveness application, and came up with an easier version: SBA Form 3508EZ.

The 3508EZ is for use by:

- Self-employed borrowers with no employees
- Generally, borrowers with employees that, during the covered period,
    - Did not reduce the annual salary or hourly wages of any employee by more than 25%;

- Did not reduce the number of employees or the average paid hours of employees; and
- Was unable to operate during the covered period at the same level of business activity as it did before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration.

During the week of October 5th, the SBA released yet another simplified application—SBA Form 3508S—along with instructions for its use. This form can only be used if the total PPP loan amount that the borrower received from their lender was $50,000 or less. However, a borrower that, together with its affiliates, received PPP loans totaling $2 million or more cannot use Form 3508S and instead must use either Form 3508 and its instructions or 3508EZ and its instructions (or their lender's equivalent form).

A borrower that qualifies for and uses SBA Form 3508S (or their lender's equivalent form) is exempt from any reductions in the borrower's loan forgiveness amount based on reductions in FTE employees or in employee salaries or wages from the CARES Act that would otherwise apply.

While SBA Form 3508S does not require borrowers to show the calculations they used to determine their loan forgiveness amount, the SBA may request information and documents to review those calculations as part of its loan-review process. Accordingly, the borrower must retain, for 6 years from the date when the loan is forgiven or repaid, all documentation (1) submitted with the loan application, (2) to prove the borrower's certification of eligibility for the PPP loan and material compliance with the PPP's requirements, and (3) to back up the loan-forgiveness application.

Keep in mind that the application for forgiveness, which can be submitted electronically, must be submitted within 10 months after the end of the loan-covered period to the borrower's lender or the lender servicing the borrower's loan.

If you have questions about how these changes might apply to your situation or need assistance with completing your forgiveness application, please give this office a call.

Don't Miss Out on Year-End Tax-Planning Opportunities

Article Highlights:

- Unemployment Benefits Taxability
- To Skip or Not Skip the 2020 Required Minimum Distribution
- Special Charitable Giving Opportunities
- Divorced or Separated Planning Issues
- Retroactive Kiddie Tax Rules – Amended Opportunity
- Retroactive Tax Benefits May Provide Refunds
- Preparing for Home Sale Reporting
- Avoiding Underpayment Penalties
- Retroactive Bonus Depreciation Opportunities
- New NOL Carryback Opportunities
- Complying with Reasonable Compensation Requirements for S-Corp Shareholders
- Assisting with PPP Loan Forgiveness Applications
- Capital Gains Can Be Deferred
- Set Up a Bunching Strategy
- Defer or Accelerate Income Depending on 2020 Income
- Waiting until Next Year to Change Marital Status
- Take Advantage of a Low-Income Year to Sell Stocks or Exercise Options

To say COVID-19 has made 2020 an unusual year for just about everyone would be an understatement. In response to the economic slowdown and losses of income, Congress passed several extensive laws to benefit individuals and businesses that suffered financial hardship because of COVID-19. However, 2020 has given rise to more than the usual tax-planning opportunities. Thus, you may find it appropriate to schedule a tax-planning appointment well before the close of the year to take advantage of the tax benefits and strategies available for 2020.

Although everyone's situation is unique, the following are examples of tax opportunities and strategies that may apply to your circumstances.

Individual Planning Opportunities

Did You Collect Unemployment Income This Year? If you did, you should be aware that it is taxable for federal purposes and that most states also tax unemployment benefits. Even if you had taxes withheld from the unemployment payments, don't be misled into thinking it will be enough. Generally, the tax withheld from unemployment compensation is insufficient, especially when the extra $600 weekly amount of federal pandemic benefits is considered. It may be appropriate to see what effects the unemployment income will have on your taxes and avoid any unpleasant surprises next year when your return is prepared.

Did You Skip the Required Minimum Distribution (RMD) for 2020? Taxpayers were allowed to skip their RMD from their IRAs and most other retirement plans for 2020. But that might not be your best tax move, especially if you can take a distribution that will result in no or minimal taxes for this year. It may be appropriate to discuss whether you should take a distribution or not. We might be able to determine an amount that can be withdrawn tax-free.

Are You the Charitable Type? If so, 2020 offers a variety of ways to make contributions, including donating unused time off from work (if your employer participates in the program). The AGI limitation for deducting cash contributions has been increased significantly, and non-itemizers can make a deductible contribution of up to $300 (pending legislation may change the amount). Of course, a taxpayer over age 70½ can make an IRA-to-qualified charity donation. We can determine the method or combination of methods best suited to your particular circumstances.

Did You Have a Large Increase in Income This Year? If so, you might want to explore the benefits of a donor-advised fund, which will allow you to make a large deductible charitable contribution this year and meet your future charitable obligations by distributing the funds in the upcoming years.

