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In a year filled with both unprecedented challenges and opportunities for ASCPA members, the ASCPA Tax Committee has been at the forefront of the efforts to ensure that ASCPA members received the guidance and support necessary to address the constantly evolving issues faced by their clients during 2020. The ASCPA Tax Committee has actively monitored the developments related to the ongoing consideration of both the Alabama tax issues associated with the Tax Cuts and Jobs Act of 2017 and the Alabama tax issues which have arisen as a result of the enactment of the CARES Act in March. Members of the Tax Committee have proactively identified individual,

partnership, and corporate tax issues for which the Alabama guidance was uncertain so that these issues could be discussed with the Alabama Department of Revenue. Though these efforts, many of these issues have been resolved quickly, and ASCPA members have received the guidance necessary to address these questions for their clients. The Tax Committee members have also assisted Alabama legislators with the modeling of the potential tax impact of several pending state legislative proposals, an effort which will hopefully facilitate the enactment of critical tax legislation in an upcoming special session.



TOM ZOEBELEIN

*ASCPA State Taxation & Legislation
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Prior to my joining the ASCPA State Tax Committee, the Department of Revenue and the ASCPA State Tax Committee were at odds over the Department changing the state tax credit. I joined the committee so that our firm could have input in the future. Two weeks after joining the committee, I was honored to be asked to be its chair.

One week before chairing my first tax committee meeting with the Department, Jeannine arranged for me to meet with the Revenue Commissioner. In that meeting, I told the Commissioner that as a new committee member, I did not bring any baggage into the

chairmanship position. I told her my belief was that the Department and the ASCPA State Tax Committee were members of the same team with the same goal of insuring tax compliance. We only asked that our clients be treated fairly, to ensure that they would only pay the tax they owe, not a penny more nor a penny less.

Building on mutual respect, the ASCPA State Tax Committee together with the Department of Revenue's staff began working as a team sharing each other's strengths and prospective benefiting the Alabama taxpayer.



TOM ZOEBELEIN

I once read on a t-shirt "old accountants never die they just lose their balance." Now at age 70 I have decided to take heed and bring more balance into my life. This means effective with this issue I will be reducing the number of articles I write for the ASCPA Connections Magazine. This does not mean "Zoebelein on Tax" is gone forever - just less often. Be assured I will still cover major tax topics and important legislation.

Seeking Forgiveness

Your clients received Payroll Protection loans in spring and summer of 2020 and now come the applications for forgiveness. Keep in mind you have ten months from the end of the twenty-four week period to apply. Some brave souls did apply for forgiveness and have actually received notice they were forgiven during the tail end of 2020. As I write, there is proposed legislation to ease the PPP forgiveness process for loans of \$150,000.

What Form to File?

There are presently three SBA forms for filing for forgiveness. The forms range in complexity based on amount of the loan, clients with no employee reductions during the period, and finally those clients that have had staffing reductions and part time employees. Please note there is a \$100,000 per employee limit in all three cases.

- SBA Form 3508S - The easiest for loans of \$50,000 or less. This form is one page, requiring the least amount of information. If the legislation regarding the \$150,000 limit is passed, I suspect this will be the form.
- SBA Form 3508EZ - This form is two pages long but not that complicated. To use this form the client must meet

one of the following three conditions:

- Self-employed with no employees and did not use wages in his PPP application.
- The client did not reduce the number of employees from January 1, 2020 through the end of the covered period (8 or 24 weeks), excluding positions that could not be filled or employees refused to return as of 12/31/2020.
- The client did not reduce wages by more than 25% from 1/1/2020 – 3/31/2020 and were unable to return to the same level due to mandated COVID 19 restrictions.
- SBA Form 3508 – This is a four-page form that includes the computation of the full time equivalent for both the covered period as well as the pre-Covid base period (2019 or trailing 12-month period). This computation is used to compute the percentage of loan forgiveness. The computation translates part-time employees to full time equivalent employees. The actual computation is beyond the space for this article. To make the computation easier, you can use a factor of .5 for each part-time employee.
- Lenders may have their own equivalent to the above forms which must be used.

