

# The Norton Tax Bulletin

Richard E. Norton, E.A., Tax Resolution Specialist

513 North Florence Street, Burbank, California 91505

(818) 842-5927 Fax: (818) 845-6031 E-mail: dick@dicknorton.com



Issue: 2021.1

*January 4, 2021*

***Payroll Protection Plan  
(PPP) Update***

Dear clients, family and friends,

One of my research services put out further information on the PPP that I want to pass on as some of you have received these loans or know people who have (*and you are welcome to share this newsletter with them*).

At the end of 2020, Congress passed, and President Trump signed, a new law that provides for additional relief related to the coronavirus (COVID-19) pandemic. This law, the Consolidated Appropriations Act, 2021 (CAA, 2021), includes a second draw of Paycheck Protection Program (PPP) loans (PPP Second Draw Loans). It also allows businesses to deduct ordinary and necessary expenses paid from the proceeds of PPP loans.

**Background.** In March 2020, the Coronavirus Aid, Relief and Economic Security (CARES) Act was enacted. The CARES Act authorizes the Small Business Administration (SBA) to make loans to qualified businesses under certain circumstances. The provision established the PPP, which provided up to 24 weeks of cash-flow assistance through 100% federally guaranteed loans to eligible recipients to maintain payroll during the COVID-19 pandemic and to cover certain other expenses. The Paycheck Protection Program Flexibility (PPPF) Act made substantial changes to the PPP, including decreasing the percentage that loan proceeds must be used on payroll costs from 75% to 60%, thereby increasing the percentage that may be used for nonpayroll costs such as rent, mortgage interest and utilities from 25% to 40%. Additionally, the PPPF Act permits borrowers to defer payments of principal, interest, and fees to 10 months after the last day of the covered period (the earlier of 24 weeks or December 31, 2020). The application period closed on August 8, 2020. The SBA began approving PPP forgiveness applications and remitting forgiveness payments to PPP lenders on October 2, 2020.

**Paycheck Protection Program Second Draw Loans.** The CAA, 2021 permits certain smaller businesses who received a PPP loan and experienced a 25% reduction in gross receipts to take a PPP Second Draw Loan of up to \$2 million.

*Eligible entities.* Prior PPP borrowers must meet the following conditions to be eligible for the PPP Second Draw Loans:

- Employ no more than 300 employees per physical location;
- Have used or will use the full amount of their first PPP loan; and
- Demonstrate at least a 25% reduction in gross receipts in the first, second, or third quarter of 2020 relative to the same 2019 quarter. Applications submitted on or after Jan. 1, 2021 are eligible to utilize the gross receipts from the fourth quarter of 2020.

Eligible entities include for-profit businesses, certain non-profit organizations, housing cooperatives, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives.

*Loan terms.* Borrowers may receive a PPP Second Draw Loan of up to 2.5 times the average monthly payroll costs in the one year prior to the loan or the calendar year. However, borrowers in the hospitality or food services industries (NAICS code 72) may receive PPP Second Draw Loans of up to 3.5 times average monthly payroll costs. Only a single PPP Second Draw Loan is permitted to an eligible entity.

*Gross receipts and simplified certification of revenue test.* PPP Second Draw Loans of no more than \$150,000 may submit a certification, on or before the date the loan forgiveness application is submitted, attesting that the eligible entity meets the applicable revenue loss requirement. Non-profits and veterans' organizations may use gross receipts to calculate their revenue loss standard.

*Loan forgiveness.* Like the first PPP loan, the PPP Second Draw Loan may be forgiven for payroll costs of up to 60% (*with some exceptions*) and nonpayroll costs such as such as rent, mortgage interest and utilities of 40%. **Forgiveness of the loans is not included in income as cancellation of indebtedness income.**

*Application of exemption based on employee availability.* The CAA, 2021 extends current safe harbors on restoring full-time employees and salaries and wages. Specifically, it applies the rule of reducing loan forgiveness for the borrower reducing the number of employees retained and reducing employees' salaries in excess of 25%.

