

# PERELSON WEINER LLP

## GETTING CASH THROUGH THE NEW U.S. PAYCHECK PROTECTION PROGRAM AND CARES ACT

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# Paycheck Protection Program

- The loans are designed to provide cash to small businesses during the COVID shut-down
- The loans will be forgiven “tax-free” if during the eight weeks after the loan proceeds are received, they are used to pay current employees in lieu of their collecting unemployment
- Rent and other qualified expenses can constitute up to 25% of the forgiven amount

# OBTAINING THE LOAN

- **Loan is based on the lesser of (A) 2.5 times average monthly payroll costs for calendar year 2019 or the twelve months preceding the expected date of the loan or (B) \$10 million**
  - The maximum amount of wages per employee cannot exceed \$100,000 based on annualized twelve-month period
  - The average twelve-month amount of employer provided health and retirement benefits, and state and local taxes incurred during the twelve-month period should be added to wages above without any caps per employee
- **Loan is guaranteed by U.S. Government. Borrower can apply through their commercial bank or other participating lenders**
  - There are no application or underwriting fees. Lender receives up to a 5% commission from the SBA and full reimbursement from SBA of amount forgiven
  - Loan is repayable two years from receipt of funds with 1% interest. Monthly repayment begins 6 months after origination to the extent loan is not forgiven

# ELIGIBILITY

- **Eligibility requires no more than 500 employees on a related entity (foreign and domestic) basis or the SBA defined maximum Industry Code, if greater. Applicant can also qualify under SBA asset and income test**
  - Not for profits, self-employed individuals qualify
  - Employers of Household Employees, 20% or more owners with criminal convictions in the past five years, borrowers who defaulted on government loans in the past seven years, and any business not legal under federal law do not qualify
- **Certification for the loan requires the applicant to certify in good faith that there is economic need for a PPP loan and that it will be disbursed to pay wages and other qualifying expenses**
  - Treasury and the SBA have ruled that anyone receiving less than \$2 million of loan proceeds are deemed to have met the certification. Treasury has also indicated that anyone receiving more than \$2 million will be audited for need and proper disbursement of the proceeds

# OBTAINING LOAN FORGIVENESS

- During the eight-week period after the loan proceeds are received, the loan must be disbursed on -
  - Employee wages
  - employer health and retirement contributions
  - and compensation related state taxes incurred during the eight weeks
  - Up to 25% of the loan proceeds may also be used on –
    - Rent
    - Utilities
    - Business Interest incurred during the eight weeks
    - Qualified Expenses

# OBTAINING LOAN FORGIVENESS

- The eight-week measurement for payroll and other qualified expenses is determined based on 8/52 weeks (or 56/365 days) of the employee's annualized compensation not exceeding \$100,000. Rent and other qualifying expenses are measured similarly (thus preventing stuffing of expenses into the measurement period)
  - New guidance permits the eight-week measurement for payroll incurred to begin the first payroll cycle after the receipt of the loan
  - Disbursement of loan funds for compensation and other qualified expenses may be made in the first periodic cycle falling outside of the eight-week period
  - It is not clear whether bonuses and health and retirement contributions need to be apportioned if incurred and paid during the eight weeks
- The loan forgiveness is reduced to the extent that the average full-time employee equivalent headcount is reduced from the pre-loan period. Loan forgiveness is also reduced to the extent that the employee's annualized wages are less than 25% of the pre-loan period

# OBTAINING LOAN FORGIVENESS

- **Covered utilities during the eight-week period include electricity, gas, water, transportation, telephone or internet access for services that began before February 15, 2020**
  - **Expenses have not been fully defined. For example, what constitutes covered transportation? Do cleaning and commercial rent tax payments constitute covered rent?**
- **The tax-free status of the loan forgiveness is uncertain. While Congress has mandated that the loan forgiveness is tax-free, the IRS has ruled that the expenses paid with the forgiven portion of the loan are not tax-deductible**

to view the application and instructions.

# OBTAINING LOAN FORGIVENESS

- The application for forgiveness together with supporting documentation must be submitted to the lender who will then obtain SBA approval. On May 15, 2020, the SBA released a standard application and further guidance. [Click here](#) to view the application and instructions
- The Employee Retention Credit - An Alternative to PPP Loan:
  - A Quarterly Refundable Credit of the lesser of 50% of qualified wages or \$5,000 per employee?
    - This compares to a maximum of \$20,833 of potentially forgivable loans under PPP loan



# INCOME TAX REFUNDS AND ACCELERATION OF DEDUCTIONS

- **Amendment of 2018 INDIVIDUAL Income Tax Returns**
  - **Elimination of Business loss Limitation of \$250,000 single/ \$500,000 married**
  - **Correction of 2017 Tax Cuts and Jobs Act as to depreciation of building improvements not eligible for bonus depreciation**
    - **Now 15 years and eligible to be written off through bonus depreciation in year of acquisition**
- **Eligible for Five Year Carryback and/or Carryforward**
  - **If carryforward, 100% now can be used, versus 80% previously, against future income**
- **NOTE: Individual Tax rates in 2017 and prior were higher than in 2018 and subsequently [maximum rates were 39.6% prior to 2018 when they were lowered to 37%]**

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- **NOTE: Corporate Tax rates in 2017 and prior were higher than in 2018 and subsequently [maximum rates were 34% prior to 2018 when they were lowered to 21%]**

