

# A First Look at Paycheck Protection Program Loan Forgiveness

Ted R. Batson, Jr., Partner and Tax Counsel  
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## Theme for today. . .

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There is a lot we don't know!

## PPP Loan Forgiveness Overview

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- Starting Point: Expect the SBA to provide a loan forgiveness application
- Your lender may be the point party on loan forgiveness
  - But PPP loans may be sold
- You will not be able to apply for loan forgiveness until at least 8 weeks after the loan disburses
- Forgiveness is available based on qualifying expenses
- The lender has 60 days to process your forgiveness application
- Amount forgiven is **not** subject to income tax, including UBTI

## PPP Loan Forgiveness Basics

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- First things first: What is the **covered period**?
  - An eight-week period that commences on the date the lender makes the first disbursement
    - Includes the date of disbursement
  - This is the period during which you need to track qualifying expenses
- What are qualifying expenses?
  - Payroll costs
  - Mortgage interest
  - Rent
  - Utilities

## PPP Loan Forgiveness: Payroll Costs

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- Salary, wages, commissions, and other similar compensation
  - Start with **gross pay**
  - Don't include the employer's share of FICA/Medicare or FUTA
    - But include the employee's share and income tax withheld
  - Don't include amounts in excess of an annualized \$100,000 per employee
    - This limit does not apply to health insurance, retirement benefits, and state taxes (more on these in a minute)
    - On a semi-monthly payroll,  $\$100,000 \div 24 = \$4,166.67$
    - On a bi-weekly payroll,  $\$100,000 \div 26 = \$3,846.15$

## PPP Loan Forgiveness: Payroll Costs (continued)

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- Salary, wages, commissions, and other similar compensation (continued)
  - Don't include wages of employees whose principal place of residence is outside the U.S.
    - See [Mission Agencies and Paycheck Protection Program Loans](#) for more on this
  - Don't include wages for which you received credits under the FFCRA for paid FMLA benefits or paid sick leave benefits
  - Don't include amounts paid to independent contractors (i.e., 1099 employees)

## PPP Loan Forgiveness: Payroll Costs (continued)

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- Salary, wages, commissions, and other similar compensation (continued)
  - **What about the minister's housing allowance?**
    - No clear guidance and no clear path to guidance
    - Much confusion among lenders
      - Lenders who rely on Form 941 to substantiate the reasonableness of average monthly payroll costs appear to be the most likely to exclude
      - Form 941 excludes the minister's housing allowance

## PPP Loan Forgiveness: Payroll Costs (continued)

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- Cash tips or their equivalent
- Payments for vacation, parental, family, medical, or sick leave
  - But not wages for which you received credits under the FFCRA for paid FMLA benefits or paid sick leave benefits
- Severance payments

## PPP Loan Forgiveness: Payroll Costs (continued)

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- **Employer** payments for group health care benefits, including insurance premiums
  - We don't have guidance regarding employer contributions to:
    - A QSEHRA
    - An ICHRA
    - An EBHRA
    - HSA coupled with a HDHP
  - We don't have guidance regarding computing the includible costs of a self-insured group health plan

## PPP Loan Forgiveness: Payroll Costs (continued)

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- **Employer** contributions to retirement plans
  - Seems clear that contributions to a 403(b) or 401(k) plan qualify for a defined benefit pension plan
  - Less clear about 457(b) plans, 457(f) plans, profit-sharing plans
- Payments of state and local taxes assessed on employee compensation
  - Probably doesn't include workers comp
  - Probably doesn't include payments to the state unemployment agency by reimbursing employers

## PPP Loan Forgiveness: Mortgage Interest

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- Mortgage interest is included
  - Mortgage must have been in place on February 15, 2020
  - Do not include mortgage principal, including pre-payment of principal
  - Construction loan interest should qualify if the loan is secured by the property and construction in progress
  - Interest on loans secured by equipment and other types of tangible personal property is included
    - Company car

## PPP Loan Forgiveness: Rent

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- Rent is included
  - Lease agreement must have been in place on February 15, 2020
  - Lease payment on both real property (i.e., your building) and equipment and other types of tangible personal property is included
    - Company car
    - Copier lease

