Small Business Owner Solutions Under COVID-19

Why now may be the time to consider this tactic

The CARES Act, introduced in response to the COVID-19 pandemic, includes provisions to provide economic relief to affected small business owners.

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With the COVID-19 pandemic necessitating social distancing, many businesses have seen their consumer foot traffic and revenue from purchases sharply dwindle, if not dry up altogether. The small business owner is faced with several decisions that impact not only the short and long term financial future of their business, but also the financial well-being of their employees and their own personal financial health.

You can play a role in being a trusted advisor to our business owner clients, bringing to light the options they have and coordinating the team of professionals it takes to impactfully serve the business owner in this trying time.

One of the first concerns that will need to be addressed is that of immediate Cash Flow. While there are several viable options to access cash personally (via life insurance cash value borrowing, home equity lines, etc.), we must also be aware of the cash flow funding available via government sources.

There are a variety of programs the government has put into place to provide Small Businesses, those with less than 500 employees, with liquidity and employee retention opportunities.

These programs include:

1. Paycheck Protection Program
2. Economic Injury Disaster Loans
3. Paid Sick and Family Leave
4. Employee Retention Credit
5. Payroll Tax Deferral

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PAYCHECK PROTECTION PROGRAM

One of the key provisions of the CARES Act is the Paycheck Protection Program (PPP), which is intended to provide economic relief to Small Business Owners through a loan forgiveness program. Under the PPP, small businesses, sole proprietors, independent contractors, and self-employed individuals that were in operation on February 15, 2020 can apply for a loan equal to the lesser of:

1. Average monthly payroll* (in most cases, the average monthly payroll in calendar year 2019) multiplied by 2.5, or

2. $10,000,000

*For seasonal businesses, the Applicant may elect to use average monthly payroll for the time period between 2/15/19 and 6/30/19; For new businesses, the Applicant may use the time period from 1/1/20 to 2/29/20.

Payroll costs include:

- Salary, wages, commissions and tips (capped at $100,000 on an annualized basis per employee)
- Paid leave
- Healthcare payments
- Retirement benefit payments
- State and Local taxes assessed

Payroll costs exclude:

- Compensation of an individual employee in excess of an annual salary of $100,000 as prorated for the covered period
- Qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Response Act
- Qualified family leave wages for which a credit is allowed under the Families First Coronavirus Response Act

The PPP loan can then be used to cover:

- Payroll costs (capped at $100,000 on an annualized basis per employee)
- Group healthcare benefits
- Employee salaries, wages, commissions
- Mortgage interest on loan set up prior to February 15th, 2020
- Rent on a lease in force before February 15th, 2020
- Utilities where service began before February 15th, 2020
- Debt interest incurred before the covered period

In addition to completing the PPP application, the Lender may request payroll registers including the following information:

- Gross wages for employees, including officers if paid W-2 wages
- Paid time off for each employee
- Vacation pay for each employee
- Family medical leave pay for each employee

- State and local taxes assessed on employees' compensation
- 2019 IRS Quarterly 940, 941 or 944 payroll tax reports
- 1099s for independent contractors for a twelve-month period
- Documentation showing all health insurance premiums paid by the company owners under a group health plan (including all employees and owner information)
- Documentation of all retirement plan funding paid by the company's owners (including 401K plans, Simple IRA, SEP IRA's, but excluding funding from employees)
- Financial statements
- Business Tax Returns

Assuming the Small Business Administration approves the two-year loan, the interest rate on the loan is 1% and principal and interest can be deferred for six months, however the interest would accrue during this period of time.