**Deductibility of expenses paid by PPP loans.** *This is a big win for taxpayers!* The CARES Act was silent on whether expenses paid with the proceeds of PPP loans could be deducted. IRS took the position that these expenses were nondeductible. The CAA, 2021 provides that expenses paid both from the proceeds of loans under the original PPP and PPP Second Draw Loans are deductible.

### **Economic Injury Disaster Loans (EIDL) – Small Business Administration**

For those of you interested in the difference between the EIDL and the PPP, there is a good FAQ put out by the SBA. Note that it was issued in September and has not been updated for the new legislation that permits a second round of PPP payouts. I expect the SBA will be updating this sheet to show that it the PPP is available again.

<https://www.sba.gov/sites/default/files/2020-09/COVID%20EIDL%20FAQ%20FINAL%20APPROVED%20Revisions%20091420-508.pdf>

### **Economic Impact Payments (EIP)**

The IRS just announced that is have started issuing a second round of Economic Impact Payments (EIPs) via direct deposit (that started on December 29<sup>th</sup>) and would begin mailing paper check EIPs on December 30. The Consolidated Appropriations Act, 2021 contains a second round of EIPs. Generally, U.S. citizens and resident aliens who are not eligible to be claimed as a dependent on someone else's income tax return are eligible for this second payment.

Eligible individuals will automatically receive an EIP of up to \$600 for individuals or \$1,200 for married couples and up to \$600 for each qualifying child. Single persons with adjusted gross income for

2019 up to \$75,000, and married couples filing joint returns and surviving spouses with 2019 adjusted gross income up to \$150,000, will receive the full amount of the second payment. For filers with income above those amounts, the payment amount is reduced.

These new payments will be automatic for eligible taxpayers who filed a 2019 tax return, and for those who receive Social Security retirement, survivor or disability benefits (SSDI), Railroad Retirement benefits, as well as Supplemental Security Income (SSI) and Veterans Affairs beneficiaries, who didn't file a tax return. Payments are also automatic for anyone who successfully registered for the first payment online at IRS.gov using the agency's Non-Filers tool by Nov. 21, 2020 or who submitted a simplified tax return that has been processed by IRS.

Most taxpayers will receive these payments by direct deposit. Social Security and other beneficiaries who received the first round of payments via Direct Express will receive this second payment the same way. Anyone who received the first round of payments earlier this year but does not receive a payment via direct deposit will generally receive a check or, in some instances, a debit card. For those in this category, the payments will conclude in January.

Those people receiving Social Security retirement, disability, Railroad Retirement, VA, or SSI income and are not typically required to file a tax return, will again receive a stimulus payment. As in the first round, the IRS would use the information from their 2019 Form SSA-1099, Form RRB-1099, or the Veterans Administration to generate their stimulus payment.

Individuals who don't receive a direct deposit by early January will likely receive either a paper check or a debit card by mail. To speed delivery of the payments to reach as many people as soon as possible, the Bureau of the Fiscal Service, part of the Treasury Department, will be sending a limited number of payments out by debit card. The form of payment for the second mailed EIP may be different than for the first mailed EIP. Some people who received a paper check last time might receive a debit card this time, and some people who received a debit card last time may receive a paper check.

*IRS notification of payment.* People will receive an IRS notice, or letter, after they receive a payment; the notice or letter will tell them the amount of their payment. They should keep this for their tax records.

**Credit available to certain persons who didn't receive an EIP.** Eligible individuals who did not receive an EIP this year – either the first or the second payment – will be able to claim it when they file their 2020 taxes in 2021. IRS urges taxpayers who didn't receive a payment this year to review the eligibility criteria when they file their 2020 taxes; many people, including recent college graduates, may be eligible to claim it. People will see the EIP referred to as the Recovery Rebate Credit (RRC) on Form 1040 or Form 1040-SR since the EIPs are an advance payment of the RRC.

**Possibility of additional amount of EIP.** IRS notes that if additional legislation is enacted to provide for an additional amount, the EIPs that have been issued will be "topped up" as quickly as possible.

