

# AN OVERVIEW OF CASH-FLOW PLANNING OPPORTUNITIES IN THE

# CARES Act

By Carrie D. Bradshaw, CPA, CCIFP

The Coronavirus Aid, Relief, and Economic Security (CARES) Act's many provisions provide emergency relief for businesses suffering financial hardships due to COVID-19. The most widely publicized provision has been the Paycheck Protection Program Loan (PPP Loan).

## **PAYCHECK PROTECTION PROVISION (SBA 7A LOAN) PROGRAM**

### **Legislative History of the Paycheck Protection Program (PPP Loan)**

**March 27, 2020** – CARES Act is signed into law and provided \$349 billion in funding for the Small Business Administration (SBA) to expand the 7(a) loan program.

**April 24, 2020** – The Paycheck Protection and Healthcare Enhancement Act (PPHE) is signed into law and increased the funding by \$310 billion to the PPP program loan funds for a total of \$659 billion available.

**June 5, 2020** – The PPP Flexibility Act is signed into law and revised the

covered period, usage of funds changes, and extended safe harbors.

Some interesting facts about the PPP Loan program:

Recipients are required to spend the loans to cover payroll costs, costs related to the continuation of health care benefits, employee salaries and commissions, rent, utilities, interest, or other debt obligations. If the funds are spent for a purpose other than those, the borrower could be charged with fraud and the SBA will have recourse against the shareholders, members, or partners for the unauthorized use. Buyer Beware!

On May 15, 2020, the SBA released form 3508, PPP Forgiveness applications for borrowers and began accepting applications on August 10, 2020. The qualifications for forgiveness are beyond the scope of this article.

Upon the receipt of application, lenders have 60 days to decide on loan forgiveness and to notify the borrower of the forgiveness amount. After application submission, the SBA has an additional 90 days to review the application. Not all banks have opened

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their forgiveness portals due to lack of guidance from SBA on many key points of eligibility. Stay Tuned!

**Latest Development:** The SBA will now allow banks to approve forgiveness applications for companies with ownership changes or are engaged in a merger or acquisition.

### **Tax Considerations**

Ordinarily, forgiveness of debt income is considered to be taxable income. Congress specifically excluded the PPP Loan forgiveness from federal taxable income. The Internal Revenue Service quickly released IRS Notice 2020-23 to confirm that employers cannot claim tax deductions for expenses, such as

wages and rent, that would typically be fully deductible, if used to qualify for PPP loan forgiveness.

**Planning Tip:** Exclude any expenses that are paid to an owner in an S-Corporation or Partnership from funds submitted for loan forgiveness. The income is still taxable to the owner and is non-deductible to the company, therefore increasing the owner's personal tax burden.

### Financial reporting Considerations

The Financial Accounting Standards Board issued Q&A Section 3200 to assist companies with reporting the PPP Loan transaction in their financial statements. The Board recommends that a for-profit company report the transaction as follows:

- Record the proceeds as a loan in accordance with the loan terms.
- Do not impute a fair market interest rate. Transactions where interest rates are prescribed by governmental agencies are excluded from the guidance on imputing interest.
- When the loan is forgiven and legal release is received, the company can reduce the liability by the amount forgiven and record a gain on extinguishment of debt as other income.
- Alternatively, the company can apply the gain contingency rules and recognize the grant proceeds as income upon determination if the proceeds are realized or realizable.
- Disclose the accounting policy for the PPP Loan and the related impact on the financial statements.

**Planning Tip:** Make every attempt to obtain forgiveness of your PPP Loan prior to the issuance of your year-end financial statements (reviewed or audited) to provide the facts and circumstances to make the gain contingency evaluation. Working capital and debt to equity are key financial ratios used to assess the bonding capacity of construction companies.

### BUSINESS TAX RELIEF

The following highlights other important business tax provisions found in the CARES Act. These changes can help businesses reduce federal income

## INTERESTING FACTS ABOUT THE PPP LOAN PROGRAM

U.S. Loan Count	5,212,128
U.S. Net Dollars	\$525,012,201,124
Average Loan Size	\$101,000
Number of Borrowers Over \$2million	28,982 (0.6%)
Total Dollars (over \$2m)	\$105,306,132,476 (20%)
Construction Industry Loan Count	496,551
Construction Industry Net Dollars	\$65,070,483,743 (12.39%)
Texas Loan Count	417,276
Texas Net Dollars	\$1,325,454,268

and payroll taxes.

### Employee Retention Payroll Tax Credit

This credit is available to employers whose operations were fully or partially suspended as a result of a government order due to COVID-19. Employers taking advantage of the small business interruption loans are not eligible for this tax credit. This credit is equal to 50% of qualified wages against quarterly employment taxes, to offset up to \$10,000 paid per employee for wages between March 12, 2020, and January 1, 2021.

### Delay of Employment Tax Payments

This provision allows employers to defer the payment of the employer share of social security tax on wages through December 31, 2020. Half of the deferred tax payments are due by December 31, 2021 and the remainder is due by December 31, 2022.

### Net Operating Loss/Excess Business Loss Changes

The CARES Act amends a provision in the 2017 Tax Cuts and Job Act (TCJA), which limited net operating loss deductions to 80%. Under the CARES Act, net operating losses incurred are fully deductible. Businesses can claim refunds of taxes paid in prior years, subject to filing deadlines.

### Business Interest Deduction

The deductibility limit of business interest has increased from 30% of taxable

income to 50%.

### Qualified Improvement Property

A technical correction to the TCJA allows the 100% bonus depreciation deduction for "qualified improvement property." Taxpayers are allowed to retroactively apply this correction to tax years starting in 2018.

Harvesting cash from these provisions will require careful planning and consultation with your CPA and accounting advisors.

### Additional SBA programs available

The PPP Loan program is no longer accepting applications for new funding. The following SBA programs are still available to provide funds to small businesses:

- Economic Injury Disaster Loans
- SBA (7a) Program
- SBA Express Bridge Loan

These cash flow management tools are a gift made available by the CARES Act. Use them to your advantage. Together we will overcome the economic impact of the pandemic.

**Disclaimer:** Please contact your CPA to discuss how these matters might affect your business. \ CP

*Carrie D. Bradshaw, CPA, CCIIFP is the CEO and founder of CD Bradshaw & Associates, P.C. She has more than 20 years of experience advising construction business owners. Her focus is building your business, your wealth, and your legacy in the most tax-efficient manner. She can be reached at [carrie@cbradshaw.com](mailto:carrie@cbradshaw.com).*