

**CAPES • SOKOL**  
Attorneys at Law

# COVID-19 Response Legislation

## Economic Relief for Small Businesses

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## Webinar Introduction

- Question Submission
- NASBA Credits:
  - Participants must be logged into the live seminar **for at least 50 minutes.**
  - Participants requesting CPE credit must answer the polling questions that arise during the presentation.

# The Coronavirus Aid, Relief & Economic Security ("CARES") Act

## Introduction

# Employee Retention Payroll Tax Credit

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5

## ERTC: The Basics

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- If an Employer receives a PPP loan, it is not eligible for ERTC.
- Generally, an Employer is better off receiving a PPP loan that is forgiven than the ERTC.
- Eligible employers receive a credit against the employer portion of FICA tax.

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## ERTC: Steps for Calculating and Claiming the Credit

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- Determine ER eligibility.
- Determine for which calendar quarter the ER is eligible.
- Determine what wages are “qualified wages.”
- Calculate the credit.
- Claim the credit.

## ERTC: Employer Eligibility

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- Carried on a business in 2020 (includes tax-exempt organizations)
- Either:
  - Business fully or partially suspended in any calendar quarter in 2020 due to government order; or
  - Experiences a significant decrease in gross receipts during a calendar quarter in 2020 compared with the same quarter in 2019.

## ERTC: Eligibility by Quarter

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- Employer eligibility is determined quarter by quarter.

## ERTC: Qualified Wages

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- Employer who averaged 100 or fewer full time employees in 2019: “qualified wages” are generally all wages paid to any employee in an eligible quarter.
- Employer who averaged MORE than 100 full time employees in 2019: “qualified wages” are wages paid to an employee who is not providing services.
- Qualified wages are wages paid up to \$10,000.

## ERTC: Calculating the Credit

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- Amount of the credit = 50% of qualified wages (up to \$10,000) paid by the employer with respect to each employee.

## ERTC: Claiming the Credit

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- Reduce ER's share of employment tax *deposits* by anticipated credit.
- If insufficient deposits, ER can get an *advance* by filing Form 7200.
- If the credit exceeds ER's portion of employment tax, ER gets a *refund*.

# Employer Payroll Tax Deferral

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## Employer Payroll Tax Deferral

- Deferral is not available if ER had indebtedness forgiven under a PPP loan.
- Payment and deposit of ER's share of the social security portion of FICA (or RRTA) required to be made from 3/27/20 – 12/31/20 is not due before:
  - 12/31/21 (for 50%); and
  - 12/31/22 (for 50%).

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14

# SBA Loan Programs

## SBA Loan Program

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- Existed before CARES Act
  - 7(a) – general program to assist small businesses
  - 7(b)(2) – Economic Injury Disaster Loan
- CARES Act makes temporary changes to both programs



# Economic Injury Disaster Loans

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17

## EIDL Loans: Section 7(b)(2) Eligibility

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- So long as your business has been in operation since **January 31, 2020**, if **one** of the following applies to your business, **your business is eligible:**
  - **no more than 500 employees**
  - a **“small business concern”**
  - a **“private nonprofit organization”**

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## EIDL Loans: Section 7(b)(2) Terms of the Loan

- up to **\$2 million**
- maturity date of *up to 30 years*
- **3.75% interest rate** for for profits
- **2.75% interest rate** for nonprofits
- **1 year** (including principal, interest, and fees) of **deferral**
- **able to be rolled into the 7(a) loan**
  - if not rolled into the 7(a), **not forgivable**

## EIDL Loans: Section 7(b)(2) Current Status

- Funding lapsed last **Thursday, April 16**
- Therefore, the SBA is **unable to accept new applications** at this time
- EIDL applicants who have already submitted their applications will continue to be processed on a first-come, first-served basis
- Senate negotiating new bill to allocate **\$60 billion** to EIDL loan program

# Paycheck Protection Program Loans

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## PPP Loans: Temporary Section 7(a)

- Loans of up to **\$10 million** available to “**small business concerns**”
- Loan calculation:
  - *LESSER OF* \$10 million *OR*
  - (average total monthly payments for payroll costs) \* 2.5
  - *PLUS* outstanding 7(b) Economic Injury Disaster Loan balances (less \$10k emergency grant)

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22

## PPP Loans: Temporary Section 7(a)

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- Allowable uses of loan proceeds
- Terms: 1% for 2 years of all that is not forgiven
- Repayment deferred 6 months

## PPP Loans: Payroll Costs

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- Salary, wages, commissions, or tips (capped at \$100,000 annualized/employee);
- Employee benefits including vacation, parental, family, medical, or sick leave;
- Allowance for separation or dismissal;
- Group health care benefits including insurance premiums;
- Payment of any retirement benefit;
- State and local taxes assessed on compensation

## PPP Loans: Forgivability

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- Amount spent in 8 weeks following loan closing on:
  - Payroll costs
  - Rent and/or interest on mortgage payments
  - Utilities
- Reduction of forgivability for reductions in FTE employees and/or reduction of salary for certain employees

## PPP Loans: Current Status

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- Funding lapsed last Thursday
- Through 4/16:
  - 1,661,367 Loans
  - \$342,277,999,103
  - 4,975 Lenders
- Senate negotiating new bill to allocate \$310B to additional PPP loans (\$60B for rural and minority groups)

## Other SBA-Loan Programs

- Deferral of disaster loans in place before 3/1/2020 (interest continues to accrue) through 12/31/2020
- SBA will automatically pay principal of principal, interest, and fees of current 7(a), 504 and microloans for 6 months

Questions?