### **Business, Medical, and Moving Standard Mileage Rates for 2021**

The IRS just issued Notice 2021-2 that provides the new 2021 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical, or moving purposes. The Notice also provides the amount taxpayers must use in calculating reductions to a vehicle's basis for depreciation taken under the business standard mileage rate, as well as the maximum standard automobile cost that may be used in computing the allowance under a fixed and variable rate plan.

Beginning on Jan. 1, 2021, the standard mileage rates for the use of a car (*also vans, pickups or panel trucks*) will be 56 cents per mile driven for business use, down 1.5 cents from the rate for 2020; 16 cents per mile driven for medical or moving purposes for qualified active-duty members of the Armed Forces, down 1 cent from the rate for 2020; and 14 cents per mile driven in service of charitable organizations, the rate is set by statute and remains unchanged from 2020.

As a reminder, under the Tax Cuts and Jobs Act, taxpayers cannot claim a miscellaneous itemized deduction for unreimbursed employee travel expenses. I have advised clients who are employees who use their vehicles for company business to negotiate a reimbursement plan since they can no longer take a deduction for their business use of their own vehicle. Self-employed taxpayers continue to take the deduction on their Schedule C. Taxpayers also cannot claim a deduction for moving expenses, unless they are members of the Armed Forces on active duty moving under orders to a permanent change of station. The law used to allow taxpayers who moved more than 50 miles for work to deduct their moving expenses if they met certain time requirements.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates. In some cases, claiming actual costs can give rise to a larger deduction. However, detailed recordkeeping of all the individual expenses is the challenge most taxpayers will face.

Taxpayers can use the standard mileage rate *but must opt to use it in the first year the car is available for and used for business*. Then, in later years, they can choose to either continue with the standard mileage rate or switch to actual expenses. However, once a taxpayer has used actual expenses for the vehicle (*even if it's the first year used for business*), you can't switch to standard mileage rate. You must continue using actual expenses as long as you use that car for business. Leased vehicles *must use the standard mileage rate* method for the entire lease period if the standard mileage rate is first chosen.

### **Several Other Provisions of Interest in the New Tax Act**

You might be interested in the following brief comments on some last-minute changes in the tax law by the recent legislation:

1. The Act made permanent the reduction in the adjusted gross income threshold for medical expense deductions from 10 percent to 7.5 percent. That means taxpayers with significant medical costs (*including insurance premiums*) can realize more of a tax benefit if they itemize their deductions.
2. The Act increased from 50% to 100% the deduction for business meal and beverage expenses, including any carry-out or delivery meals, provided by a restaurant that are paid or incurred in 2021 and 2022. Previously, business meals were only deductible to the extent of 50% of their costs. *Remember that employees are no longer able to deduct business meals incurred for their employer's benefit.*
3. The Act provides 11 more weeks (*and a \$300 a week increase*) of unemployment benefits to March 14, 2021; an extension of expiring pandemic-related unemployment assistance; and protection for individuals who received pandemic-related unemployment benefit overpayments through no fault of their own and are now unable to repay those funds. The bill also extends the Pandemic Unemployment Assistance (PUA), which expands unemployment to those who are not

usually eligible for regular unemployment insurance benefits. This means that self-employed, freelancers, and side giggers will continue to be eligible for unemployment benefits.

4. The Act provides for a special lookback rule will allow lower income individuals to use their earned income from 2019 to determine their Earned Income Tax Credit and the refundable portion of the Child Tax Credit in 2020. Their lower 2020 income could reduce the credit amount for which they would be eligible if based upon their 2020 income.

I hope that you find the information in this newsletter of value to you. Above all else, please stay safe.

Very truly yours,

*Dick Norton*

***This newsletter is not intended or written by me to constitute written advice that you may rely upon to avoid penalties that may be imposed by any taxing authority. Selection of a tax entity may have considerations beyond simply its tax treatment. Therefore, I advise clients to always first consult with an attorney who is intimately familiar with business forms and their relevance to potential future tax and financial issues.***