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GYF TAX SERVICES GROUP

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***Second Draw PPP Loans & ERC Expansion
Under the Consolidated Appropriations Act, 2021***



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INTRODUCTION TO THE NEW LEGISLATION



***Second Draw PPP Loans & ERC Expansion
Under the Consolidated Appropriations Act, 2021***



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INTRODUCTION TO THE NEW LEGISLATION

Consolidated Appropriations Act, 2021 (CAA)

- Signed into law on December 27, 2020
- A single legislative vehicle for COVID-related fiscal relief, an omnibus appropriations act and a “tax extenders” package
- Almost 5,600 pages in length
- \$2.3 trillion spending bill with \$900 billion in stimulus
- [Click here](#) for link to PDF of the CAA



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INTRODUCTION TO THE NEW LEGISLATION

Economic Aid Act

- “Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act”
- Part of the CAA that extends and modifies the PPP loan program first introduced under the CARES Act in March, 2020
- Amends/expands provisions contained in prior COVID-relief packages
 - *CARES Act (March 27, 2020) contained \$2.2 trillion in stimulus relief*
 - *Paycheck Protection Program Flexibility Act (June 5, 2020) modified PPP forgiveness*



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INTRODUCTION TO THE NEW LEGISLATION

Primary CAA Relief/Opportunities

- \$600 stimulus checks subject to income limitations based on filing status
- Increased the “above-the-line” charitable contribution deduction to \$300
- Increased federal unemployment benefits (additional \$300/week) until March 14, 2021
- Extended to April 30, 2021, the ability of an employee to defer payment of certain payroll taxes



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INTRODUCTION TO THE NEW LEGISLATION

Primary CAA & Economic Aid Act Relief/Opportunities

- Provides an additional \$284 billion for Second Draw PPP Loans
- Clarified that those expenses otherwise deductible and PAID from the proceeds of PPP loans are deductible
- Provides changes to existing PPP Loan forgiveness rules
- Enhanced and retroactive Employee Retention Credit (ERC)



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INTRODUCTION TO THE NEW LEGISLATION

SBA Interim Final Rule (IFR) – Issued on January 6, 2021

- Consolidates prior PPP interim final rules, makes certain changes to existing PPP rules affecting all PPP loans, including those previously funded, and adds new rules for new loans (both first draw and second draw loans) issued under the PPP pursuant to the Economic Aid Act
- The SBA's authority to guaranty both first and second draw loans expires March 31, 2021, which means lenders and borrowers will need to close both new first draw and second draw loans before then



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PPP LOANS – PROGRAM CHANGES & EXPANSION



Second Draw PPP Loans & ERC Expansion Under the Consolidated Appropriations Act, 2021



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PPP LOANS – PROGRAM CHANGES & EXPANSION

Expenses Paid with PPP Loan Proceeds

- Expenses paid with PPP loan proceeds are deductible
 - *Impact to Sole Proprietors and Self-Employed Individuals*
 - *Additionally, taxable income does not include any EIDL grants or loan repayment assistance including where the SBA may have paid six months of payments of principal and interest on existing SBA loans on behalf of borrowers*
- IRS issued [Revenue Ruling 2021-2](#) in early January declaring Notice 2020-32 and Revenue Ruling 2020-27 “obsolete”



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PPP LOANS – PROGRAM CHANGES & EXPANSION

Expenses Paid with PPP Loan Proceeds

- Importantly, the CAA provides that the tax basis and other attributes of a borrower’s assets will not be reduced as a result of PPP loan forgiveness
 - *This treatment preserves the “non-taxability” of the PPP loan program*
 - *For example, if tax basis were to be reduced for the forgiveness element of the loan, the gain would simply be deferred until that ownership interest is sold or exchanged*



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PPP LOANS – PROGRAM CHANGES & EXPANSION

