

PPP and Forgiveness Update



By Susan J. Markey | September 10th, 2020

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| Question Asked | Answer Provided |
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| On owner-employees We have 4 owners. 3 of the owners combined own 80 percent of the C-Corp. All 3 of those owners are paid bi-weekly like all the other 88 employees. one is the controller, one the general manager and one is a district manager. On worksheet A are they considered an employee or an owner-employee. Thank you | The only definition that has been provided of owner-employee is that it is an owner who is an employee is any owner who is also an employee. Thus, they should be treated as owner-employees. |
| Is employer paid life insurance and Long term disability paid as a group benefit eligible for forgiveness? | No. Life insurance and LTD are not group health expenses. |
| Can you clarify the cap on wages for owners if using a 24 week period. If greater than 5% and if less than 5% ownership. | The owner of more than 5% is treated as an owner-employee. Each owner-employee is eligible for forgiveness of the lesser of \$20,833 or 20.833% of their 2019 compensation or \$15,385 or 15.385% if the borrower elected to use an eight-week covered period. Owners of less than a 5% ownership stake are eligible for up to \$46,154 in payroll forgiveness for 24 weeks. |
| What if S corp owner has more than 5%? How much is eligible for forgiveness? | The owner of more than 5% of a C or S corp is treated as an owner-employee. Each owner-employee is eligible for forgiveness of the lesser of \$20,833 or 20.833% of their |

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| | 2019 compensation or \$15,385 or 15.385% if the borrower elected to use an eight-week covered period. |
| I have not seen "workers comp insurance" listed as an eligible expense under the PPP loan. This is a large part of our payroll expense. Is it a forgivable payroll expense? | Workers compensation insurance is not a covered expense. |
| So for CAT tax purposes, the PPP income does not get counted in your total income? | Yes, the Ohio legislature specifically enacted an exclusion of PPP forgiveness income from gross income that is subject to the CAT. |
| If our covered period ends on Dec 24th is our deadline Dec 31 or 10 months from Dec 24th? | Ten months from December 24th. |
| What should we use as the number of FTE to include as the "Employees at Time of Forgiveness Application?" | You can either use the average number of hours worked by the employee divided by forty, or and rounding to the nearest tenth (limited to 1.0 per employee) or using an FTE of 1.0 for employees working 40 hours or more and 0.5 for employees working less than 40 hours weekly. |
| Is it only the Employer portion of the State tax that is covered? The Federal Employer taxes are excluded? | The payment of the employee's share of federal payroll taxes may be included, not the employer's share. Payment of state and local tax imposed on the compensation of the employee is also forgivable. |
| What is the maximum deduction for owners of businesses for payroll if using the 24 week period. | The owner of more than 5% of a C or S corp is treated as an owner-employee. Each owner-employee is eligible for forgiveness of the lesser of \$20,833 or 20.833% of their 2019 compensation or \$15,385 or 15.385% if the borrower elected to use an eight-week covered period. |
| Our company receives R&D credit based on our engineers wages. Would it be good to exclude the engineer wages from the PPP calculation if we have plenty of other qualifying wages? Reason would be that I am doubtful that we can take R&D credit on engineer wages that qualify for PPP forgiveness. | This is not entirely clear, but it appears that amounts paid with PPP funds would not be eligible for the R & D credit, and thus if you can achieve forgiveness without including the engineers, excluding their wages seems like a reasonable approach. |
| For the 3508EZ, do "All" requirements need to be met or "Any" of the three listed? | If any of the tests referenced in the slides are met, then you can use the 3508 EZ. |

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| <p>My company rents its office building from an LLC related through common ownership (i.e. the same individuals own each entity). There is no "intra-business" ownership interest. Are the rent expenses paid to the LLC considered qualified expenses, and if so, is the amount eligible for forgiveness limited to the LLC's mortgage interest?</p> | <p>The SBA has said that "Any ownership in common between the business and the property owner is a related party for these purposes." This means they are likely related parties subject to the limitation.</p> |
| <p>How do you handle the \$100,000 annualized wages when someone is paid a per day rate and it varies each biweekly payroll period for the wage calculation for the PPP loan?</p> | <p>If any payroll during the period annualizes to more than \$100,000, the most conservative approach is to treat this individual as earning more than \$100,000 and thus subject to the limitation on forgivable payroll.</p> |
| <p>If you use the 24 week covered period, apply for forgiveness early, can an owner's comp be \$20,833 or do you have to somehow pro-rate this?</p> | <p>You would pro rate it based on the time that has elapsed.</p> |
| <p>Do you think it would be beneficial to have an attorney prepare a letter on the reasons your company should be eligible for loan forgiveness?</p> | <p>I do not think this is necessary if you fill out the application completely. If you have questions about how to complete the form, you should consult your attorney and/or accountant.</p> |
| <p>If my payroll expense is greater than my PPP Loan, will my PPP loan be forgiven? Should I submit application for forgiveness now?</p> | <p>Yes. If your payroll for the covered period exceeds the loan amount (and you are not subject to limitations on forgiveness due to reductions in salary or number of employees) then your entire loan should be forgiven.</p> |
| <p>Since I already spent all the money from PPP Loan (\$400k) on payroll, can I apply for additional amount? Is there other program that I can borrow?</p> | <p>There is not currently any rules that provide for a second loan. You should explore the EIDL and Mainstreet Lending programs.</p> |
| <p>Do you only have to meet one of the conditions to use the EZ Form since it "or"?</p> | <p>Yes, you only need to meet one of the conditions set forth on the slide.</p> |
| <p>What if we reduce an employee? Are we still qualify for the EZ form? We have 13 employees and now we have 12.</p> | <p>You should use the full form 3508, in order to document whether your reduction falls under one of the safe harbors.</p> |
| <p>What about owners/employees with larger than a 5% stake, as far as payroll costs?</p> | <p>The owner of more than 5% is treated as an owner-employee. Each owner-employee is eligible for forgiveness of the lesser of \$20,833 or 20.833% of their 2019 compensation or \$15,385 or 15.385% if the</p> |

