This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Second Draw Paycheck Protection Program ("PPP") Loans: How 501(c)(3)s Calculate Maximum Loan Amounts and What Documentation to Provide

Earlier this month, the PPP was reopened to accept applications from borrowers applying for their second PPP loan ("Second Draw PPP Loan"). On January 19, 2021, the Small Business Administration ("SBA"), in consultation with the Department of the Treasury, provided guidance to assist businesses in calculating their revenue reduction and payroll costs (and the relevant documentation that is required to support each set of calculations) for purposes of determining the maximum amount of a Second Draw PPP Loan. See our article on Second Draw PPP Loans for an overview of the program.

Gross Receipts

1. **Definition:** The guidance defines gross receipts for nonprofit organizations as the gross amount received by the organization during its annual accounting period from all sources without reduction for any costs or expenses including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amounts. Thus "gross receipts" includes, but is not limited to:

    (i) the gross amount received as contributions, gifts, grants, and similar amounts without reduction for the expenses of raising and collecting such amounts,

    (ii) the gross amount received as dues or assessments from members or affiliated organizations without reduction for expenses attributable to the receipt of such amounts,

    (iii) gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization qualifies for exemption, the net income or loss from which may be required to be reported on Form 990-T),

    (iv) the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and

(v) the gross amount received as investment income, such as interest, dividends, rents, and royalties.[1]

In addition, "gross receipts" does NOT include PPP Loan proceeds that are forgiven (or EIDL advances).

2. **Reference Period to Use:** The reference periods the organization should use to demonstrate at least a 25 percent gross receipts reduction to qualify for a Second Draw PPP Loan depend on how long the Applicant has been in business and are listed below:

   - For all organizations (except those satisfying the conditions below), the organization must demonstrate that gross receipts in any calendar quarter of 2020 were at least 25% lower than the same quarter of 2019. Alternatively, organizations may compare annual gross receipts in 2020 with annual gross receipts in 2019 if they were in business in 2019.

   - For organizations not in business during the first and second quarters of 2019 but in operation during the third and fourth quarters of 2019, organizations must demonstrate that gross receipts in any quarter of 2020 were at least 25% lower than during either the third or fourth quarters of 2019.

   - For organizations not in business during the first, second, and third quarters of 2019 but in operation during the fourth quarter of 2019, organizations must demonstrate that gross receipts in any quarter of 2020 were at least 25% lower than the fourth quarter of 2019.

   - For organizations not in business during 2019 but in operation on February 15, 2020, organizations must demonstrate that gross receipts in the second, third, or fourth quarter of 2020 were at least 25% lower than the first quarter of 2020.

3. **Reference Period Documentation:** Whichever reference period you use, you will need one set of documents to prove your reduction in gross receipts. One set of any of the following is required:

   - Quarterly financial statements for the organization. If the financial statements are not audited, the organization must sign and date the first page of the financial statement and initial all other pages, attesting to their accuracy. If the financial

[1] This is the same definition as Internal Revenue Code §6033.

statements do not specifically identify the line item(s) that constitute gross receipts, the organization must identify which line item(s) constitute gross receipts.

- Quarterly or monthly bank statements for the organization showing deposits from the relevant quarters. If it's not clear, the organization must identify which deposits listed on the bank statement constitute gross receipts.

- If using an annual reference period, whatever version of the Form 990 the organization files is required. If the organization has not yet filed a tax return for 2020, the organization must fill out the return forms, compute the relevant gross receipts, and sign and date the return, attesting that the values that enter into the gross receipts computation are the same values that will be filed on the organization's Form 990. Note, however, organizations that use a fiscal year different from the calendar year may document a reduction in gross receipts with its Form 990 only if its fiscal year contains all of the second, third, and fourth quarters of the calendar year (i.e., have a fiscal year start date of February 1, March 1, or April 1).

If you are applying for a Second Draw PPP Loan of more than $150,000, you must provide one of the above sets of documents when you submit your loan application. If you are applying for a loan of $150,000 or less, you must provide documentation substantiating the reduction in gross receipts before or at the time you seek loan forgiveness (or upon SBA request). The documentation must clearly identify both of the reference quarters (if not using annual comparison), must contain the gross receipts amounts for both quarters, and must support the amounts provided.

Payroll Costs

1. **Reference Period:** The SBA guidance uses calendar year 2019 as the reference period for determining payroll costs used to calculate loan amounts. ***However, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their Second Draw PPP Loan amount calculation.*** All payroll costs must be from the same calendar year.