Required Attachments and/or Required to be Kept in Support (for the covered period)

- IRS Form 941s
- AL A-1 Quarterly
- AL UC-CR4 Quarterly Contribution & Wages
- Employee Quarterly Taxable Wage Summary (payroll services should supply)
- Quarterly Tax Report (payroll services should supply)
- Reconciliation Report (payroll services should supply)
- SUI Taxable Wages by Quarter (payroll services should supply)
- Taxable Wage Recon (payroll services should supply)
- Required to be kept but not sent with application:
 - Expense verification
 - Cancelled checks
 - Transcripts of accounts
 - Payment receipts (including rent and debt payments)

PPP Covered Expenses

- Loan forgiveness for expenses incurred during the 24 weeks (or elected 8 weeks) after loan is made.
 - Forgivable payroll (must be at least 60% of the loan)
 - i. Cash wages limited to \$100,000, \$46,154 per employee (8 weeks \$15,384). Self-employed and 5% or more business owners are limited to a cap of 20,833 (>5% are treated as a regular employee).
 - ii. Covered benefits
 1. These are not forgiven for self-employed and 5% or more business owners
 - iii. Employer paid state taxes, such as SUI
 - Forgivable non-payroll costs (limited to 40% of the loan) appear limited to 8/52 weeks. However, this, and whether costs are determined on a cash basis, are unclear at this writing.
 - i. Mortgage interest and equipment debt interest (excludes principle and prepayments)
 - ii. Rent (includes both facility and equipment leases). Related party rent is limited to interest on the property mortgage.
 - iii. Utilities (also include transportation, telephone and internet, per Pub 535)

Review Process

- The lender has 60 days to approve the application
 - This should take much less time with favorable results
- SBA has 90 days after lender approves the application.
 - Smaller loans appear to be fast tracked by SBA (3508S & 3508EZ applicants)

Issues

- SBA will be focusing on whether our clients qualified for a PPP loan. This is not an issue for loans under \$2 million as they are considered qualified (safe harbor).
 - The SBA has provided the lender two forms to be

sent to those borrowers with loans over \$2 million - Form 3509 for for-profit companies and Form 3510 for not-for-profit borrowers.

- The form asks very pointed questions targeting proof of need, giving only ten days to respond. I suggest reviewing the form with your clients and attaching a detailed explanation of the conditions at the time the loan was taken out.
- The SBA has a six-year statute to examine the applications in detail
 - There are insurance providers issuing coverage in case SBA denies forgiveness asserting the borrower did not qualify.
 - The SBA will have the advantage of hindsight. So be prepared to have documentation and a narrative of the situation when the PPP loan was applied for.
- The IRS has issue pronouncement that the items of expense paid with PPP funds are not deductible. This position is contrary to the intent of Congress. The proposed Bipartisan Emergency COVID Relief Act of 2020 specifically addresses that point - "business expenses paid for with proceeds of the PPP loans are tax deductible, consistent with Congressional intent in the CARES Act." This IRS position has wreaked havoc with year-end planning for 2020.
- One unanswered question regarding forgiveness - what happens if 100% of the proceeds were used to pay wages? Will the borrower be denied forgiveness? In my opinion, I do not see forgiveness being denied as it would be a tragedy and contrary to the spirit of the CARES Act. The employers have performed the objective of the CARES Act - to get money to the people in need quickly.

Ownership Change with PPP Loan still Outstanding

SBA issued guidance on this issue on October 2, 2020. SBA said if there is a 20%-49% change in ownership the lender must give permission for the ownership change. 50% or more change in ownership requires SBA permission. Getting SBA is impracticable in most sales and acquisitions and as such, many buyers are demanding the PPP loan be repaid. There is a better solution under the October 2, 2020 guidance in which the seller can escrow with the lender the outstanding amount of the loan. If the loan is forgiven, the escrow is paid to the seller. If not, the loan is repaid out of the escrow. Putting this provision in the sale document takes away the requirement for SBA approval. I have had this come up twice in the same week.

My hope is that with your help, your clients will have all their PPP loans forgiven. Also, if the Bipartisan Emergency COVID Relief Act of 2020 has an additional \$300 Billion to go to the SBA, there could be a second round of PPP loans. As the saying goes "it is déjà vu all over again."