The principal of the loan will be forgiven in an amount equal to the following costs incurred during the eight weeks after the loan is originated:

- Payroll costs (capped at $100,000 on an annualized basis per employee)
- Mortgage interest
- Rent
- Utilities

However, if more than 25% of the loan is used to cover non-payroll costs, a proportional amount of the loan will not be forgiven. In addition, the loan forgiveness amount will be reduced by the amount of reduction in salaries or wages of any employee (excluding employees with annualized pay greater than $100,000) that is in excess of 25% for any employee during the covered period, compared to the most recent quarter. You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

To determine the loan forgiveness amount, there is a calculation that will need to be run by the Business Owner's tax professional, and is based on two different calculations and chosen by the Business Owner:

1. Forgiveness eligible costs

   X

   <u>Average Full Time Employees per month during the covered period</u>

   Average Full Time Employees per month (Feb. 15th, 2019 - June 30th, 2019)

2. Forgiveness eligible costs

   X

   <u>Average Full Time Employees per month during the covered period</u>

   Average Full Time Employees per month (Jan. 1st, 2020 – Feb. 29th, 2020)

Baird does not provide tax or legal advice. Please consult your tax or legal advisor.

Any amount forgiven is excluded from the business' gross income, but the expenses paid using the loan proceeds are still deductible on their 2020 tax return.

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ECONOMIC INJURY DISASTER LOANS

The Small Business Administration (SBA) provides disaster loans to small businesses suffering from a disaster and with the entire country now qualifying as a disaster area, Economic Injury Disaster Loans (EIDL) are another alternative for business owners to consider.

The EIDL program provides small businesses up to $2 million in working capital loans and with the recent enactment of the CARES Act, all loan payments have been deferred by six months. In addition, the CARES Act provides for an emergency advance, which will be made within 3 days of the request. The emergency advance is a $10,000 tax free grant from the government. The emergency grant can be used to for:

- Paid sick leave
- Payroll
- Increased material costs
- Rent/mortgage payments and
- Repaying obligations that cannot be met due to a decline in revenue

The emergency advancement does not need to be repaid if the loan is subsequently denied by the SBA. To the extent that the SBA does grant an EIDL loan, the loan can be refinanced with a PPP loan. However, the amount of the emergency advancement will not be forgiven under the PPP.

PAID SICK AND FAMILY LEAVE

Under the Families First Coronavirus Response Act, Small Businesses can receive a refundable employer FICA tax credit up to:

- Sick Leave: Lesser of wages + healthcare costs or $511/day (up to 10 days) and includes employees subject to government quarantine or isolation order, employees advised by a healthcare professional to self-quarantined or an employee that is experiencing symptoms and seeking diagnosis. The sick leave pay is not subject to the employee's portion of the 6.2% FICA tax on Social Security

- Family Leave: Up to $200/day with a $10,000 maximum for all calendar quarters and includes taking care of a family member ordered or advised to quarantine or taking care of a child following a school closing

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EMPLOYEE RETENTION CREDIT

The CARES Act grants eligible employers a refundable credit against payroll taxes equal to 50% of qualified wages paid to employees during the period March 12, 2020 and December 31, 2020. The credit is available to employers who:

1. Have fully or partially closed their business due to the COVID-19 shutdown, or
2. Have experience gross receipts decline by more than 50% when compared to the same quarter in the previous year.

The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is $10,000, so that the maximum credit for qualified wages paid to any employee is $5,000. The credit can be claimed on the employer's federal employment tax returns (usually Form 941).

If the Eligible Employer averaged more than 100 full-time employees in 2019, qualified wages are wages paid to an employee for the time that the employee is **not providing services** due to the economic hardships described in (1) and (2) above. For these employers, qualified wages taken into account for an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

If the Eligible Employer averaged 100 or fewer full-time employees in 2019, qualified wages are the wages paid to **any employee** during any period of economic hardship described in (1) and (2) above.

The amount of qualified wages for which an Eligible Employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA. Also, an Eligible Employer may not receive the Employee Retention Credit if the Eligible Employer receives a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act. Therefore, an Eligible Employer that receives a paycheck protection loan should **not** claim Employee Retention Credits.

PAYROLL TAX DEFERRAL

Under the CARES Act, Employers can now defer the payment of the employer portion of 2020 FICA taxes incurred between March 27, 2020 and December 31, 2020. If deferred, 50% of the amount is due December 31st, 2021 and the residual balance is due on December 31st, 2022.