

# Ebb Tide: Tax & Compensation Implications Around PPP Loans



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# Paycheck Protection Program - Round 2

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# Talking Points

- The Consolidated Appropriations Act of 2021
- Overview of PPP Second Draw (“Round 2”) Loans
- PPP Round 2 Loan Eligibility
- PPP Round 1 vs. Round 2
- Deadline to Apply for Forgiveness
- State & Local Income Tax Concerns re Forgiveness
  - Other Considerations

# Consolidated Appropriations Act of 2021



H.R. 133 – Signed into law on December 27, 2020

- <https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf>
- Over 5,500 pages

What was in the Act?

- \$2.3 trillion spending bill
- \$892 billion in COVID-19 related relief
- **\$284 billion to fund round two of the Paycheck Protection Program (PPP)**
- \$1.4 trillion to fund the Government through September 2021 (goodbye shut down concerns, yay!)

Key Takeaways for new PPP provisions:

- Overturns IRS Notice 2020-32; now allows for deductibility of expenses paid with PPP funds
- PPP forgiveness (or cancellation of debt) is not considered income---for **FEDERAL** tax purposes
- Expands coverage to additional non-payroll costs categories

Other key Act updates:

- Improved Employee Retention Credit
- **100% deductibility of business meals for 2021 & 2022**

# Overview of PPP Round 2 Loans

- Loan amount up to \$2 million
- No collateral required
- No personal guarantees required
- Interest rate will be equal to a non-adjustable 100 basis points (or 1%); non-compounding
- Loan maturity shall be five years
- Principal forgivable if at least 60% spent on covered payroll costs; and
  - Remainder spent on covered non-payroll costs

# PPP Round 2 Loan Eligibility



- 1) Employer must have **300 or less employees** (PPP Round 1 required 500 or less)
- 2) Employer has or **will use the full amount of First Draw PPP loan** (i.e., Round 1 PPP)
  - See 15 U.S.C. § 636(a)(37) --- Added by the Cons. Appr. Act of 2021
- 3) Employer had at least a **25% drop in gross receipts** during the 1st, 2nd, 3rd, **or** 4th quarter of 2020 as compared to the same quarter of 2019
  - The operative “or” conjunction only applies if PPP loan app was submitted on or after 1/1/2020
  - Only need to satisfy gross receipts requirement for one quarter (or annual average in some cases)
- 4) Loan must be “**necessary**”
  - The late addition of this certification requirement led to many companies and organizations returning some or all of their initial PPP loan funds

New: 501(c)(6) organizations now eligible (e.g., chambers of commerce, real estate boards, etc.)

Prohibition: Loan proceeds cannot not be used for lobbying activities or by sports leagues

# PPP Round 1 vs. Round 2

	Round 1	Round 2
<b>Deadline to Apply</b>	August 8, 2020	March 31, 2021
<b>Funding Availability</b>	April 3, 2020 through August 8, 2020	<u>Only if</u> received and used Round 1 funds
<b>Source of Fund Amount</b>	2.5 x monthly payroll costs	Same*
<b>Covered Payroll (60%)</b>	Pay and comp., group health ins., certain retirement plans, state & local employment tax	Same, plus <b>life, disability, vision, and dental</b> insurance costs
<b>Covered Non-Payroll (40%)</b>	Mortgage interest, rent, and utilities	Same, plus covered property damage costs, operations expenditures, supplier costs, and worker protection exp.
<b>Loan Limit</b>	Up to \$10 million	Up to \$2 million



\*Restaurants and accommodations businesses may use 3.5 x monthly payroll costs to source Round 2 PPP loan; all other borrowers remain limited to 2.5 x monthly payroll costs

# Deadline to Apply for Forgiveness

Borrowers must submit an application for forgiveness **within 10 months after the last day of the “covered period.”**

- CP for PPP Round 1 → 8 or 24 weeks from date of origination of loan; 24 weeks if funded 6/5/2020 or later
- CP for PPP Round 2 → 24 weeks from date of origination of loan, or if elected, after spending all funds

“A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan—including before the end of the covered period—if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness.” SBA Interim Final Rule, 85 FR 38304, Section III(C).

- However, “if the borrower applies for forgiveness before the end of the covered period and has reduced any employee's salaries or wages in excess of 25 percent, the borrower must account for the excess salary reduction for the full 8-week or 24-week covered period.” Id.

## When does forgiveness actually occur?

- At the point in which SBA certifies forgiveness to the lending bank





# State & Local Income Tax Concerns re Forgiveness

- 1) Determine whether your state follows the CARES Act (§ 1106(i))
  - Why? Because PPP forgiveness may not be automatically excluded from gross income for purposes of state income tax → continue to steps 2 and 3 below
- 2) If state does not follow CARES Act, find out how it treats cancellation of debt income
  - State likely follows IRC § 108(a), which treats the cancellation of debt as not taxable re bankruptcy, insolvency, or qualified farm debt
- 3) Determine whether your state allows for the deductibility of expenses paid for with PPP funds

## Other Considerations

- PPP forgiveness affect on partnership basis
- Consider § 465 “at risk” limitations to using losses tied to a nonrecourse loan

# Additional Sources of Information

- 1) Interim Final Rule – PPP Round 1: <https://home.treasury.gov/system/files/136/PPP-IFR-Paycheck-Protection-Program-as-Amended-by-Economic-Aid-Act.pdf>
- 2) Interim Final Rule – PPP Round 2: <https://home.treasury.gov/system/files/136/PPP-IFR-Second-Draw-Loans.pdf>
- 3) IRS Revenue Ruling 2021-2: <https://www.irs.gov/pub/irs-drop/rr-21-02.pdf>

**\*\*\*Please also remember that the rules continue to change daily.\*\*\***

Be sure to regular check the SBA, IRS, and Treasury Department for update guidance and/or rules.

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