Paycheck Protection Program
The Consolidated Appropriations Act contains several provisions related to the Paycheck Protection Program (PPP), including a second round of PPP loans for certain eligible borrowers:
Deductibility of Expenses Paid with PPP Loan Proceeds – The deductibility of expenses paid with PPP proceeds has been a contentious matter between the U.S. Department of the Treasury (Treasury) and Congress. While the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) specifically excluded the forgiveness of PPP loans from taxable income, Treasury and the IRS took a position that expenses paid with forgiven PPP loan proceeds should not be deductible by the borrower. The stimulus bill fixes this. To align with congressional intent, in a very succinct one-sentence provision, the Consolidated Appropriations Act makes expenses paid with PPP loan proceeds 100 percent deductible. This applies to all PPP loans, even if the loans were already forgiven at the date this legislation is enacted. A subtle item in the provision will benefit owners of pass-through entities by not denying a basis step-up in their stock/partnership interest for any tax-exempt income from a forgiven PPP loan.
PPP Second Draw Loans – These "second draw" loans are targeted at hard-hit businesses that employ 300 or fewer employees and that have used or will use the full amount of their first PPP loan. The maximum loan under this program is $2 million, based on two and a half months of average annual payroll (three and a half months for NAICS Code 72 entities—generally hotels and restaurants). The measurement period for the payroll can either be calendar-year 2019 or the one-year period before the date the second draw loan is made.
Borrowers must show a 25 percent decline in revenue in the first, second, or third quarter in 2020 as compared to the same quarter in 2019 (if the loan application is after December 31, 2020, then a fourth quarter comparison may be used as well). There are special comparison rules for entities not in existence for all of 2019. The same waiver of affiliation rules that applied to the initial PPP loans will apply to the second draw PPP loans. Similarly, the rule covering more than one physical location that applied for the first PPP loans applies to the second draw loans, except the employee limit per location is 300 employees.
The forgiveness of the second draw loans follows the rules in the first round of loans, including the various reduction provisions. The revised covered period definition as noted above also applies to the second draw loans. The covered period would, therefore, be any time period selected by the borrower that is more than eight weeks from the date of deposit but not greater than 24 weeks from such time.
There are set-asides for the following:

- First-time PPP borrowers with 10 or fewer employees
- Second-time PPP borrowers with 10 or fewer employees
- First-time PPP borrowers that have been made newly eligible by the Consolidated Appropriations Act
- Second-time returning PPP borrowers

COVID-19 Payroll Tax Credits
The Consolidated Appropriations Act also extends and expands the Employee Retention Credit (ERC) under the CARES Act and the paid leave credits under the *Families First Coronavirus Response Act* (FFCRA).

ERC – Eligible businesses may now take advantage of the ERC through July 1, 2021. However, the ERC has been expanded and modified for calendar quarters beginning after December 31, 2020, as follows:

- The ERC is expanded from a 50 percent refundable tax credit to 70 percent, and the $10,000 eligible wage limit per employee will be a quarterly limit (previously, this was an annual limit). So instead of a $5,000 credit per employee credit per year, it will be a credit of up to $7,000 per employee per quarter.
- To be eligible for the expanded ERC in 2021, an employer must show that gross receipts for such calendar quarter are less than 80 percent of the gross receipts for the same calendar quarter in 2019 or it experienced a full or partial suspension of operations during the quarter due to a governmental order. There's also a safe harbor allowing employers to use prior quarter gross receipts to determine eligibility.
- The definition of a large employer for purposes of the ERC is modified to mean more than 500 employees (currently, this threshold is 100 employees). As such, for eligible small to midsize employers (those who averaged 500 full-time employees or fewer in 2019), qualified wages for purposes of the ERC will be wages paid

to *any employee* during the quarter where the employer meets the gross receipts test or experienced a full or partial suspension of operations due to a governmental order. These employers also will be able to receive advances on the ERC at any point during the quarter based on wages paid in the same quarter in a previous year.

In addition, employers who receive PPP loans may still qualify for the ERC with respect to wages that are not paid for with forgiven PPP proceeds. This provision is effective retroactively to the enactment date of the CARES Act.

FFCRA Paid Leave Credits – The FFCRA mandated paid sick leave and expanded FMLA leave provision is extended through March 31, 2021. As such, eligible employers are required to keep providing such leave to eligible employees, and the corresponding payroll tax credits for paid sick leave and expanded FMLA leave also are available through March 31, 2021.

For more information, contact:
Nathan Fitzgerald, CPA
Director | BKD
nfitzgerald@bkd.com
417.865.8701 Ext 23097