

**CARE ACT AND
FAMILIES FIRST CORONAVIRUS RESPONSE ACT
EXPLANATION AND ANALYSIS
MITCH REITMAN**



5408Woodway Drive
Fort Worth, Texas 76133
817-698-9999
WWW.Reitman.US



- General Accounting, Tax Preparation and Representation
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PAYROLL PROTECTION PROGRAM

The Paycheck Protection Program covers businesses with 500 or fewer employees (unless the covered industry's SBA size standard allows more than 500 employees), which were operational on Feb. 15, 2020. The size standards are tested on an affiliate basis—combined with all businesses under common control (50% ownership or contractual control)—counting on an aggregate basis towards the size test.

USES OF FUNDS

- Payroll support (including paid sick or medical leave);
- · Employee salaries;
- · Mortgage, rent and utility payments;
- · Insurance premiums; and
- · Other debt obligations.

WHO QUALIFIES

Less than 500 employees

In business on February 15, 2020

LOAN AMOUNT

The maximum loan amount available to a borrower will be the lesser of \$10 million or the average total monthly payments for payroll costs of the business during the 1-year period before the loan is made by 2.5. Payroll costs include salary, wage, vacation, parental, family, medical or sick leave, severance, health care benefits, and local taxes. Thus, payroll costs include much more than aggregate salary. For example, if the loan is made on April 1, 2020, and payroll costs for the period April 1, 2019, to April 1, 2020, were 50,000, the maximum loan amount would be \$125,000.

LOAN FORGIVENESS

Under the Paycheck Protection Program Borrowers may be eligible for loan forgiveness in an amount equal to the amount spent by the borrower during the eight-week period following the origination date of the loan on:

- Payroll costs (which may include employees that make over \$100,000 but prorated);
- Interest payment on any mortgage incurred before Feb. 15, 2020;
- Rent on any lease in force before Feb. 15, 2020; and
- Utilities for which service began before Feb. 15, 2020.

OTHER TYPES OF LOANS

- Economic Injury Disaster Loan (EIDL).
- Direct from Sba
- 3.75 percent for small businesses for up to \$2 million and a maturity of up to 30 years.
- Terms are determined on a case-by-case basis, based upon each borrower's ability to repay the loans.
- Applications are available now on the SBA's website.
- Importantly, under the CARES Act, a borrower that receives a Paycheck Protection Program loan for employee salaries, payroll support, mortgage payments and/or other debt obligations would not be able to receive an EIDL for the same purpose, or co-mingle funds from another loan for the same purpose. However, the Paycheck Protection loan may be used to repay an EIDL loan. The CARES Act waives the requirement for personal guarantees on EIDL loans amounts less than \$200,000 and borrower is not required to have been in business for at least 1 year. The requirement that borrowers are unable to obtain credit from other sources is also waived on EIDL loans
- EIDL loans, as modified by the CARES Act, will be available until December 31, 2020 where the Paycheck Protection loan program runs only until June 30, 2020. For purposes of the EIDL loans the definition of "small business," for the purposes of EIDL loan, include a company with no more than 500 employees, but does not waive the affiliation rules for Sector 72 businesses (hospitality and restaurant businesses).
- A \$10,000 emergency advance (within three days of submitting an application) will be paid while an applicant's loan application is pending. This advance is not required to be repaid.
- EIDL loans may be used to pay fixed debts, payroll, accounts payable and other costs, but are not intended to replace lost sales or profits and cannot be used for certain purposes, including to refinance debt, make payments on loans owed to another federal agency, to pay tax penalty obligations, repair physical damages, or to pay dividends to stockholders.

OTHER TYPES OF LOANS

- SBA Express Loan
- The CARES Act increases the maximum SBA Express loan—a loan whose application SBA will process in 36 hours—from \$350,000 to \$1 million through December 31, 2020.
- Other elements of the CARES Act Which Are Favorable to Business

EMPLOYEE RETENTION TAX CREDIT

- refundable payroll tax credit for 50 percent of wages paid by employers to employees from March 12, 2020 to January 31, 2021.
- available to employers whose (1) operations were fully or partially suspended, due to a COVID-19 related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES

- Employers and self-employed individuals may defer payment of the employer share of the Social Security tax they otherwise are responsible for paying. Note, this is only the employer share (6.2%) of payroll subject to limitations.

