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Covid-19 financial relief programs: Considerations for year-end planning



MAKING A DIFFERENCE IN MINNESOTA: ENVIRONMENT + FOOD & AGRICULTURE + COMMUNITIES + FAMILIES + YOUTH

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2

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Covid Stimulus Legislation

- I. Coronavirus Preparedness and Response Supplemental Appropriations Act (**\$8.3 billion**)
- II. Families First Coronavirus Response Act (**\$192 billion**)
- III. CARES Act (**\$2.2 trillion**)
- IV. Paycheck Protection Program and Health Care Enhancement Act (**\$484 billion**)



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What's our focus?

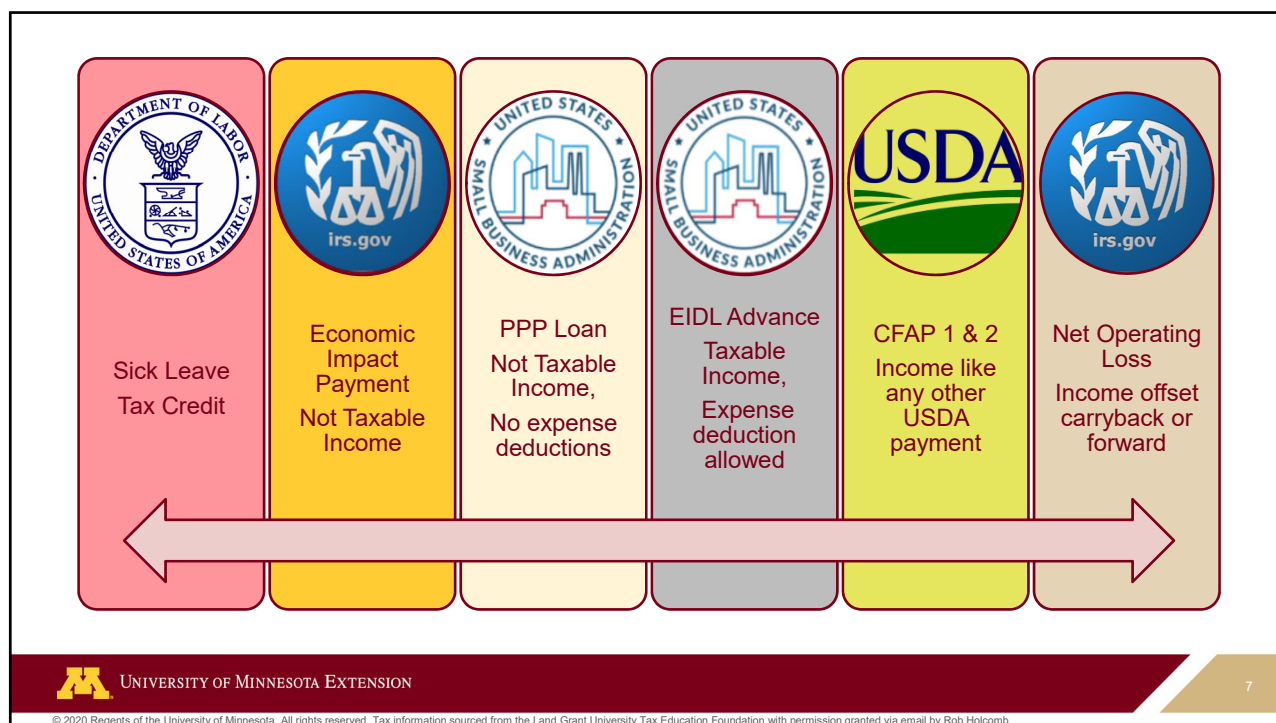
- Paid Sick Leave
- Economic Impact Payments – no 2019 income? 2020?
- PPP Forgiveness
- EIDL Advances and Loans
- CFAP 1 & 2
- NOLs



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Families First

Paid Sick Leave – Yep, it's mandatory for small businesses

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**Farmers
Need to
Notify
Employees**

DEPARTMENT OF LABOR
UNITED STATES OF AMERICA

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9



- Sick leave
- $\frac{2}{3}$ Sick leave
- $\frac{2}{3}$ FMLA*

*FBM Students likely exempt from this

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Yes, they need to provide paid Covid sick leave, but the IRS provides a 100% tax credit from April 1 to December 31.



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Required paid sick leave

The Emergency Paid Sick Leave Act portion requires employers with less than 500 employees to provide leave and guarantee pay capped at two levels.