Expenses Paid with PPP Loan Proceeds

- **A note of caution for shareholders/partners/members of borrowers**
 - *The deduction for expenses paid or incurred from PPP proceeds may be limited due to inadequate tax basis or amounts at risk*
 - *If the PPP loan is not forgiven or deemed forgiven in the same year, unexpected results may occur due to timing differences between 2020 and 2021*
- **Requires careful planning based on specific facts and circumstances**



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PPP LOANS – PROGRAM CHANGES & EXPANSION

PPP Loan Forgiveness Changes

- **Simplified process for loans under \$150,000**
 - *One-page loan forgiveness application ([Form 3508S](#))*
 - *Required information includes:*
 - Description of retained employees (number)
 - Estimated amount spent on payroll
 - *Maintenance of records:*
 - Four years for employment information; three years for other records



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PPP LOANS – PROGRAM CHANGES & EXPANSION

PPP Loan Forgiveness Changes

- **Forgivable Expenses (Expanded under the CAA)**
 - *Worker protection expenses; Including personal protective equipment*
 - *Costs related to damaged property due to public disturbances*
 - *Operations expenditures*
 - *Supplier expenditures*



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PPP LOANS – PROGRAM CHANGES & EXPANSION

PPP Loan Forgiveness Changes

- **Forgivable Expenses (Expanded under the CAA)**
 - *The expanded forgivable expenses may be utilized by borrowers of PPP loans made before or after the enactment of these provisions, (the CAA) except for those loans already forgiven*
 - *As will be noted later in the program, this expansion of covered expenses may allow for greater use of the Employee Retention Credit*



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PPP LOANS – PROGRAM CHANGES & EXPANSION

PPP Loan Forgiveness Changes

- **Covered Worker Protection Expenditures**
 - *Operating or capital expenditures to facilitate the loan recipient’s compliance with federal health and safety guidelines or equivalent state and local guidance related to the COVID-19 national emergency beginning on March 1, 2020, through the expiration of the national emergency declaration*



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PPP LOANS – PROGRAM CHANGES & EXPANSION

PPP Loan Forgiveness Changes

- **Covered Operations Expenditures**
 - *Payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions or accounting or tracking of supplies, inventory, records and expenses*



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PPP LOANS – PROGRAM CHANGES & EXPANSION

PPP Loan Forgiveness Changes

- **Covered Property Damages Expenditures**

- *Cost[s] related to property damage and vandalism or looting due to public disturbance that occurred during 2020 not covered by insurance or other compensation*



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PPP LOANS – PROGRAM CHANGES & EXPANSION

PPP Loan Forgiveness Changes

- **Covered Supplier Costs**

- *Costs paid by a borrower for goods, made under a contract, order, or purchase order in effect prior to taking out the loan that “are essential to the operations of the [borrower] at the time at which the expenditure was made”*
- *Includes costs of perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan*



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PPP LOANS – PROGRAM CHANGES & EXPANSION

PPP Loan Forgiveness Changes

- Clarification of Covered Payroll Costs
 - *Employer-provided group insurance benefits, such as group life, disability, vision and dental insurance, are included in payroll costs eligible for forgiveness*



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PPP LOANS – OTHER FORGIVENESS MATTERS

PPP Loans Over \$2M

- Forgiveness process remains unchanged (excepting change on \$150,000 loan threshold)
- PPP Loan Necessity Questionnaires required
 - [Form 3509 \(For-Profit Borrowers\)](#)
 - [Form 3510 \(Non-Profit Borrowers\)](#)



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PPP LOANS – OTHER FORGIVENESS MATTERS

PPP Loans Over \$2M

- **PPP Loan Necessity Questionnaire**

- *The purpose of this form is to facilitate the collection of supplemental information that will be used by SBA loan reviewers to evaluate the good-faith certification that borrowers, who together with their affiliates, received PPP loans totaling \$2 million or greater, made on their PPP Borrower Application (SBA Form 2483 or Lender's equivalent form) that economic uncertainty made the loan request necessary*