Divorced or Separated This Year? Divorce creates numerous issues that can have profound implications on your tax return and the amount of your tax liability. For example, who takes credit for the kids, allocating taxable income, who benefits from tax-credits and deduction carryovers, alimony, and who is responsible for the tax liabilities are just a few issues to consider. It might be appropriate to project your tax liability in advance, so you can prepare for the outcome.

Congress Extended Tax Benefits that Expired after 2017. Some of those benefits may apply to you for 2020. Or, you can amend your returns for 2018 and 2019, as appropriate, to take advantage of the following extenders: forgiveness of qualified principal residence debt income; deduction of mortgage insurance premiums; credit for energy-efficient home improvements; and credits for fuel cell vehicles, two-wheeled electric vehicles, and alternative-fuel refueling property. If any of these apply to you, you might consult with this firm to see if the benefits warrant filing an amended return.

Did You Sell Your Home This Year? If so, and if you meet the ownership and occupancy tests, the gain from selling your main home will not be taxed, up to $250,000 ($500,000 if you file a joint return with your spouse). But if you don't meet the requirements of both owning and using your home for 2 years in the 5 years counting back from the sale date, you may still qualify for a partial home sale gain exclusion. For example, you may qualify for a reduced exclusion if you sold your home to relocate this year because of a change in employment or due to health. We can determine the amounts of excluded income and taxable gain, and project how your taxes will be impacted.

Have You Prepaid Enough Tax for 2020? One of the reasons for doing year-end tax planning is to determine if the tax you've already paid through withholding or estimated tax payments will be sufficient to cover your tax for the year, in order to avoid a penalty for underpayment of estimated tax. If there's a shortfall, we can then see what appropriate steps you can take either to reduce the tax, perhaps by increasing your retirement plan contributions or bunching deductions, or increase your withholding for the rest of the year.

Business-Planning Opportunities

Did You Place Qualified Improvement Property in Service during 2018, 2019, or 2020? Congress made a retroactive law change that allows a business owner to expense the costs of qualified improvement property in the year when it goes into service. This is instead of depreciating the improvements' cost and claiming that deduction over a number of years. Qualified improvement property generally means any improvement to an interior portion of a building that is nonresidential real property, if the improvement is placed in service after the date when the building was first placed in service. If you made qualified improvements in 2018 or 2019, it may be appropriate to review the benefits of amending your 2018 and 2019 returns or claiming the tax break for 2020.

Did You Have a Business Loss in 2018 or 2019? If you incurred a net operating loss (NOL) in 2018 or 2019, changes made by the CARES Act retroactively allow taxpayers to carry those losses back 5 years. This entails amending your returns for the earlier years to deduct the loss being carried back, with the purpose of getting a refund on income taxes paid in those years. If you had an NOL in 2018 or 2019, it might be appropriate to review your situation to determine how this law revision will affect your prior returns and your 2020 situation.

Are You a Working Shareholder in an S-Corporation? If so, you may not be aware of the IRS's "reasonable compensation" requirements, which can influence your Section 199A (qualified business income) deduction and your payroll taxes. Reviewing the requirements as they apply to your particular circumstances may avoid future problems with the IRS.

Did You Secure a Paycheck Protection Program Loan from the SBA? If so, you will need to apply for loan forgiveness, if you haven't already. The SBA forgiveness applications can be quite challenging. This office can assist with completing the application and help you to maximize your forgiveness.

Did You Have a Large Capital Gain in 2020? If so, you may want to consult with this firm about investing in a Qualified Opportunity Fund (QOF) to defer the taxable gain until 2026. Unlike Section 1031 tax-deferred exchanges, only the profits need to be invested in a QOF, not the entire proceeds from the sale that resulted in the capital gain.

Other Planning Ideas

In addition to the situations above, some customary planning issues may also apply to you in 2020. Here are some examples.

- You could bunch deductions to itemize in one year and take the standard deduction in the subsequent year.
- Depending on your 2020 income, it may be appropriate to accelerate or defer your income and deductions. This will be especially crucial during 2020.
- Are you considering marriage or divorce? Some circumstances might warrant waiting until after the end of the year.
- If you expect your income to be abnormally low in 2020, this may be an opportunity to cash in on stock gains or exercise stock options while incurring little or no tax liability.
- As always, those with large estates may find it appropriate to make annual gifts of $15,000 per recipient (no limit on the number of individuals) to reduce the value of the estate. Married couples can gift $30,000 to each recipient. Giving appreciated assets will transfer the taxable gain to the recipient.

Opportunities for tax benefits and for reducing your tax liability abound for 2020. Please contact this office for a virtual tax-planning appointment and continue to be safe during these trying times.

Thank you for selecting our firm for your tax and accounting needs. We appreciate the confidence you have shown in us, and we remain ready to assist you at any time.

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