- Employee: (Usual pay rate, capped at \$511, max of \$5,110)
 - Employee subject to governmental quarantine
 - Employee advised by medical professional to quarantine
 - Employee experiencing COVID-19 symptoms
- Employee CARING for persons (2/3 usual pay, capped at \$200/day, max of \$2,000)
 - Individual who is subject to quarantine
 - Son or daughter whose school or place of care is closed due to COVID-19
 - Employee is experiencing any other similar condition



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Required family medical leave

The Emergency Paid Sick Leave Act portion requires employers with less than 50 employees an exception from the expanded FMLA.

- Exemption applies if granting such leave jeopardizes the viability of the business, see list of three items to determine the exemption.
 - Provision of leave would result in small business's expenses exceeding business revenue
 - Absence of employee(s) would entail substantial risk to the business due to loss of special skills/knowledge
 - Not a sufficient number of employees to perform the work of the business by providing services to the business



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Claiming the credits

Eligible employers are entitled to receive a tax credit in the full amount of qualified sick leave wages plus allocable qualified health plan expenses paid between April 1 and December 31, 2020.

- Form 941
- Form 943
- Form 944
- CT-1



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Retention of deposits example

- Agribusiness, Inc. paid \$5,000 in sick leave to employees. The company was required to deposit \$8,000 in payroll taxes, including employee withholdings.
- Under FFCRA, Agribusiness, Inc. may use up to \$5,000 of the \$8,000 of taxes it was going to deposit via its 941 to make qualified leave payments.
- Therefore, they only need to deposit \$3,000 on their deposit date.



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Sick leave credits and the self-employed

- FFCRA provides equivalent leave credit amounts for self-employed individuals.
- An income tax credit offsets self-employment tax equal to either “qualified sick leave equivalent amount” or “qualified family leave equivalent amount”.
- Qualified Sick Leave tax credit is claimed on 1040 as a proportion of “average daily SE income”.



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Economic Impact Payments

A quick note...



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Economic Impact Payments - EIPS

- EIPs are “*credits against 2020 taxable income*”
- Money in April was an advanced payment based on 2019 or 2018 income
- Reconcile amount in 2020, if greater payment triggered in 2020, then taxpayer entitled to recover offset
- This is likely not relevant to many but we do have some high income farms in Finbin



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Paycheck Protection Program

What's the lowdown? We don't know.



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Paycheck Protection Program

- A **forgivable loan** for small businesses
- Covered 2.5 months worth of “payroll”

Two common scenarios:

- No employees, used + 2019 net income
- With employees, used 2019 payroll records



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Payroll percentage needed for forgiveness

- The Paycheck Protection Program Flexibility Act modified Treasury's early interim guidance from 75% to 60% for payroll costs.
- 40% of the PPP Loan may be used for other allowable business expenses.
- Proportionate amount of loan can still be forgiven if payroll expenditures are less than 60 percent.



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Payroll percentage example

- Feed Mill Co. obtained a \$200,000 PPP loan based on 2019 payroll costs. The company used \$100,000 on non-payroll costs & \$100,000 on payroll
- The amount which can be forgiven is $\$100,000 / 0.60 = \$166,667$



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Payroll costs Ineligible for forgiveness

- Cash compensation in excess of \$100,000 per individual employee or owner
- Payments to independent contractors
- Federal employment or withholding taxes
- Compensation to an employee whose principal residence is outside the US (H-2A workers)
- Qualified sick leave for which a credit is allowed
- Qualified family leave for which a credit is allowed



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Payroll costs eligible for forgiveness

- **Salary, wages, and tips** (or equiv comp), up to \$100,000 annualized pay per employee or employee-owner
 - For 24-week covered period, maximum = \$46,154 per non-owner employee, \$20,833 for owner-employee
 - For 8-week covered period, maximum = \$15,385 per employee or owner-employee
- **Covered benefits** for employees (and some employee-owners), in some cases even above maximums



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Calculating eligible payroll for owners

- For 24 weeks, the compensation of self-employed is limited to **2.5/12 of 2019 net profit** as reported on IRS Form 1040 Schedule C line 31 or Form 1040 Schedule F line 34. For new businesses with employees, the estimated **2.5/12 of 2020** Schedule C (or Schedule F).

Ad for Ag Tax Book: pages 58-59 walk through partner, C-corp and S-corp owner-employees. The theme throughout is owner comp is not to exceed \$20,833 for 24-weeks or \$15,385 for 8-weeks.