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PPP LOANS – OTHER FORGIVENESS MATTERS

PPP Loans Over \$2M

- **PPP Loan Necessity Requirement**

- *Note that the borrower continues to be required to certify on behalf of the business that the current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant as of the date of application*
- *The 25% gross receipt reduction requirement for Second Draw loans takes some of the risk associated with the certification, especially for smaller loans*



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PPP LOANS – OTHER FORGIVENESS MATTERS

Additional PPP Provisions That Remain Unchanged

- Must still maintain a minimum payroll v. non-payroll split of 60%-40%
- All loans continue to be subjected to the FTE and salary reduction rules
- \$100,000 annualized wage cap per employee remains in place
- The covered period remains set at a maximum of 24 weeks, but borrowers may now choose any covered period between eight weeks and 24 weeks



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NEW PPP LOANS – ELIGIBILITY & APPLICATION



Second Draw PPP Loans & ERC Expansion Under the Consolidated Appropriations Act, 2021



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PPP LOANS – NEW LOAN ELIGIBILITY

General Criteria

- You are eligible if the Company, together with affiliates (if applicable) is:
 - *A small business concern*
 - *An independent contractor, eligible self-employed individual or sole proprietor*



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PPP LOANS – NEW LOAN ELIGIBILITY

General Criteria

- You are eligible if:
 - *The Company is a business concern, a tax exempt nonprofit organization described in IRC §501(c)(3), a tax exempt veterans organization described in IRC §501(c)(19), or a Tribal business concern; AND*
 - *You have no more than 500 employees, or (if applicable) the SBA size standard*



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PPP LOANS – NEW LOAN ELIGIBILITY

General Criteria

- **You are eligible if:**
 - *The Company is a housing cooperative, an eligible organization described in IRC §501(c)(6), or an eligible destination marketing organization that employs no more than 300 employees*
 - *The Company is a news organization that is majority-owned or controlled by a NAICS code 511110 or 5151 business or a nonprofit public broadcasting entity with a trade or business under NAICS 511110 or 5151, that employs no more than 500 employees*



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PPP LOANS – NEW LOAN ELIGIBILITY

General Criteria

- [SBA Procedural Notice 5000-20076](#) (issued 1/13/21)
 - *Describes the additional narrow circumstances under which certain eligible borrowers may reapply for a new First Draw PPP Loan or request an increase to a First Draw PPP Loan approved on or before August 8, 2020*



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FIRST DRAW PPP LOANS

Loan Reapplications and Increases

- If, after your original PPP application was submitted to the SBA and new interim or final rules would have increased your calculated total, you can now obtain relief from the lender for those additional funds
- Most notable, if you were a partner in a partnership that filed early...and did not count partnership earnings in the total loan requested, you may be eligible to increase the original loan



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FIRST DRAW PPP LOANS

Loan Reapplications and Increases

- Increases in First Draw PPP loans can only be made by the lender of record
- No loan increases are permitted under this Notice if the SBA has remitted a forgiveness payment to the lender on the First Draw PPP loan
- Special provision is made for partnerships, seasonal employers, farmers and ranchers, borrowers that fully repaid a First Draw PPP loan before December 27, 2020, and those that did not accept the full amount of a First Draw PPP loan for which they were approved



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FIRST DRAW PPP LOANS

Loan Reapplications and Increases

- A First Draw PPP loan may also be requested under the SBA Notice and the CAA if you did not receive a PPP loan previously
- The amount of the First Draw PPP loan or the increase (when added to the original PPP loan) cannot exceed \$10M for an individual borrower or \$20M for a corporate group



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FIRST DRAW PPP LOANS

Additional Guidance

- On January 17, 2021, the [SBA issued guidance](#) for calculating the maximum amounts for First Draw PPP Loans as well as documentation requirements
 - *12 pages of Q&A instructions on how to calculate maximum loan amounts by entity type including self-employed businesses with and without employees, partnerships, limited liability companies, S corporations and C corporations and non-profits*
 - *The guidance describes payroll costs using calendar year 2019 as the reference period for payroll costs used to calculate loan amounts, however, borrowers are also permitted to use payroll costs from calendar year 2020 for the calculation*



