

Agudath Israel, In Conjunction with Roth & Co, Presents a Webinar on PPP Loan Forgiveness

June 22, 2020



Business owners across the country have had a rough year. COVID-19 has left many institutions struggling to plan and organize their future finances. That is why Agudath Israel is proud to introduce another webinar in conjunction with Roth&Co: The New PPP Loan Forgiveness Application.

On Tuesday, June 23rd, Roth&Co hosted a webinar on the topic of the new Paycheck Protection Program loan forgiveness applications. It was presented by Ahron Golding, our in-house tax controversy attorney, and moderated by Zacharia Waxler, Roth&Co's Co-Managing Partner. There were opening remarks by Mr. Shlomo Werdiger, President & CEO of Outerstuff and Chairman of the Board of Agudath Israel of America.

Please note that while we are sharing what we currently know about the applications, the details are still changing by the minute. We will continue to keep you updated as additional information becomes available. Keep in mind that the forgiveness process is brand new, so there is no experience to draw from. This material has been prepared for informational purposes only, and is not intended to provide, nor should it be relied upon for, legal or tax advice.

Summary of Changes Under the Paycheck Protection Program Flexibility Act

Covered Periods:

- The covered period in which the loan funds must be spent to qualify for forgiveness was changed from 8-weeks to 24-weeks.
- If you received your loan before June 5th, you have the option to choose between the 8-week and 24-week covered periods.

Payroll Costs:

- The payroll cost requirement to qualify for maximum forgiveness was reduced from 75% of the total loan amount to 60%.
- If payroll is less than 60%, forgiveness will be reduced, but will not be completely diminished.
- You can spend more than 60% of your loan amount on payroll.

Headcount Requirements:

To qualify for maximum forgiveness, you are required to maintain the same employee headcount (FTE, or full time equivalent) as it was prior to the pandemic.

The following exceptions apply:

- The amount of loan forgiveness will not be reduced due to loss of employees if the borrower can document the inability to hire or rehire new employees because of the business's inability to return to its pre-February 15th operating levels due to compliance of CDC, OSHA or HHS regulations. The SBA has clarified that if your local government ordered closures of businesses due to these guidelines, you would qualify for this exception. Keep documentation of any orders or guidelines that you are relying on for this safe harbor.

- If you have reduced your headcount during the pandemic, you have the opportunity to restore your headcount without penalty by hiring back your workforce by December 31st, 2020. This rehire safe harbor (called “safe harbor 2” on the regular forgiveness form) is only applicable if there was a reduction of FTE between February 15th and April 26th, 2020. If you did not reduce headcount between those dates, the “rehire/restore by December 31st” safe harbor will not apply.
- The employer will not be penalized for reductions for positions in which the employer made a good-faith, written offer to rehire an employee and which was then rejected by the employee. Businesses have been finding this difficult to document, as employers are required to report rejected employment offers to the Department of Labor, possibly impacting the employee’s unemployment payments. Employees are therefore not inclined to respond in writing.

Other Changes:

- Employers, even those who obtain forgiveness of a PPP loan, may defer their 2020 employer payroll taxes. 50% of the total due would need to be paid by the end of 2021, and the balance at the end of 2022.
- You do not have to wait until December 31st to apply for forgiveness. You can apply as soon as you have spent your loan proceeds on forgivable costs, even before your covered period is over.
- Because of the extension to 24-weeks, those who are self-employed may now receive full forgiveness for up to \$20,833 (rather than the 8-week limit of \$15,385). The forgivable compensation limit is calculated as the 2.5-month equivalent of \$100,000 per year (\$20,833) or 2.5/12 (20.83%) of their 2019 Schedule C net income. This is per individual across all businesses.
- For non-owner employees, the forgivable compensation limit is \$46,154 for the 24-week covered period, and \$15,385 for the 8-week covered period.
- Note that you cannot apply for additional PPP funds due to the extension; it is just an extension of time in which you can spend it and receive forgiveness.

The New EZ Forgiveness Application

A simplified EZ Application is now available for sole proprietors and other borrowers who did not reduce their workforce or who were unable to maintain full employment due to safety guidelines. It is a 1-page form with a 1-page certification. However, there is extensive documentation required

along with the application.

Qualifications for EZ Form:

- self-employed with no employees; OR
- did not reduce the salaries or wages of employees by more than 25% and did not reduce the number or hours of employees; OR
- experienced reductions in business activity as a result of federal health directives related to COVID-19, and did not reduce the salaries or wages of employees by more than 25% of those of the first quarter of 2019.

How to Choose Between the 8-Week and 24-Week Covered Periods

You can apply for forgiveness at any time. An analysis is needed to know which covered period will yield maximum forgiveness.

Advantages of an 8-week covered period:

- If you can spend the funds on forgivable costs sooner than later, you can get the PPP loan over with and get on with your business. You can apply for forgiveness as soon as you are ready.
- You can take advantage of the safe harbor of reduction of business due to COVID-19 health guidance which will become harder to receive as cities move through their reopening phases.
- Predictability. We never know what kind of regulations the SBA is going to come out with.
- You can get the loan off your books. Borrowers who may need to maintain lines of credit or get subsequent loans will be impeded to the extent that lenders are concerned with the unclarity of how much forgiveness will be received. Until the forgiveness application has been approved by the bank and then by the SBA, the borrower cannot be sure that the loan will be forgiven.
- You want to avoid tax complications. If you do not receive a forgiveness decision before you file your 2020 return, you may run into issues regarding business expenses, which cannot be deducted if those same expenses are later forgiven.

Advantages of a 24-week covered period:

You have more time to meet the required headcount and spending requirements. With 24 weeks, you have more payrolls, monthly rent and

other expenses.

Bottom Line: If headcount and spending allow you to get full forgiveness after the 8-week period, then why risk waiting? Here at Roth&Co, we are doing the calculations for our clients now to determine the best choice. Unless you do the appropriate calculations, you will not have the data required to make a wise decision. Due to the current safe harbor, many businesses are able to apply for full forgiveness using a period significantly less than 24-weeks.

Frequently Asked Questions

Is there a deadline to apply for forgiveness?

At this point there is no clear deadline, but you will be required to start making payments to your bank 10 months after your covered period has ended.

When will I know if my loan is forgiven?

Your lender has 60 days to make a decision and inform the SBA, who then has 90 days to review, for a total of up to 150 days before a final decision is made. Keep all of your documentation on file for 6 years in case of an audit by the SBA.

Can you lay off your employees right after your covered period?

Yes.

Other Related Issues

- The amount of EIDL Advance Grant (the portion that doesn't have to be paid back) will be reduced from your PPP forgiveness.
- If you received a PPP loan (whether or not it was forgiven), you are no longer eligible for the employee retention credit.

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