2. **Reference Period Documentation:** Documentation, including IRS forms, must be supplied for the selected reference period. If a borrower is using the same lender and same payroll timeframe as it used for its First Draw PPP Loan and already submitted the required payroll documentation to the lender, no additional payroll documentation is required to be submitted with its Second Draw PPP Loan application. However, if you used payroll costs from the prior precise 12-month period when computing your First

Draw PPP Loan amount, you may not continue to use those figures to compute your Second Draw PPP Loan amount. You can calculate the amount for your Second Draw PPP Loan amount using calendar year 2019 or calendar year 2020 payroll costs.

3. Determining Payroll Costs for Nonprofits in Existence prior to February 15, 2019

The following methodology should be used to calculate the maximum amount that can be borrowed for eligible nonprofit organizations (those that file a Form 990, 990EZ or 990N):

Step 1: Compute 2019 payroll costs by adding the following:

- 2019 gross wages paid to your employees whose principal place of residence is in the United States, up to $100,000 per employee, which can be computed using:
    - 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter,
    - Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, and
    - Minus (i) any amounts paid to any individual employee in excess of $100,000, and (ii) any amounts paid to any employee whose principal place of residence is outside the U.S.;
- 2019 employer group health, life, disability, vision, and dental insurance contributions (if you file a Form 990, the amount is the portion of Part IX line 9 attributable to those contributions);
- 2019 employer retirement contributions (If you file a Form 990, the amount is on Part IX line 8); and
- 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

Step 2: Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).

Step 3: Multiply the average monthly payroll costs from Step 2 by 2.5.

The organization's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with the filed IRS Form 990 Part IX (if applicable) or other documentation of any retirement and group health, life, disability, vision, and dental insurance contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date. Nonprofits that file Form 990-EZ should rely on that form, and nonprofits that file Form 990N should provide other documentation to substantiate these costs.

Other documentation that can be used to substantiate payroll costs include: Form W-2s and Form W-3 or payroll processor reports, including quarterly and annual tax reports, in lieu of IRS Form 941. Additionally, very small businesses that file an annual IRS Form 944 should rely on and provide IRS Form 944 instead of IRS Form 941. Also, records from a retirement administrator to document employer retirement contributions and records from a health insurance company or third-party administrator for a self-insured plan to document employer health insurance contributions may be used.

4. Determining Payroll Costs for Nonprofits Not in Existence for full one-year period preceding February 15, 2020

The following methodology should be used to calculate the maximum amount that can be borrowed:

Step 1: Compute total payroll costs from when first in operation in 2019 or 2020 through the end of calendar year 2020 by <u>adding</u> the following:

- Gross wages paid to your employees whose principal place of residence is in the United States, up to $100,000 per employee annualized, which can be computed using:
  - Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter the business was in operation,
  - Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips,
  - Minus (i) any amounts paid to any individual employee in excess of the product of $8,333 and the number of months in operation through 2020, and (ii) any amounts paid to any employee whose principal place of residence is outside the United States;

- Employer group health, life, disability, vision, and dental insurance contributions;
- Employer retirement contributions; and
- Employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

Step 2: Calculate the average monthly payroll costs (divide the amount from Step 1 by number of months in operation from 2019 through the end of 2020).

Step 3: Multiply the average monthly payroll costs from Step 2 by 2.5.

The organization's Form 941s and state quarterly wage unemployment insurance tax reporting form from each quarter the entity was in operation (or equivalent payroll processor records or IRS Wage and Tax Statements), along with documentation of any retirement and group health, life, disability, vision, and dental insurance contributions, must be provided to substantiate the applied-for Second Draw PPP Loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date.

5. **Additional Payroll Cost Considerations:**

   - ***Capturing all Pre-Tax Employee Contributions:*** There are other pre-tax employee contributions for fringe benefits (besides employee contributions for health insurance) that may have been excluded from Form 941 Taxable Medicare wages & tips that are part of employee gross pay such as employee contributions and deductions from pay for flexible spending arrangements (FSA) or other nontaxable benefits under a section 125 cafeteria plan, qualified transit or parking benefits (up to $270 a month), and group life insurance (for up to $50,000 of coverage). However, pre-tax employee contributions to retirement plans are included in Taxable Medicare wages & tips and should not be added to that figure to calculate gross pay.

   - ***Accounting for Federal Taxes:*** Payroll costs are calculated on a gross basis without regard to federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer. However, payroll costs do not include the employer's share of payroll tax. For example, the wages of an employee who earned $4,000 per month in gross wages, from which $500 in federal taxes was withheld, count as $4,000 in payroll costs. However, the employer-side federal payroll taxes imposed on the $4,000 in wages are excluded from payroll costs under the statute.