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SECOND DRAW PPP LOANS

General Criteria for Borrowers Who Previously Received PPP Loans

- Must have been in operation as of February 15, 2020
- 300-employee limit
- Has used or will use the full amount of PPP #1
- Gross receipts must have decreased by at least 25% during any quarter of 2020 (as compared to the same quarter in 2019)
- Eligible borrowers include non-profits, self-employed individuals, sole proprietors and independent contractors



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SECOND DRAW PPP LOANS

FTE Reduction Measurement and Rules

- First or Second Draw PPP Loans Reference Period
 1. *February 15, 2019 through June 30, 2019, or*
 2. *January 1, 2020 through February 29, 2020, or*
 3. *Special Seasonal Rules*



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SECOND DRAW PPP LOANS

“Gross Receipts Decrease” Criteria

- Definition of “Gross Receipts”

- Includes: All revenue in whatever form received or accrued (in accordance with the entity’s accounting method) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees or commissions, reduced by returns and allowances
- Excludes: Sales taxes collected from customers, intercompany (domestic or foreign) transaction proceeds, amounts collected for others, and First Draw PPP loan forgiveness



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SECOND DRAW PPP LOANS

“Gross Receipts Decrease” Criteria

- Definition of “Gross Receipts”

- Includes: All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer’s request, investment income, and employee-based costs such as payroll taxes



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SECOND DRAW PPP LOANS

Gross Receipts Example

- See full example text in [SBA Guidance SBA-2021-0002](#)
 - *A borrower has gross receipts of \$50,000 in the second quarter of 2019, compared to gross receipts of \$30,000 in the second quarter of 2020*
 - *The borrower has experienced a revenue reduction of 40% between the quarters, and is therefore eligible for a Second Draw PPP loan (assuming all other eligibility criteria are met)*



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SECOND DRAW PPP LOANS

Additional SBA Guidance

- [Top-Line Overview of Second Draw Loans](#) (01/06/21)
 - *Provides detail on Second Draw Loan Requirements*
 - *Note that the same general loan terms apply as with First Draw PPP loans*
- [How to Calculate Second Draw Loan Eligibility & Amount](#) (01/19/21)
 - *18 pages of Q&A instructions to assist businesses in calculating their revenue reduction and payroll costs (and the relevant documentation required to support the calculations) to determine eligibility for and amount of a Second Draw PPP Loan*



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SECOND DRAW PPP LOAN CALCULATION

How to Determine Second Draw Loan Borrowing Amounts

- A process is set forth for making the total second loan determination in the [SBA's January 19, 2021 guidance](#) for each type of entity including not-for-profit organizations
- The guidance is extremely specific and detailed and should be respected in making the application



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SECOND DRAW PPP LOAN CALCULATION

Provisions and Restrictions

- Borrowers are permitted to use either 2019 payroll or the one year preceding the new loan (2020) for calculation purposes
 - *Ultimately equates to 2.5X your average monthly payroll*
 - *NAICS codes beginning with prefix-72 (which include restaurants, hotels, bars, etc.) will use a 3.5X multiplier on their average monthly payroll*
 - *Restrictions on seasonal employer calculations*
- Maximum Second Draw PPP loan amount is \$2M; additional cap of \$4M for businesses that are part of a single corporate group



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PPP LOAN APPLICATION PROCESS

Program Dates: 1/11/21 – 3/31/21 (or until funds are depleted)

- **First-time applicants can still apply (not subject to PPP #2 restrictions)**
 - *Special rules for businesses started in 2019 and/or 2020*
- **Special amounts set aside for certain first- and second-time applicants:**
 - *Sole-proprietors*
 - *Self-employed individuals*
 - *Businesses with less than 10 employees*