PAID LEAVE

U.S. businesses with fewer than 500 employees can use the funds to provide employees with paid leave, either for the employee's own health care needs or to care for their family members. Eligible employers will be able to claim these credits based on qualifying leave they provide between the effective date and Dec. 31, 2020. Equivalent credits are available to self-employed individuals based on similar circumstances.

SICK LEAVE

- For COVID-19-related reasons, employees will be able to receive up to 80 hours of paid sick leave and expanded paid child care leave when employees' children's schools are closed or child care providers are unavailable. Health insurance costs are included in the credit. Employers won't face any payroll tax liability. Employers will receive 100 percent reimbursement for paid leave.

CREDITS AVAILABLE

- To take advantage of the paid leave credits, businesses can keep and access funds they would otherwise pay to the IRS in payroll taxes. If those amounts aren't enough to cover the cost of paid leave, employers can seek an expedited advance from the IRS by submitting a streamlined claim form that will be released next week.

REFUNDABLE CREDITS

- For an employee who's unable to work because of coronavirus quarantine or self-quarantine or has coronavirus symptoms and is seeking a medical diagnosis, eligible employers can receive a refundable sick leave credit for sick leave at the employee's regular rate of pay, up to \$511 per day and \$5,110 in the aggregate, for a total of 10 days.

CHILD OR OTHER CARE

For an employee who's caring for someone with coronavirus, or is caring for a child because the child's school or child care facility is closed, or the child care provider is unavailable due to coronavirus, eligible employers can claim a credit for two-thirds of the employee's regular rate of pay, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

REFUNDABLE CHILD CARE LEAVE CREDIT

- Along with the sick leave credit, for an employee who's unable to work because of a need to care for a child, eligible employers can receive a refundable child care leave credit. The credit is equal to two-thirds of the employee's regular pay, capped at \$200 per day or \$10,000 in the aggregate. Up to 10 weeks of qualifying leave can be counted towards the child care leave credit. Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period.

RELATED IRS PROVISIONS

- The IRS has issued Notice 2020-18 which extends deadlines for the filing of, and for the payment of tax related to, the following forms.
- Form 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR, 1040-SS (individual income tax)
- Form 1041, 1041-N, 1041-QFT (trust returns)
- Form 1120, 1120-C, 1120-F, 1120-FSC, 1120-H, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT, 1120-RIC, 1120-SF (corporate and other entities)
- Form 8960 (Net Investment Income Tax)
- Form 8991 (Tax on Base Erosion Payments for Taxpayers with Substantial Gross Receipts)

RELATED IRS PROVISIONS

- Does not extend the time for payroll and other informational returns
- If a return is not filed by July 15th, an extension must be filed or it will be considered delinquent on July 15th.
- Does not address fiscal year returns due on May 15 or June 15.
- Does not address State Income or Franchise returns
- Extends the IRA & HSA contribution deadline to July 15, 2020
- Does not provide relief from failure to make estimated installments in 2019

RELATED ISSUES

- At this point the Bill provides no specific relief for self employed and “independent contractors.” If you are treating employees as independent contractors, or, if you are contracting with individuals who truly are independent contractors, but you do not have a **Contract** with them, be ready to get a notice from the IRS.

Why??

I

RELATED ISSUES

- Independent Contractors are not, at this point, eligible for relief under the Bill
- Independent Contractors who have no wages are not eligible for many credits including the Child Credit
- Independent Contractors are not eligible for sick leave, family leave, and other employee related provisions.
- You cannot take a credit for payments made to independent contractors.

