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Are you or someone you know a small business owner? If so, please read and share the information below.

Even the most prepared businesses need to plan for what happens if cash flow decreases or runs out. With the uncertainty of how COVID-19 will affect your business long term, you may be wondering how long you can continue to pay your employees or rent.

Now that the CARES Act has been enacted, your business may be eligible for loans and advances designed to keep you in business. Additionally, President Trump's national emergency declaration on March 13th triggered tax code Section 139, which allows employers to exclude disaster assistance payments from employee's income.

See below for eligibility and application information on Economic Injury Disaster Loans and Paycheck Protection Program Loans, as well as how tax code Section 139 can help you assist your employees.

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Economic Injury Disaster Loans (EIDL)

The CARES Act temporarily expands eligibility for EIDLs administered by the Small Business Administration and provides an emergency advance of up to $10,000 to small businesses and private non-profits harmed by COVID-19. The advance will be available within 3 days of applying for an EIDL. **You will not have to repay the advance, even if your application for a loan is denied.** The advance may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent, and mortgage payments.

Who is eligible?

In addition to the entities that are currently eligible for SBA disaster loans (small businesses, private non-profits, and small agriculture cooperatives), eligibility is temporarily expanded to include:

- Business entities with 500 or fewer employees
- Sole proprietorships, with or without employees
- Independent contractors
- Cooperatives and employee owned businesses
- Tribal small businesses
- Private non-profits of any size

You must have been in business as of Jan. 31, 2020, and the expanded eligibility criteria and the emergency advance are only available between Jan. 31, 2020, and Dec. 31, 2020.

How do I apply?

Click here to apply for an EIDL. You can request an emergency advance of $10,000, and the SBA will provide the advance within 3 days of receiving your application. A local Small Business Development Center or Women's Business Center can help guide you through the loan application process.

Can I apply for other SBA loan programs?

If you apply for an EIDL and the advance, you can still apply for a Paycheck Protection Program loan (see next page). However, the amount forgiven under a Paycheck Protection loan will be decreased by the $10,000 advance.

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Paycheck Protection Program Loan

Paycheck Protection Program loans are 100% federally-guaranteed loans available under a new subsection of the Small Business Act designed to help employers retain their employees and help businesses cover their near-term operating expenses during the COVID-19 crisis.

Who is eligible?

- A small business with fewer than 500 employees (includes all employees full-time, part-time, and any other status)
- A small business that otherwise meets the SBA's size standard
- A 501(c)(3) with fewer than 500 employees
- An individual who operates as a sole proprietor
- An individual who operates as an independent contractor
- An individual who is self-employed who regularly carries on a trade or business
- A Tribal business concern that meets the SBA size standard
- A 501(c)(19) Veterans Organization that meets the SBA size standard

Note that if you are in the accommodation and food services sector (NAICS 72), the 500-employee rule is applied on a per physical location basis. Also, if you are operating as a franchise or receive financial assistance from an approved Small Business Investment Company, the normal affiliation rules do not apply.

You must have been in business as of February 15, 2020 and have had employees or independent contractors you paid. Unlike other SBA loans, you are not required to prove you cannot receive credit elsewhere in order to receive funds provided under this program.

What are the loan terms?

- Up to one year deferral of principal and interest payments
- Available for up to a 10-year term (amortized) at an interest rate not to exceed 4%
- Some traditional SBA requirements are waived for this loan program, including:
    - No personal guaranties of shareholders, members or partners
    - No collateral
    - No proving recipient cannot obtain funds elsewhere
    - No SBA fees (may still have to pay lender processing fee)
    - No prepayment fee

Are there loan fees?

There are no borrower or lender fees for participation.

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Paycheck Protection Program Loan (continued)

What can the loans can be used for?

- Payroll costs
    - Includes compensation to employees, such as salary, wage, commissions, cash, etc.; paid leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; and compensation to sole proprietors or independent contractors (including commission-based compensation) who earn up to $100,000 in 1 year, prorated for the covered period
    - Excludes individual employee compensation above $100,000 per year, prorated for the covered period; certain federal taxes; compensation to employees whose principal place of residence is outside of the US; and sick and family leave wages for which credit is allowed under the Families First Act
- Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Payments of interest on mortgage obligations
- Rent/lease agreement payments
- Utilities
- Interest on any other debt obligations incurred before the covered period

How much of a loan can I receive?