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PPP LOAN APPLICATION PROCESS

Application Dates

- **Phased approach to opening loan application portals to ensure that funds are made available to smaller businesses and lending institutions**
 - *01/11/21 – Community Financial Institutions start accepting applications*
 - *01/15/21 – PPP-eligible lenders with \$1B or less in total assets can take applications*
 - *01/19/21 – SBA loan application portal opens to all eligible lenders*



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PPP LOAN APPLICATION PROCESS

Loan Applications

- Issued by the SBA on January 8, 2021
- Includes the uncertainty and loan necessity certification
- First Draw Application ([SBA Form 2483](#))
- Second Draw Borrower Application ([SBA Form 2483-SD](#))



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PPP LOAN APPLICATION PROCESS

General Documentation Requirements

- Generally, the same as the original program in the CARES Act for both First and Second Draw PPP Loans
- The guidance allows for certain safe harbor documentation (using previously submitted information) if 2019 information is used for both loans, and the lender remains the same



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PPP LOAN APPLICATION PROCESS

Additional Documentation Requirements – Second Draw Loan

- The [Second Draw Loan Guidance](#) released by SBA on January 19, 2021, includes information on what is needed by borrowers to “corroborate” that the entity sustained at least a 25% reduction in gross receipts



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PPP LOAN APPLICATION PROCESS

Additional Documentation Requirements – Second Draw Loan

- Quarterly Financial Statements for the entity
 - *If not audited, the Applicant must “sign and date” the first page and initial all other pages, attesting to their accuracy*
 - *Alternatively, quarterly or monthly bank statements for the entity showing deposits from relevant quarters*
 - The Applicant must annotate which deposits on the bank statement constitute gross receipts and not capital infusions



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PPP LOAN APPLICATION PROCESS

Additional Documentation Requirements – Second Draw Loan

- Annual income tax returns (if using an annual reference period)
 - *If 2020 returns are not yet filed, the Applicant must fill out the forms, compute the relevant gross receipts value, and sign and date this return, “attesting” that the values that enter into the gross receipts computation are the same as those that will be filed on the entity’s income tax return*
 - *If the applicant is using the annual income tax returns to demonstrate a gross receipts reduction of 25%, [Question 5 of the January 19, 2021](#) guidance provides computation details by entity type and tax return type*



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PPP LOAN APPLICATION PROCESS

Documentation Requirements – Second Draw Loan

- If the Applicant is requesting a Second Draw PPP loan in excess of \$150,000, evidence of the reduction in gross receipts is required with the loan application
- If the Applicant is requesting a Second Draw PPP loan of \$150,000 or less, evidence of the reduction in gross receipts is required before or at the time the borrower requests loan forgiveness



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EXPANSION OF THE EMPLOYEE RETENTION CREDIT (ERC)



***Second Draw PPP Loans & ERC Expansion
Under the Consolidated Appropriations Act, 2021***



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ERC EXPANSION

Overview of Changes Under Consolidated Appropriations Act (CAA)

- Previously (under the CARES Act) a taxpayer was permitted to utilize only PPP funds or the ERC (cannot count wages for both purposes)
 - *As such, given the limitations on use of the ERC, and the potential forgiveness associated with the PPP loans, most companies elected to pursue the PPP loans in lieu of the credit*



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ERC EXPANSION

Overview of Changes Under Consolidated Appropriations Act (CAA)

- CAA permits taxpayers to retroactively claim the ERC for the 2020 taxable year for wages paid after March 12, 2020, and before January 1, 2021
- CAA expands the credit to include wages paid for first two quarters of 2021



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ERC EXPANSION

Economic Aid Act Changes

- Extended the ERC opportunity (which was scheduled to expire on December 31, 2020) to June 30, 2021
- Permitted borrowers of the Second Draw PPP loans to take advantage of the ERC as well
- Permitted borrowers of First Draw PPP loans to “retroactively” take advantage of the ERC for wages paid between March 13, 2020, and December 31, 2020