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Calculating eligible benefits for owners

	Health Insurance	Retirement Benefits	State and Local Taxes on Comp.
Self-Employed (Schedule C or F)	No	No	No
Partner	No	No	No
S Corp Owner-Employee	No	Yes*	Yes**
C Corp Owner-Employee	Yes**	Yes*	Yes**

*Does not count toward \$20,833 cap, but is limited to 2.5/12 of 2019 contributions.

**Does not count toward \$20,833 cap.



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Noncash compensation eligibility

- Guidance does not clarify whether covered benefits include life insurance or disability.
- Cannot prepay.
- Does not include any employee-paid benefits.



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Alternative payroll period

- There is an option for adjusting covered period for businesses with employees
- May or may not make sense based on the farm



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Non payroll expenses and forgiveness

- Eligible expenses go beyond payroll, also include mortgage interest, utilities, & rent
- Paid and/or incurred



Mortgage interest



Utilities



Rent or lease payments



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Let's dive into the non-payroll details

- Mortgage obligations on real or personal property incurred before ...
- Rent payments on lease agreements in force...
- Utility payments under service agreements dated before...

» ...February 15, 2020 and to the extent they are deductible on the Schedule F.



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For self-employed no employees

- All those nonpayroll qualifications must be met, AND must have claimed an equivalent sized deduction for mortgage interest, rent, and utility expenses on the 2019 Form 1040 Schedule F.



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For business that rents to itself

- August 25 IFR said that forgiveness for rental payments made to a related party is limited to portion of rent attributed to mortgage interest.
- Puts on par with business that does not rent to itself.



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Paid vs incurred example

- 24-week covered period runs from April 20 to October 4.
- On **October 6**, the borrower receives electric bill for September. These costs are eligible for forgiveness because they were incurred during the covered period and paid before the next regular billing date.
- On **May 6** received electric bill for April. Also good to go.



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Should the self-employed write himself or herself a check?

- In the absence of any guidance to the contrary, transfer owner compensation in the same way they would normally take a distribution from the business
- Transfer money, write a check, etc. and keep documentation



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Forgiveness Forms and Details

We have plenty of time...10 months in fact.



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General forgiveness thoughts

- Documentation is key
- SBA website's forgiveness application directions actually are quite helpful
- Your student's lender the key contact



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Forms aplenty – 3508S and 3508EZ

- For those \$50k or less, use the new 3508S. Still need to do calculations and have documentation, but borrowers don't enter it on the new short form.
- For those over \$50k, use the 3508EZ, if:
 - Did not reduce salaries or wages of their employees by more than 25%, and did not reduce the number or hours of their employees OR
 - Experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25%.



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Forms aplenty - 3508

- If the borrower does not meet the requirements of the previous slide, the 3508 long form is required for forgiveness. More detailed
- Remember that for large loan recipients (\$2 million and greater), SBA will review and audit forgiveness requests.



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How long before submission?

- Any time on or before the maturity date, including before the end of the covered period, if all of the proceeds have been spent.
- 10 months after the end of the covered period is the final due date before loan payments become due



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What about deductibility of expenses?

- Current Treasury rules **disallow** deductions for expenses paid with forgiven PPP loan proceeds
- Although Congress excluded forgiven PPP proceeds from a taxpayer's gross income, Treasury stepped in with **Notice 2020-32** to say that expenses paid with forgiven proceeds (such as payroll costs) will not be deductible. I.R.C. § 265(a)(1).



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What about self-employed, no employees?

- Notice 2020-32 should not impact this group.
- The owner compensation is not a deductible expense to begin with.
- Use owner's 24 week compensation to achieve full forgiveness without using any additional non-payroll eligible expenses.
- Transfer to your personal account to avoid any lack of clarity.



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Considerations on forgiveness in 2020

- With employees = expenses used are not deductible in the year of forgiveness
 - Wait??, but be prepared for possible tax recapture in 2021
- No W2 employees = consider the 24 week covered period and only owner's comp
 - Get it done maybe??, no tax deduction concerns



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Loan terms if unforgiven

- One percent interest
- Two-year term (PPPFA increased to 5-year for loans made after June 5)
- Payments must begin 10 months from the end of the forgiveness covered period if no forgiveness application is made.