## PPP Loan Forgiveness: Utilities

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- Utilities include payments for:
  - Electricity
  - Gas
  - Water
  - Transportation
    - We don't have guidance as to what is included here
  - Telephone
    - We don't know if this includes allowances for BYOD
  - Internet access
    - We don't know if this includes allowances for an employee's home Internet service

## PPP Loan Forgiveness: Incurred and Paid Dilemma

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- CARES Act section 1106(b) states that forgiveness is available for  
  
“costs incurred and payments made during the covered period”

## PPP Loan Forgiveness: Potential 8-Week Trap

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- Covered period is eight weeks beginning on the date the PPP loan is disbursed
  - An employer that pays semi-monthly that receives a PPP loan on April 16 – April 20 will only have 3 payroll periods during the eight-week period
    - April 16, 2020 – June 10, 2020
    - April 17, 2020 – June 11, 2020
    - April 18, 2020 – June 12, 2020
    - April 19, 2020 – June 13, 2020
    - April 20, 2020 – June 14, 2020

## PPP Loan Forgiveness: Documentation

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- Payroll documentation
  - Number of employees
  - Hours worked by part-time employees (for FTE computations)
  - Rates of pay
  - Form 941
  - Income, payroll, and unemployment tax filings with state authorities
  - Payroll registers from your payroll service
  - Health insurance premium invoices
  - Evidence of retirement plan contributions



## PPP Loan Forgiveness: Documentation (continued)

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- Mortgage interest
  - Canceled checks
  - Payment coupons
  - Payment receipts
  - Mortgage statement, account transcript, or amortization schedule showing interest portion of payments
- Rent
  - Invoice
  - Lease agreement
  - Canceled check or electronic payment confirmation

## PPP Loan Forgiveness: Documentation (continued)

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- Utilities
  - Invoices
  - Canceled check or electronic payment confirmation
  - Account statement
- These documentation requirements are mandatory

## 5 Paths to Incomplete Forgiveness

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- Economic Injury Disaster Loan (EIDL) Advance
  - Up to a \$10,000 advance upon application for an EIDL
  - Is not required to be repaid, even if the EIDL loan denied
  - Must be subtracted from the loan forgiveness amount

## 5 Paths to Incomplete Forgiveness (continued)

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- 75% Rule
  - The First Interim Rule requires that at least 75% of the PPP loan proceeds be used for payroll costs
  - Forgiveness will be denied to the extent this isn't the case
    - Assume you borrowed \$100,000 but only spent \$70,000 on payroll costs
    - \$70,000 is 75% of what number?
      - $\$70,000 \div 75\% = \$93,333.33$
    - Assuming mortgage interest, rent, and utility payments of at least \$23,333.33, the loan forgiveness amount is \$93,333.33

## 5 Paths to Incomplete Forgiveness (continued)

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- Paid FMLA leave/Emergency Paid Sick Leave
  - Wages paid for FMLA leave or paid sick leave *for which you receive the credits provided by the FFCRA* must be excluded from the loan forgiveness computation
    - Make sure to reserve this amount to repay if you don't want a loan balance

## 5 Paths to Incomplete Forgiveness (continued)

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- Headcount reduction factor
  - A fraction
  - This computation looks at your change in employment numbers since the onset of the pandemic versus:
    - A similar period during 2019; or
    - The first two months of 2020

## 5 Paths to Incomplete Forgiveness (continued)

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- Headcount reduction factor (continued)
  - Compute the numerator
    - Relevant date range: the eight-week period
    - Relevant employees: full and part-time employees on each payday
    - Method: Compute FTEs at each payday within the eight-week period
      - If there are 4 paydays, then there will be 4 FTE computations
      - Compute the average of the 4 FTE computations
      - This is the numerator

## 5 Paths to Incomplete Forgiveness (continued)

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- Headcount reduction factor (continued)
  - Compute the denominator
    - Relevant date range:
      - February 15, 2019, and June 30, 2019; or
      - January 1, 2020, and February 29, 2020
      - Whichever gives you the best answer
    - Relevant employees: full and part-time employees on each payday