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ERC EXPANSION

Economic Aid Act Changes

- The CAA includes rule changes with respect to the ERC which differentiate the provisions for claiming the ERC for 2020 and 2021
 - *Thus, the rules and calculations differ for 2020 and 2021*
 - *The rules for 2020 remain as they were under the CARES Act and are more onerous for taxpayers than the rules applicable to ERCs associated with 2021*
- The ERC is only available for the first two quarters of 2021, and the program is set to expire on June 30, 2021, under the CAA



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ERC EXPANSION

Major Limiting Condition to the Use of the ERC

- As the ERC is discussed, note that those wages paid and considered in conjunction with the request for forgiveness of the PPP loans (First Draw or Second Draw) are NOT permitted to be considered in determining a taxpayer's ERC
- This rule is set in place to prevent employers from reaping double benefits for the same expenditures



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ERC EXPANSION

2020 Credit Calculation – Basic Computation

- 50% of the “qualified” wages paid to an employee (plus the cost to continue providing health benefits)
- Annual cap of \$5,000 per employee (\$10,000 in wages X 50%)
- **NOTE:** 2020 credit is limited to an annual maximum of \$5,000 per employee as the wage cap is considered on an annual basis



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ERC EXPANSION

2020 Credit Qualification

- Qualified wages differ depending on employee count
 - **100 employees or fewer:**
 - Employers are eligible even if the employee is not working(wages)
 - **100 employees or more:**
 - Employers are eligible for only those wages paid to employees who are not working



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ERC EXPANSION

2020 Credit Qualification

- Eligible businesses must have:
 - *Operations that were either fully or partially suspended by a COVID governmental order and only during the period the order is in force; OR*
 - *Gross receipts that were less than 50% of the gross receipts for the same quarter in 2019 until such quarter as gross receipts are 80% of same quarter in 2019 (the entire quarter would qualify)*
- Special rules apply for businesses that were not in existence in 2019



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ERC EXPANSION

IRS Interpretation of Eligibility (based on [FAQs](#))

- Special rules on whether business was only impacted nominally
- Supplier delivery suspensions may cause a business to meet the governmental order test
- The determination of eligibility must be made in consideration of all facts and circumstances specific to the taxpayer



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ERC EXPANSION

Example of IRS Interpretation (based on [FAQ #34](#))

Employer F, a restaurant business, is not allowed to offer on-site dining due to a governmental order closing all restaurants, bars, and similar establishments for sit-down service, however, it may continue sales of food and beverages to the public on a carry-out, drive-through, or delivery basis.

- Employer F's business operations are considered to be partially suspended because a portion of its business operations – its indoor and outdoor dining service – is closed due to the governmental order
- Capacity restriction (entire year for restaurants) qualifies as a partial suspension



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ERC EXPANSION

Example of IRS Interpretation (based on [FAQ #34](#))

Employer J, a large retailer, is required to close its storefront location due to a governmental order, however, it is permitted to provide customers with curbside service to pick up items ordered online or by phone.

- During this period, Employer J's business operations are considered to have been partially suspended due to the governmental order requiring it to close its physical location



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ERC EXPANSION

Example of IRS Interpretation (based on [FAQ #35](#))

Employer K operates a food processing facility that normally operates 24 hours a day. A governmental order issued by the local health department requires all food processing businesses to deep clean their workplaces once every 24 hours in order to reduce the risk of COVID-19 exposure.

- In order to comply with the governmental order, Employer K reduces daily operations by five hours per day so that a deep cleaning may be conducted
- Employer K is considered to have partially suspended its operations due to the governmental order requiring it to reduce its hours of operation



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ERC EXPANSION

Example of IRS Interpretation (based on [FAQ #28](#))

State Y issued a governmental order for all non-essential businesses to close from March 10 through April 30, 2020.