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EIDLoans

This is Covid Relief that is still ongoing through Dec 21



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EIDLoans

- Eligibility – 7a finally allowed!
- Loan Terms – 3.75% for up to 30 years
- Emergency Grant (\$10,000) – \$1000 per employee (expired)
- Allowable uses of loan proceeds – similar to PPP



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EIDLoans

- Consider for farms deeply impacted by Covid and unlikely to be able to access other similar favorable loan terms
- As a loan, need to factor increased debt load for farmer
- Dec 21 is the date

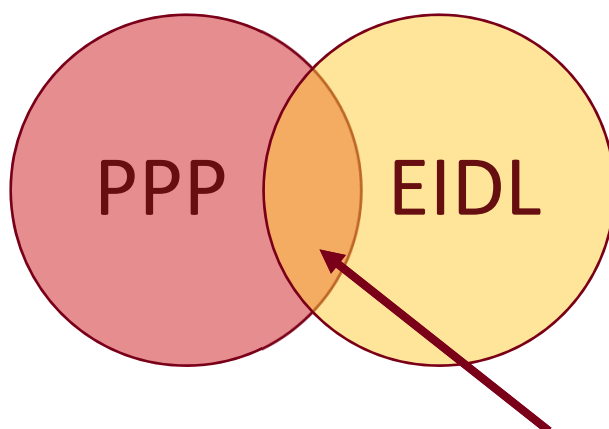


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Let's talk interaction



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EIDL advance and PPP interaction

- If a borrower received an EIDL advance, SBA is required to reduce the borrower's loan forgiveness amount by the amount of the EIDL advance.
- EIDL Advances count as taxable income. PPP does not, but PPP forgiveness expenses can't be deducted. So this is an interesting interaction for those that got both.



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CFAP 1&2

We lot of governmental income to think about here...



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Coronavirus Food Assistance Program

- CFAP 1 announced on May 19, totaling \$16 billion. Closed on September 11.
- CFAP 2 announced on September 18, totaling \$14 billion – wide reaching including price trigger commodities, sales commodities, and flat rate commodities. Will close on December 11.



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Coronavirus Food Assistance Program

- Payment limits up to \$250,000/individual and up to \$750,000/entity (**times 2**)
- This is an income tax concern for some producers...don't forget to add CFAP 2 to end of year income projections.



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Net Operating Loss Provisions

CARES gives options, but honestly we don't want NOLs...



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Net Operating Loss provision

- CARES modified the carry back from two years to five years for all NOLs arising in tax years 2018, 2019 and 2020.
- Taxpayers can also elect out of the carryback and carry the loss forward.



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Net Operating Loss provision

- No taxable income limitation in eligible years, the NOL can offset 100% of taxable income.
- Technical correction in the Act allowed for 2018 and 2019 elections made prior to date of enactment to have 120 days after enactment to address and adjust the election, July 27, 2020 was that date.



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Enacting NOL provisions

- Requesting the Carryback
 - Corporations use IRS Form 1139
 - Individuals, estates and trusts use IRS Form 1045
 - After July 15, 2020, an amended return is used.
- Waiving the Carryback
 - Attach an election statement for the first taxable year ending after March 27, 2020 and separate statements for 2018 and 2019.



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But, there is a problem for farmers.

- Because farmers previously had a two-year NOL carryback for tax years 2018 and 2019, they had the ability to elect to waive those carrybacks.
- The new law **did not provide farmers with an option to revoke their previous elections.**
- If a farmer did not carry an NOL back two years in 2018 and 2019, he or she now has **no option to take advantage of the CARES Act five-year carryback.**



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Remember though ---

- We don't really want to incur net operating losses
- This is a tool in the Covid toolbox but not ideal



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Plus more CARES funds

- State Departments of Agriculture
- County Grants
- Rural Development loans
- Farm Service Agency loans
- Existing SBA loans



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What are some final takeaways?

Farm income and tax planning is going to be all over the place.



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If your students did benefit from numerous programs (CFAP, DMC, DRP, LMP, PPP, ARC/PLC, WHIP+) start making tax planning decisions while you still have time.



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Lecturing the choir, but I'll say it again.

If your students did benefit from numerous programs (CFAP, DMC, DRP, LMP, PPP, ARC/PLC, WHIP+) start making tax planning decisions while you still have time.



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"I'm disappointed; if anyone should have seen the red flags, it's you."


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Sick Leave Tax Credit	Economic Impact Payment Not Taxable Income	PPP Loan Not Taxable Income, No expense deductions	EIDL Advance Taxable Income, Expense deduction allowed	CFAP 1 & 2 Income like any other USDA payment	Net Operating Loss Income offset carryback or forward



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Thanks and questions.

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Reminder to reach out to the UMN ABM Team for any question about land rent meetings, business structure education, and farm transfer/estate planning, etc!

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