# INCOME TAX REFUNDS AND ACCELERATION OF DEDUCTIONS

- **2019 and 2020 tax returns should also incorporate the increased allowable business interest loss deduction**
  - **Business interest deduction in 2019 and 2020 is increased to allow 50% of tax EBIDTA versus the previous 30% under the Tax Cuts and Jobs Act**
    - **The taxpayer can elect to use 2019 tax EBIDTA in determining 2020 limitation**
    - **Taxpayers should consider the value of pass-through interest limitations on their personal return**
- **In 2020, the limitation on charitable contributions is increased to 100% of AGI for individuals and 25% of taxable income for corporations from 60% and 10%, respectively**
  - **Non-Cash donations, and contributions to private foundations and Donor Advised Funds do not qualify for increase in limitations**

# OTHER FEDERAL TAX RATE CONSIDERATIONS

- **20% Capital Gains Rate on active capital gain**
- **23.8% Capital Gains Rate on passive capital gain income**
- **29.6% effective rate on individual ordinary income where there is Qualified Business Income**
- **37% rate on ordinary income**
- **Plus 3.8% additional tax on passive income other than passive capital gain income, as above**

# OTHER FEDERAL TAX RATE CONSIDERATIONS

- **State and Local Taxes are not deductible for Individual Income Tax Returns [except for \$10,000]**
  - **Some states permit no deductions [i.e. NJ]**
  - **Some states permit itemized deductions consistent with pre 2017 tax act provisions**
  - **Some states are now providing employer deductions which can be offset personal state income taxes**

# EXTENDED PAYMENTS AND RETURN FILINGS

- **Employer share of Payroll taxes (FICA) and Self-Employment taxes payable through December 31, 2020 can be deferred and then become payable 50% December 31, 2021 and 50% December 31, 2022 with no interest or penalties**
  - **PPP Borrowers are only eligible to delay until loan is forgiven**
- **Income tax payments for 2019 and 2020 and 2019 income tax returns previously due April 15th or later are now due July 15, 2020 without interest and penalties**
  - **Not all state and local jurisdiction follow federal**

# OTHER CONSIDERATIONS

- **Restructuring investment management to obtain deduction for miscellaneous itemized deductions not deductible under Tax Cuts and Jobs Act [Lender Case}**
- **Inter-Generational Wealth Transfer Opportunities**
  - **GRATS**
  - **Sales to Defective Grantor Trusts**
  - **Valuation Declines of Property Transfers**

# PERELSON WEINER LLP

## OUR PHILOSOPHY

- PERELSON WEINER LLP IS A LEADING ADVISORY AND FULL-SERVICE ACCOUNTING FIRM WHERE LONGSTANDING CLIENT RELATIONSHIPS AND TECHNICAL EXPERTISE COME TOGETHER TO POSITIVELY IMPACT OUR CLIENTS' LIVES AND BUSINESSES. WE HELP OUR CLIENTS ACHIEVE AN INTEGRATED, COHERENT, AND UNDERSTANDABLE APPROACH TO ADDRESS THE FINANCIAL COMPLEXITIES FACING BUSINESSES AND INDIVIDUALS TODAY.
- WE ARE, FIRST AND FOREMOST, IN THE SERVICE BUSINESS, WE CARE, WE MAKE A DIFFERENCE AND CONSEQUENTLY REPRESENT SMART, NICE PEOPLE AND THE BUSINESSES THEY OWN AND CONTROL.
- WE ARE IN THE KNOWLEDGE BUSINESS TO HELP OUR CLIENTS. WE ARE NOT A COMMODITY SERVICE SELLER. WE ARE ALSO RELATIVELY PROFITABLE AS OUR CLIENTS VALUE OUR SERVICES SINCE WE DO MAKE A DIFFERENCE AND WE WORK HARD ON THEIR BEHALF.
- WE ARE ONE OF THE 200 LARGEST FIRMS IN THE COUNTRY AND WE REPRESENT CLIENTS RANGING IN SIZE FROM INDIVIDUALS, TO HIGH NET WORTH FAMILIES AS WELL AS INTERNATIONAL BUSINESSES DOING BUSINESS IN THE UNITED STATES, INCLUDING A SOVEREIGN WEALTH FUND. ON AVERAGE, OUR EQUITY PARTNERS HAVE BEEN TOGETHER OVER 25 YEARS AND WE HAVE TEN NON-EQUITY PARTNERS OF EQUITY PARTNER POTENTIAL AS WELL AS A NUMBER OF ESTATE AND TRUST ATTORNEY PRINCIPALS. WE HAVE LOW TURNOVER RELATIVE TO THE REST OF THE PROFESSION AND A NUMBER OF POTENTIAL PARTNERS IN STAFF.
- WE HAVE BEEN RECOGNIZED FOR OUR PARTNER AND EMPLOYEE DIVERSITY AS WELL AS BY FORBES EDITOR'S PICKS AMERICA'S BEST TAX AND ACCOUNTING FIRMS AND "INSIDE PUBLIC ACCOUNTING'S BEST OF THE BEST". THERE IS ALSO A 2012 HARVARD BUSINESS SCHOOL CASE STUDY ON PERELSON WEINER LLP WHICH CONTINUES TO BE TAUGHT THERE EACH YEAR. RON WEINER IS INVITED TO PARTICIPATE AS THE PROTAGONIST. THE CASE IS TO BE UPDATED THIS COMING YEAR.