- Pursuant to the order, Employer H, which operates a non-essential business in State Y, closes from March 10 through April 30, 2020
- Employer H is an Eligible Employer for wages paid during this shut-down – March 13 (*effective date of the CARES Act provision*) through March 31 in the first quarter, and April 1 through April 30 in the second quarter



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ERC EXPANSION

Example of IRS Interpretation (based on [FAQ #28](#))

Employer I's gross receipts for Quarters 1-3 of 2020 were \$100,000, \$190,000, and \$230,000, compared to \$210,000, \$230,000, and \$250,000 in 2019.

- Thus, Employer I's 2020 quarterly gross receipts were approximately 48%, 83% and 92% of its respective 2019 quarterly gross receipts
- Accordingly, Employer I had a significant decline in gross receipts commencing on the first day of the first calendar quarter of 2020 (in which gross receipts were <50% of the same quarter in 2019) and ending on the first day of the third calendar quarter of 2020 (which follows the quarter for which gross receipts were >80% of the same quarter in 2019)
- Employer I is entitled to ERC with respect to both the first and second calendar quarters



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ERC EXPANSION

2020 Credit Example (Restaurant)

- Qualifying from March 18, 2020 – December 31, 2020
- PPP Loan ≈ \$90,000
 - Implies annual payroll of \$432,000 [$\$90,000 \div (2.5 \times 12)$]
 - 60% of \$90,000 requires \$54,000 of covered payroll to obtain forgiveness



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ERC EXPANSION

2020 Credit Example (Restaurant)

- Remaining payroll for ERC purposes is \$378,000
 - *(\$432,000 – \$54,000 considered in obtaining PPP loan forgiveness)*
- Assuming 35 employees with the same wages, the remaining compensation paid for the balance of 2020 is \$10,800 per employee
- Capping the qualified compensation at \$10,000 and applying the 50% credit rate, the total ERC would be \$105,000 (35 X \$5,000)



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ERC EXPANSION

2020 Credit Example (Disaster Entity)

- Qualifying in the third and fourth quarters of 2020, based on a drop in gross receipts
- PPP Loan was ≈ \$250,000
 - *Implies annual payroll of \$1,000,000 [$\$250,000 \div (2.5 \times 12)$]*
 - *60% of \$250,000 requires \$150,000 of covered payroll to obtain forgiveness*



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ERC EXPANSION

2020 Credit Example (Disaster Entity)

- Remaining payroll for ERC purposes is \$850,000
 - *(\$1,000,000 – \$150,000 considered in obtaining PPP loan forgiveness)*
- Assuming 45 employees with the same wages, the remaining compensation paid for the balance of 2020 is \$18,889 per employee
- Capping the qualified compensation at \$10,000 and applying the 50% credit rate, the maximum total ERC would be \$225,000 (45 X \$5,000)



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ERC EXPANSION

2020 Credit Example (Construction Entity)

- Business was closed during much of the second quarter, but also qualified under the gross receipts test for the second and third quarters
- PPP Loan was received in early May (8 weeks ended on or around June 26)
 - *Qualifying periods within the quarter are March 18 - September 30, 2020*
 - *60% of loan used for payroll, and the rest was utilized on other qualifying items*
- Remaining payroll for 15 employees equated to a ERC of approx. \$35,000



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ERC EXPANSION

2020 Credit Examples – Disclaimer

- Note that because all employees do not make the same wages, it is likely that the maximum credit will differ from the simple examples shown here
- However, so long as all employees have at least \$10,000 in qualifying wages remaining after the covered wage analysis in the PPP loan forgiveness process, the maximum ERC may be attainable



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ERC EXPANSION

2021 Credit Calculation Changes

- 70% of qualified wages (plus cost to continue employee's health benefits)
- Cap is increased to \$7,000 per employee **for each quarter** (for each of the first two quarters of 2021)
- Wage cap is set at \$10,000 per employee, **per quarter**
- Maximum possible credit is \$14,000 per employee for the first half of 2021



