

Maximizing Loan Forgiveness

How to Calculate Your Way Through the PPP

June 9, 2020

Panelists



Joshua E. French
Partner, Corporate and Transactions
Nutter
jfrench@nutter.com



Bonnie Simmons
Partner
Citrin Cooperman
bsimmons@citrincooperman.com



Shannon Zollo, Moderator
Chair, Mergers and Acquisitions
Nutter
szollo@nutter.com

- **Maximization** - We're here today to offer the best approach on how to maximize PPP loan forgiveness based on significant SBA guidance issued and Congressional action adopted since the PPP's inception
- **Key Concepts Driving Changes** - More time to (i) utilize loan proceeds (compensation and working capital), and (ii) seek loan forgiveness in light of social distancing/reopening requirements
- **Worst Case Scenario** - If maximum loan forgiveness not achieved borrowers are still receiving an extremely low interest working capital loan payable over multiple years

PPP Flexibility Act – What changed?

- Longer maturity for new loans (but outstanding loans will likely be extended by your lender)
- Extended covered period for use of the proceeds
 - But be careful about a longer analysis period for reduction in headcount and reduction in wages!
- 60/40 payroll/non-payroll split...
 - ...but there's a catch (for now)...the 60% threshold is a cliff, without spending at least 60% of the loan proceeds on payroll, there is NO forgiveness

PPP Flexibility Act – What changed?

- Safe harbors broadened
 - Restoration of headcount and/or wages extended to December 31, 2020
 - New restoration of forgiveness if unable to rehire terminated employees or hire qualified replacements
 - New restoration of forgiveness if compliance with COVID-related safety regulations makes borrower unable to return to the same level of business as it operated at on February 15, 2020
- Deferral on payments tied to final determination of forgiveness
- PPP borrowers eligible for payroll tax deferral

PPP Flexibility Act – What questions remain?

- Can a borrower get forgiveness for 24/52 of \$100,000 (app. \$46,154) for each employee due to longer covered period, or is this still limited to 8/52 (app. \$15,385)?
- Are “owner/employees” still limited to 8/52 of their 2019 self-employment income?
- Will the “cliff” concept for the 60/40 payroll/non-payroll split be revised to be a reduction in forgiveness?
- Can the safe harbors be satisfied temporarily before December 31, 2020 and then cuts made to headcount and/or wages?
- Are borrowers limited to 8 weeks or 24 weeks or will borrowers be permitted to elect any period between 8-24 weeks?



CITRINCOOPERMAN®
FOCUS ON WHAT COUNTS

into **action**
evolution

TAXABILITY OF FORGIVENESS

- Federal taxable income related to forgiveness is NOT taxable
- States have not issued guidance on taxability of this same forgiveness income
- Under Section 265(a)(1) of the Code, a taxpayer is not allowed to deduct amounts allocable to income that is wholly exempt from taxes. **As a result, any PPP loan amounts used for Covered Expenses will not be deductible to the extent such loan amounts are forgiven.**

OTHER TAX TIDBITS

- Net operating losses incurred in 2018, 2019 or 2020 can be carried back 5 years and offset 100% of income
- Immediate write off for qualified improvement property assets placed in service post 2017 (great news for retail and hospitality industries)
- Employers can defer social security tax deposit and payment until 12/31/2020, even if there is forgiveness, until 2021 and 2022

Let's Look at an Example....

QUESTIONS?



Upcoming Webinar



Moving Forward to the 'New Normal': Navigating Transportation in a COVID-19 World – Key Issues and Strategies *Tuesday, June 16, 8:30AM*

Panelists:



Paul Ayoub, Moderator Executive Committee and Co-Chair, COVID-19 Task Force, Nutter



Maya Ben Dror, Ph.D. Urban Mobility Lead, Future Mobile Platform, World Economic Forum



Katie Lapp, Executive Vice President, Harvard University
Former Executive Director and CEO, NYC's Metropolitan Transportation Authority



Ying Loong Lee, Managing Director, Security Business, Certis Security Australia
Formerly oversaw security for Singapore's mass transit system



James O'Leary, President, Alternate Concepts Inc. (ACI)
*Operator of railroad and bus services throughout the United States and Puerto Rico;
Former General Manager of the Massachusetts Bay Transportation Authority (MBTA)*



Sathish Rajendren, COO, Facilities & Asset Services, Knight Frank India
Oversees management of Central Railway Station, Bangalore, India