## 5 Paths to Incomplete Forgiveness (continued)

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- Headcount reduction factor (continued)
  - Compute the denominator (continued)
    - Method: Compute average number of FTEs per month for each month or partial month in the measurement period
      - If there are 2 paydays in a month, then there will be 2 FTE computations for that month
      - Compute the average of the 2 FTE computations
      - Now compute the average of the monthly FTE computations
      - This is the denominator
  - Compute the factor
    - One minus (numerator  $\div$  denominator)

## 5 Paths to Incomplete Forgiveness (continued)

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- Headcount reduction factor (continued)
  - Example
    - Assume your loan forgiveness amount (the sum of all qualifying expenses) is \$100,000
    - Assume your FTE headcount for the eight-week period is 27 (the numerator)
    - Assume your lowest FTE headcount for the two permissible periods for the denominator is 30
    - Reduction factor =  $1 - (27 \div 30) = .1$  or 10%
    - Reduction amount =  $\$100,000 \times 10\% = \$10,000$
    - Loan forgiveness amount =  $\$90,000$

## 5 Paths to Incomplete Forgiveness (continued)

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- Salary and Wage Reduction Amount
  - Amount, not a fraction
  - Sum of salary and wage reductions greater than 25%
  - Only looks at employees employed in the most recent full (calendar?) quarter before the eight-week period
  - Excludes employees whose annualized pay in 2019 was greater than \$100,000
  - No guidance as to how to compare salary and wages paid in the preceding quarter with the eight-week period

## 5 Paths to Incomplete Forgiveness (continued)

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- Salary and Wage Reduction Amount (continued)
  - Example:
    - Assume an employee was paid \$18,750 in Q1 2020, or \$72,750 per year
    - Assume that this employee's rate of pay during the eight-week period is \$13,125
    - This is a 30% drop
      - Stated differently, it is a greater than 25% decrease
    - If we convert the before and after rates of pay to weekly rates of pay and then compare 75% of the prior quarter rate of pay to actual pay during the eight-week period, we get a difference of \$576.92
    - This is the reduction amount relative to that one employee

## Exception to the Reduction Rules

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- There is an exception to the headcount and salary and wage loan forgiveness where headcount/salary and wage reductions are restored by June 30, 2020
  - Compare your FTE headcount at February 15, 2020 to your FTE headcount between February 15, 2020 and April 26, 2020
  - If there was reduction in headcount during this period, then eliminate the reduction by June 30, 2020
    - There is no guidance for organizations with preschools or private schools that have a natural drop-off in employment coincident with the end of the school year

## Exception to the Reduction Rules (continued)

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- Compare the salary and wages of employees on February 15, 2020 with their salary and wages between February 15, 2020 and April 26, 2020
- If there was reduction in salary and wages during this period, then eliminate the reduction by June 30, 2020

## PPP Loan Forgiveness: Separate Account?

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- Neither the CARES Act nor the Interim Final Rule require a separate account
- Reasons to use a separate account
  - Improved accountability for loan forgiveness documentation
    - Only release funds against documented qualifying expenses
  - Unused funds are available for repayment

## PPP Loan: Deferral Options

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- Interest and principal payments are deferred for the first six months
  - Interest accrues, but is forgiven if the principal is forgiven
  - We don't know what will happen if the loan is only partially forgiven
- After six months, the balance continues on at 1% interest for the remainder of the two-year term



## Potpourri

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- Impact of other federal aid programs
- Uniform guidance audits (single-audit)
- Using PPP loan funds for back-pay
- Interaction of PPP loan with deferral of employer payroll taxes
- Interaction of PPP loan with employee retention credits

## Additional COVID-19 Resources

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## Thank you!

Ted R. Batson, Jr., Partner & Tax Counsel  
Professional Practice Leader – Tax  
CapinCrouse LLP

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✉ [tbatson@capincrouse.com](mailto:tbatson@capincrouse.com)

📱 505.50.CAPIN ext. 1105



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