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| | borrower elected to use an eight-week covered period. |
| <p>regarding form 3508ez, can I use this form if we only reduced in hour about 10 hours per week prior to the 8 week period we are using.</p> <p>also we are being acquired October 1, 2020 we will be using the dates for forgiveness from 4/20/20-6/14/2020.</p> <p>will we have a problem with forgiveness if this transaction goes through on 10/1/2020,</p> | <p>If the reduction occurred during the covered period you need to use the full Form 3508. You should discuss the forgiveness implications with your transaction counsel. The answer as to whether this will impact your forgiveness depends on the form of the transaction, acquirer attributes, etc.</p> |
| <p>We paid our 2019 employee match dollars with the PPP loan. throughout the past webinars it, some have said yes this is eligible since we normally pay the prior year contributions the next year before taxes are filed. Should I use that contribution on the forgiveness form?</p> | <p>It appears to qualify as forgivable payroll, but this is still an evolving issue.</p> |
| <p>If the company vision and dental premiums are employee responsibility only, the company does not qualify for any forgiveness on these premiums.</p> | <p>Correct. Employee paid group health care benefits are not eligible for forgiveness</p> |
| <p>Where can we get the most updated version of the Forgiveness Application</p> | <p>https://www.sba.gov/document/sba-form-paycheck-protection-program-loan-forgiveness-application</p> |
| <p>Does equipment rental qualify?</p> | <p>It is not entirely clear, but it appears that equipment rental will qualify if it was leased before February 15, 2020.</p> |
| <p>If my number of employees was reduced due to normal retirement, would that disqualify me from using the EZ form? I had no other reductions.</p> | <p>Yes, because there was a reduction you need to use the full form 3508 in order to establish that the retirement falls under the safe harbor for reductions.</p> |
| <p>Can our lender say "we won't accept a forgiveness application from you yet" because we are a small borrower and they are waiting for legislative action?</p> | <p>Some lenders are encouraging borrowers to wait before submitting their forgiveness applications.</p> |
| <p>I've seen where EIDL loans are also tied into the PPP forgiveness determination. Can you comment on these types of loans?</p> | <p>The SBA will reduce the PPP forgiveness amount by an EIDL advance.</p> |
| <p>hearing that any loans under \$2million will be automatically forgiven what have you heard follow up do you think we should wait</p> | <p>Affirmations of economic necessity are presumed truthful for loans under \$2 million. It seems likely that loans of under</p> |

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| | \$150,000 may be entitled to automatic forgiveness in the future. |
| Owners less than 5% are limited to \$46,154, what about owners of 50%, is that still limited to the \$15,385? | Yes. The owner of more than 5% is treated as an owner-employee. Each owner-employee is eligible for forgiveness of the lesser of \$20,833 or 20.833% of their 2019 compensation or \$15,385 or 15.385% if the borrower elected to use an eight-week covered period. |
| IS THE OWNER'S SALARY FORGIVABLE IF THEY OWN 50% OF THE BUSINESS? | Yes. The owner of more than 5% is treated as an owner-employee. Each owner-employee is eligible for forgiveness of the lesser of \$20,833 or 20.833% of their 2019 compensation or \$15,385 or 15.385% if the borrower elected to use an eight-week covered period. |
| Is loan forgiveness all or nothing or can a portion be forgiven? | A portion may deemed forgivable and a portion prohibited. |
| Can you use 100% payroll when you select the 24 period and not use any other expenses? | Yes, if that amount is sufficient to result in forgiveness, you are not required to include other expenses. |
| When SBA changed from 8 weeks to 24 weeks. We used all the loan in about 20 weeks. Can we use 100% of the loan for payroll | Yes. |
| What is the probably of audit after submission of loan forgiveness? | We do not yet have this information, but it is important to carefully review and follow the application instructions and maintain all supporting documentation to ensure that you can substantiate your expenses if an audit occurs. |
| Is the forgiveness deadline of 12/31/20 or ten months after exhausting funds under an "Earlier or later than" clause? IE, "The forgiveness deadline is 12/31/20 or within 10 months of exhausting funds whichever is earlier" | It is a later than test. No later than ten months after the end of the covered period, which may be later than December. |
| Is the reduction in hours the same "more than 25%"? We had some people out for personal reasons. I am not sure if that applies here. | Yes, if hours are reduced by more than 25% and none of the safe harbors apply, forgiveness would be reduced. If the reduction was because of a voluntary resignation, no reduction if forgiveness should result. |
| If the Owner of an S or C corp has more than 5%, is their full payroll amount excluded from the payroll calculation? | The owners are treated owner-employees. Each owner-employee is eligible for forgiveness of the lesser of \$20,833 or 20.833% of their 2019 compensation or |

