Welcome to Edition 19 of The Newsletter from Scott H. Novak, Attorney at Law. The Newsletter is designed to bring timely and interesting topics to accountants and attorneys. Comments and suggestions are always welcome. Feel free to call or write at any time.

Do I Have to Pay Back My PPP Loan?

Many of you and your clients have applied for the Payroll Protection Program loan. If you receive the loan, do you have to pay it back? No, but only if you qualify for loan forgiveness and properly document necessary items. Let's take a look at those two important concepts.

How do I qualify for loan forgiveness? There are several things to know about loan forgiveness. Here are the main requirements.

- You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan.
- Not more than 25% of the forgiven amount may be for non-payroll costs.
- You will also owe money if you do not maintain your staff and payroll.
    - Number of Staff: Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
    - Level of Payroll: Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than $100,000 annualized in 2019.
    - Re-Hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

What documentation will be required for loan forgiveness? Note that the CARES Act specifically prohibits forgiveness of loan amounts without submission of required documentation to the lender that is servicing the covered loan. The required documentation for loan forgiveness treatment is as follows:

- documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods at issue, including:
    - payroll tax filings reported to the Internal Revenue Service; and
    - State income, payroll, and unemployment insurance filings;
- documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
- a certification from a representative of the eligible recipient authorized to make

such certifications that-
    - the documentation presented is true and correct; and
    - the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
- any other documentation the SBA determines to be necessary.

What other tax benefits are available to businesses under the CARES Act?

- **Deferral of employment taxes.** Employers can defer payment of their 6.2% share of Social Security tax on wages paid from March 27 through December 31, 2020. Half of the deferred amount is due on December 31, 2021, and the other half on December 31, 2022. Self-employed people can defer 50% of the self-employment tax they owe. This provision does not apply to businesses that receive a PPP loan and have that loan forgiven.

- **Payroll tax credit.** If you retain and continue to pay workers, you may be eligible for this tax credit. The credit of up to $5,000 per paid employee offsets the employer's 6.2% share of Social Security taxes, with the excess refundable. Who is eligible? Employers who have to close up shop or reduce hours because of a governmental order, or whose gross receipts in a quarter have declined by more than 50% compared to the same quarter in 2019.

    > The credit only applies to "qualified wages" paid from March 13 through December 31, 2020. Qualified wages depend on the number of employees the business had in 2019. If the business averaged more than 100 full-time employees, qualifying wages are wages paid when employee services are not provided. For smaller firms, all wages are eligible for the credit.

    > Employers may be able to get this credit quickly by reducing employment tax deposits otherwise owed to the IRS by the amount of the credit. Employers can also file new IRS Form 7200 for advance payment of credits in excess of payroll tax deposits.

    > There are many rules and complexities involved with this payroll tax credit. One rule is that if an employer gets a PPP loan, it is not eligible for this credit. If you plan to take this credit, please be sure you understand the rules or are appropriately advised.

- **Charitable contributions.** As a general rule, a corporation can't deduct charitable contributions that exceed 10% of its taxable income for the year. Any amount over the 10% limit can be carried over for up to five years. Under the Act, the taxable income limit on 2020 charitable gifts of *cash* is increased to 25%. The Act also increases the limitation on deductions for 2020 contributions of food inventory from 15% to 25%.

- **Net operating losses.** The 2017 tax reform law changed the net operating loss (NOL) rules such that after 2017, NOLs could no longer be carried back, but could only be carried forward, indefinitely. In addition, NOLs could only be used to offset up to 80% of taxable income in a carryforward year. The Act temporarily eases the tax reform law's NOL provisions. First, NOLs in 2018, 2019 and 2020 can now be carried back up to five years (the carryforward rule wasn't changed). Second, the 80% taxable income limit for utilizing NOLs is changed for 2018 through 2020 - for those years, the NOL can offset up to 100% of taxable income.

- **Business interest deductions.** The 2017 tax reform law limited the deduction that large firms can claim for interest on business debt to 30% of adjusted taxable income (ATI), with any disallowed interest carried forward. (The limit doesn't apply if a business's average annual gross receipts are $25 million or less for the three prior tax years. Also, certain regulated utility companies and real estate companies are exempt.) The Act increases the 30% ATI limit. Net interest write-offs are now capped at 50% of ATI for 2019 and 2020. Any business interest expense that isn't allowed as a deduction for the year is carried forward to the following year.

- **Business losses on individual returns.** Under the 2017 tax reform law, the amount of trade or business losses that exceeded a $500,000 threshold for couples and $250,000 for other filers was nondeductible, with any excess carried forward. The Act suspends this loss limitation rule generally for 2018 through 2020.

If you have any questions about these provisions or have any other tax questions, please feel free to contact me.

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