FORM 8919

Form 8919		Uncollected Social Security and Medicare Tax on Wages		OMB No. 1545-0074	
Department of the Treasury Internal Revenue Service		Information about Form 8919 and its instructions is at www.irs.gov/form8919 . Attach to your tax return.		2016 Attachment Sequence No. 61	
Name of person who must file this form. If married, complete a separate Form 8919 for each spouse who must file this form.				Social security number	
Who must file. You must file Form 8919 if all of the following apply. <ul style="list-style-type: none">• You performed services for a firm.• You believe your pay from the firm wasn't for services as an independent contractor.• The firm didn't withhold your share of social security and Medicare taxes from your pay.• One of the reasons listed below under Reason codes applies to you.					
Reason codes: For each firm listed below, enter in column (c) the applicable reason code for filing this form. If none of the reason codes apply to you, but you believe you should have been treated as an employee, enter reason code G, and file Form SS-8 on or before the date you file your tax return.					
A I filed Form SS-8 and received a determination letter stating that I am an employee of this firm.					
C I received other correspondence from the IRS that states I am an employee.					
G I filed Form SS-8 with the IRS and haven't received a reply.					
H I received a Form W-2 and a Form 1099-MISC from this firm for 2016. The amount on Form 1099-MISC should have been included as wages on Form W-2. (Don't file Form SS-8 if you select reason code H.)					
(a) Name of firm	(b) Firm's federal identification number (see instructions)	(c) Enter reason code from above	(d) Date of IRS determination or correspondence (MM/DD/YYYY) (see instructions)	(e) Check if Form 1099-MISC was received	(f) Total wages received with no social security or Medicare tax withholding and not reported on Form W-2
1				<input type="checkbox"/>	
2				<input type="checkbox"/>	
3				<input type="checkbox"/>	
4				<input type="checkbox"/>	
5				<input type="checkbox"/>	
6 Total wages. Combine lines 1 through 5 in column (f). Enter here and include on Form 1040, line 7; Form 1040NR, line 8; or Form 1040NR-EZ, line 3				6	
7 Maximum amount of wages subject to social security tax				7	118,500.00
8 Total social security wages and social security tips (total of boxes 3 and 7 on Form(s) W-2), railroad retirement (RRTA) compensation (subject to the 6.2% rate), and unreported tips subject to social security tax from Form 4137, line 10. See instructions				8	
9 Subtract line 8 from line 7. If line 8 is more than line 7, enter -0- here and on line 10				9	
10 Wages subject to social security tax. Enter the smaller of line 6 or line 9				10	
11 Multiply line 10 by .062 (social security tax rate for 2016)				11	
12 Multiply line 6 by .0145 (Medicare tax rate)				12	
13 Add lines 11 and 12. Enter here and on Form 1040, line 58; Form 1040NR, line 56; or Form 1040NR-EZ, line 16. (Form 1040-SS and Form 1040-PR filers, see instructions)				13	

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 37730B Form **8919** (2016)

Form **SS-8**
(Rev. May 2014)

Department of the Treasury
Internal Revenue Service

**Determination of Worker Status for Purposes
of Federal Employment Taxes and
Income Tax Withholding**

► Information about Form SS-8 and its separate instructions is at www.irs.gov/formss8.

OMB No. 1545-0004

For IRS Use Only:
Case Number:

Earliest Receipt Date:

Name of firm (or person) for whom the worker performed services		Worker's name	
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)	
Trade name	Firm's e-mail address	Worker's daytime telephone number	Worker's e-mail address
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)

Note. If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer. ►

Disclosure of Information

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See *Privacy Act and Paperwork Reduction Act Notice* in the separate instructions for more information. **If you do not want this information disclosed to other parties, do not file Form SS-8.**

Parts I-V. All filers of Form SS-8 must complete all questions in Parts I-IV. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "Unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or worker's name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.

Part I General Information

- This form is being completed by: ☐ Firm ☐ Worker, for services performed _____ to _____.
(beginning date) (ending date)
- Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get workers' compensation benefits, or you were audited or are being audited by the IRS). _____
- Total number of workers who performed or are performing the same or similar services: _____
- How did the worker obtain the job? ☐ Application ☐ Bid ☐ Employment Agency ☐ Other (specify) _____
- Attach copies of all supporting documentation (for example, contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings). In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ _____.
If both Form W-2 and Form 1099-MISC were issued or received, explain why. _____
- Describe the firm's business. _____

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Cat. No. 16106T

Form **SS-8** (Rev. 5-2014)

PENDING LEGISLATION

- One of the proposals in the Republican plan for the current stimulus package currently under consideration is waiving the 10 percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes.