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| | \$15,385 or 15.385% if the borrower elected to use an eight-week covered period. |
| On the interest question - What if part of your loan is forgiven, is there interest on the loan amount? | If your loan is only partially forgiven, interest will accrue from the date of disbursement on the portion that was not forgiven |
| Where do we find SBA FAQ's? | https://www.sba.gov/document/support-faq-lenders-borrowers |
| Benefit: Will "HRA company paid" be eligible? What is the term? | HRA does not appear to be an expense eligible for forgiveness as it is not a group health care plan. |
| How to record the forgiveness amount in the accounting book? | Generally, the loan is recorded as a liability when it is received. When forgiveness is received, it becomes income (although it is not subject to tax). |
| If the employer opts in; can the employee still opt out? | Yes, the employee may opt not to defer their withholding taxes. |
| if an employee was laid off temporarily from 3/30-4/24 will that disqualify us from using the EZ form? | Yes, if that was a reduction in employees during your covered period. |
| if an employee is out on STD will that have an effect on either FTE or wages? | It should not, as it would be a voluntary reduction in number of employees. |
| if 1 employee in 2019 received compensation including commissions in 1 month that would annualize to over \$100,000 but did not actually earn more than \$100,000 in 2019 still be counted in the group earning \$100,000 on the forgiveness application? | This situation has not yet been addressed. Since their salary would be annualized to more than \$100,000, it is the more conservative approach to include them in the group earning \$100,000 |
| Are employer HSA contributions a deductible payroll expense? | No. There is no indication that HSA contributions would be a forgivable expense. |
| The real estate rental payments - the amount forgivable appears to be linked to the equivalent interest obligation on a mortgage.....what if the financing on the property is from a related party? | Mortgage interest owed to a related party is not eligible for forgiveness. |
| Are S Corp. 100% owners' salary and wages not eligible for forgiveness? | The owners are treated owner-employees. Each owner employee is eligible for forgiveness of the lesser of \$20,833 or 20.833% of their 2019 compensation or \$15,385 or 15.385% if the borrower elected to use an eight-week covered period. |
| We're still not sure where we fall as employees who have more than 5% owners in an S corp | You are treated owner-employees. Each owner employee is eligible for forgiveness of the lesser of \$20,833 or 20.833% of their 2019 compensation or \$15,385 or 15.385% if the borrower elected to use an eight-week covered period. |
| Regarding the forgiveness of rental payments, the company that owns our building is a family owned corporation with our owner and his siblings. We are trying to | The SBA has said that "Any ownership in common between the business and the property owner is a related party for these purposes." This means they are likely related parties subject to the limitation. |

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| determine if this would make our rent ineligible for including in our forgiveness. | |
| how to determine exactly what an owner-employee is. | The only definition that has been provided of owner-employee is that it is an owner who is an employee is any owner who is also an employee |
| We received a PPP loan in the amount of \$155,000. We didn't use all of the money and will have to pay back a part of the loan (less than \$10,000) For the PPP loan forgiveness, can I pay the \$10,000 back in a lump sum and use the short form or do I need to use the more extensive form as the original loan was for more than \$150,000. This is assuming the legislative bodies allow the one page forgiveness form for loans less than \$150,000. Thanks | The use of the full or EZ form is not based on whether an amount will be forgiven. You can use Form 3508EZ if you satisfy one of these tests: i) you are self-employed and have no employees; ii) you did not reduce the salaries or wages of their employees by more than 25% and did not reduce the number or hours of their employees; or iii) you e experienced reductions in business activity as a result of health directives related to Covid-19 and did not reduce the salaries or wages more than 25%. |
| The bank sent a form 3245-0407 do I have to use that or can I switch to a different form, company is a S Corp, with employees. | Form 3508 has the code form 3245-0407 on the top. If the lender suggests this is the appropriate form, use that form. |
| Is there final guidance for S-Corp owners/employees regarding employer retirement contributions being eligible for forgiveness? | If the owner-employee holds more than 5%, their health insurance premiums and retirement contributions are not eligible. |