- No loans may be larger than $10 million.
- Loans are designed to cover two-and-a-half months of payroll, using a calculation of the average monthly payments during the last year period before the loan is issued. For example, if your annual payroll payment was $1.2 million, you can request a loan of up to $250,000 ($1,200,000/12 = $100,000; $100,000 X 2.5 = $250,000).
    - Allowable payroll costs for employers are the sum of payments of any compensation with respect to employees that is a: salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical, or sick leave; allowance for dismissal or separation; payment required for the provisions of group health care benefits including insurance premiums; payment of any retirement benefit; and payment of state or local tax assessed on the compensation of the employee.
    - Allowable payroll costs for sole proprietors, independent contractors, and self-employed individuals are the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than $100,000 in one year, as pro-rated for the covered period.

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Paycheck Protection Program Loan (continued)

Can the loan be forgiven?

You must apply for forgiveness with the lender servicing the loan. Lenders have 60 days to review and make a determination. Any portion of the loan that is forgiven will be excluded from gross income. Section 1106 of Title I outlines forgiveness of loans obtained under the CARES Act. Specifically:

- The forgiven amount will be equal to the amount actually paid for payroll costs, salaries, benefits, rent, utilities and mortgage interest during the eight weeks following disbursement of the loan. Additional wages paid to tipped employees under Section 3(m)(2)(A) of the Fair Labor Standard Acts may also be forgiven.
- The forgiveness amount is subject to reduction if there is a workforce reduction or a reduction in the salary or wages of an employee.
- The loan forgiveness Incentivizes companies to retain employees by reducing the amount forgiven proportionally by any reduction in employees retained compared to the prior year.
- To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- Reductions in workforce, salaries and wages that occur from February 15, 2020 to April 26, 2020 will be disregarded for purposes of reducing the forgiveness amount so long as the reductions are eliminated by June 30, 2020.
- The forgiven amounts are not taxable as income to the borrower.

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Disaster Assistance Payments (Tax Code Section 139)

President Trump's national emergency declaration on March 13 triggered tax code Section 139, which enables employers to make non-taxable qualified disaster relief payments to employees for reasonable and necessary expenses resulting from the coronavirus pandemic. It allows employers to provide direct financial assistance to employees impacted by a qualified disaster without adverse tax consequences.

What qualifies as a reimburseable expense?

Reimbursable expenses associated with the coronavirus may include:

- Unreimbursed medical expenses including co-pays, deductibles, vitamins, and supplements
- Increased expenses associated with being quarantined at home (e.g., increased utilities and home office expenses, as discussed below)
- Expenses associated with setting up or maintaining a home office such as enhanced internet connections, computer monitors, laptops, printers, office supplies, etc. (even if such expenses would not otherwise satisfy the home office deduction requirements)
- Housing for additional family members, (e.g., transportation and living expenses for college students returning home including duplicative meal expenses)
- Nonperishable food purchases/reserves
- Increased childcare expenses
- Expenses to enhance mental health and physical well-being from social distancing such as meditation apps and home health fitness
- Alternative commuting means in lieu of mass transit

What are nonreimbursable expenses?

- Payments for expenses that are not reasonable and necessary
- Payments that constitute an income replacement program (i.e., a payment for lost wages, lost business income, or unemployment benefits)
- Payments that are reimbursed or reimbursable by insurance or otherwise

Are there deduction limitations?

Qualified disaster relief payments should be fully deductible. Even though the payments are neither taxable wages nor gross income, employers may reasonably take the position that the payments remain fully deductible to the same extent that they would have been if they were otherwise included in gross income or taxable wages. However, Section 139(h) denies "double benefits" with the likely result that self-employed individuals and other owner-employees may find their tax deductions limited if they are actually a recipient of a qualified disaster relief payment.

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Disaster Assistance Payments (Tax Code Section 139) - continued

What is the dollar limit?
Section 139 does not impose a dollar limit. An employer could provide an affected employee with a six-figure payment as long as the expenses in question are reasonable and necessary.

Is plan documentation necessary?
A written plan document is not required or recommended. Nevertheless, given the benefits of tax-free status for qualified disaster relief payments, employers should consider adopting an administrative system that validates such payments meet the Section 139 requirements. Such a system can include an application form and an affirmative statement from the employee that the requested funds are necessary for expenses associated with the coronavirus and confirms that such expenses are not reimbursable by insurance.

Additional information about Section 139:

- Qualified disaster relief payments are excluded from gross income and wages for payroll tax purposes. In addition to being exempt from payroll taxes, such payments are not subject to information reporting on either Forms W-2 or Forms 1099-MISC.
- Payments are not subject to discrimination testing.
- Section 139 also encompasses cash advances to pay for covered expenses that the employer reasonably expects the employee to incur.

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