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ERC EXPANSION

2021 Credit Qualification

- Eligible businesses must:
 - *Pass the same “governmental order test” as used for the 2020 computation; OR*
 - *Have gross receipts that are <80% of the gross receipts for the same quarter in 2019*
- Special rules apply for businesses that were not in existence in 2019



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ERC EXPANSION

2021 Credit Qualification Changes

- Eligible 500 employee maximum
- All employees are eligible to be included in the employer’s computation, even if they are working



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ERC EXPANSION

Special Items to Consider

- The requirement that eligible taxpayers only realize a 20% reduction in gross receipts for 2021 versus a 50% reduction in the CARES Act, and which is still applicable to 2020 ERC computations, is extremely significant in opening this incentive opportunity to more taxpayers
- 2021 ERC could be substantial based on the 80% gross receipts rule
 - *Utilize the benefit in real-time once you recognize you have a qualifying quarter*



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ERC EXPANSION

Special Items to Consider

- Does it matter how you apply for PPP loan forgiveness?
- Remember the 60-40 rule on payroll
 - *You may want rethink what you put on your forgiveness application*



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ERC EXPANSION

Special Items to Consider

- The ERC is used to offset the employer's share of payroll taxes, but is refundable if you do not have enough payroll taxes to utilize in a given quarter
- The ERC can now be used to decrease amounts due on Form 941
- Allows for advanced and retroactive refunds using modified Form 941 and Form 7200 – *see additional details in post at www.gyf.com/resources*



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ERC EXPANSION

Special Items to Consider

- Finally, note that affiliation rule restrictions and related-party employee rules must be respected
- It is important to understand that the ERC is an Internal Revenue Code item and is governed by the affiliation and related party rules in the Code versus those affiliation rules that have been promulgated by the SBA



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UTILIZING THE ERC

Next Steps

- Qualification under both the PPP and ERC incentive opportunity should be evaluated sooner rather than later
- If you are able to qualify for a First Draw or Second Draw PPP loan, we would suggest contacting your lender and filing a loan application soon
 - *While the program runs through March 31, 2021, there is no way to be certain that the funds allocated by Congress will not be fully utilized before that date*



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UTILIZING THE ERC

Next Steps

- Analyzing the potential benefit of the ERC can serve to yield an almost immediate cash flow effect through the reduction of payroll taxes withheld and those amounts due as employer obligations under the payroll tax rules
- Additionally, under certain fact patterns, there may be opportunity to use the ERC to obtain 2020 payroll tax refunds



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OTHER RELEVANT ISSUES



Second Draw PPP Loans & ERC Expansion Under the Consolidated Appropriations Act, 2021



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OTHER RELEVANT ISSUES

Expected Changes under the Biden Administration

- On January 20, 2021, Mr. Biden was inaugurated as the 46th President of the United States
- As has been well publicized, he plans to introduce a new stimulus package with an additional \$1.9 trillion in economic assistance to stave off a drop in the U.S. economy
 - *Though exactly what provisions that bill might contain are currently unknown, it is more than possible that additional aid will be included for the country's small and medium-sized businesses*



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OTHER RELEVANT ISSUES

Expected Changes under the Biden Administration

- In addition, major tax legislation is anticipated later in 2021 and many of the new President's plans for tax reform will likely move easily through Congress given Democratic control
- Due to the ongoing Pandemic, the speed of the vaccine manufacture and distribution, the Economic Relief Act and a probable additional stimulus and tax reform package, 2021 should prove to be another challenging year for all of us



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OTHER RELEVANT ISSUES

How GYF Can Help

- As always, the professionals at Grossman Yanak & Ford LLP will continue to monitor these developments on behalf of our clients, contacts and friends
- If you find that you need assistance on the Second Draw PPP opportunity or in determining the ERC applicability to your Company, please contact [Bob Grossman](#), [Don Johnston](#) or [Mike Weber](#) at your convenience