

# *The Bankler Report*

December 22, 2020

## INTRODUCTION

Last night, both houses of Congress overwhelmingly passed the COVID relief bill, which was included in the massive Consolidated Appropriations Act, 2021. President Trump indicated that he would sign this Legislation when it comes to his desk.

### **Business Provisions:**

1. **Paycheck Protection Program** –This Legislation makes clear that the expenses paid with the **proceeds of this loan are NOT reduced by any forgiveness amount.**
2. **Paycheck Protection Program Round 2** - In addition, Congress approved a Second Draw Loan for businesses, who meet the following conditions:
  - a. That have less than 300 employees,
  - b. Has or will use the full amount of the first PPP loan,
  - c. Had gross receipts during the any quarter of 2020, whose revenues have declined at least 25 percent from the gross receipts of the entity during the same quarter in 2019 and are “Small Businesses”.
  - d. Loan amount is 2.5 times the average total monthly payroll costs incurred or paid during either (1) the 1 year period before the date of the loan; or (2) Calendar year 2019. However entities with NAICS codes starting with 72 hit especially hard by the pandemic (**generally restaurants, hospitality/accommodation**) are eligible to utilize 3.5 as the multiplier.
  - e. Maximum loan amount is \$2 million.
  - f. **Necessity Test, certified in good faith, is still required.** Many businesses have since adapted to new methods of operation. Businesses that have survived one or two difficult quarters but are now making ends meet will likely find it challenging to honestly certify that the loan they are seeking is “**necessary**” for the ongoing operation of the business, even though the business could reasonably argue that they **need** the loan. The test will present a very important issue to be carefully addressed with the borrower’s advisors.
3. **Expansion of Allowable/Forgivable Expenses** – Loans forgiven after the enactment of this legislation can now include:
  - a. Covered operations expenditures - includes payment for any business software or cloud computing service that facilitates business operations, product service/delivery, processing, payment or tracking of payroll expenses, human resources, sales and billing functions, or accounting and tracking of supplies, inventory, records and expenses.
  - b. Covered property damage costs - includes costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation.
  - c. Covered supplier costs - expenditures made by an entity to a supplier of goods which are: essential to the operations of the entity at the time at which the expenditure is made; or Made pursuant to a contract order/purchase order (i) in effect at any time before the covered period or (ii) with respect to perishable goods, in effect before or at any time during the covered period.

- d. Covered worker protection expenditures – includes an operating or capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by HHS, the CDC, or OSHA or guidance issued by a state or local government starting on March 1, 2020, relating to the maintenance of standards for sanitation, social distancing or other worker/safety requirement relating to COVID-19. The Act details which costs would fall under this category, however, it does specifically exclude residential real property or intangible property.
  - e. In addition, the definition of payroll costs was expanded to include employer payments for group life, disability, vision and dental insurance.
- 4. **Simplified Forgiveness Application for Loans \$150,000 or less** – For any loan up to \$150,000, Congress has mandated that the covered loan amount will be forgiven if the borrower **submits a one-page online (or paper form)** listing the loan amount, the number of employees retained, and the amount of the loan spent on payroll.
  - 5. **Business Meal Deductions** – For 2021 & 2022, the deduction for business meals is increased to 100% for food and beverages provided by a restaurant.
  - 6. **COVID-19 Payroll Tax Credits** – The Act extends and expands the Employee Retention Credit (ERC) under the CARES Act and the paid leave credits under the Families First Coronavirus Response Act.
  - 7. **Depreciation Adjustment for Interest Expense Limitation** – Certain residential rental property can now use a 30 ADS depreciation schedule in order to elect out of the business interest limitation.

### Individual Provisions:

- 8. **New Rebate** – The Act provides another rebate to eligible individuals in the amount of \$600 per eligible family member. The credit is \$600 per taxpayer (\$1,200 for married filing jointly), and an additional \$600 per qualifying child. The credit phases out starting at \$75,000 of modified adjusted gross income for single taxpayers (\$112,500 for heads of household and \$150,000 for married filing jointly) at a rate of \$5 per \$100 of additional income.
- 9. **Unemployment Extensions** – The Act restores the Federal Pandemic Unemployment Compensation (FPUC) supplement to all state and federal unemployment benefits at \$300 per week, starting after December 26, 2020 and ending March 14, 2021.

This report only discusses specific provisions that we consider to be of general interest to business owners and is not a complete discussion of the law's contents. As with any changes in the tax laws, there are new planning opportunities to be considered. Please feel free to contact us with your specific questions.