

# Is 1099-C Required for Lenders on Forgiven PPP, EIDL Funds?

June 17, 2020

To address the adverse economic consequences to businesses and employees caused by the coronavirus, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was enacted. It amends Section 7 of the Small Business Act to provide a new type of loan to small businesses. This is the Paycheck Protection Program (PPP) loan (Section 7(a)). In addition, the CARES Act provides for emergency grants of up to \$10,000 under the Economic Injury Disaster Loans (EIDL) program.

The PPP loans are nonrecourse, and Section 1106 of the CARES Act provides for the forgiveness of the principal amount of PPP loans provided certain requirements are met. In addition, Section 1106(i) provides that “[f]or purposes of the Internal Revenue Code of 1986, any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income.”

When a business applies for an EIDL under Section 7(b)(2), it can request an emergency grant of up to \$10,000 under Section 1110 of the CARES Act. This is an advance on an SBA disaster loan. Generally, disaster loans must be repaid. Interestingly, with respect to the emergency grant, the CARES Act states, “An applicant shall not be required to repay any amounts of an advance provided under this subsection, even if subsequently denied a loan under section 7(b)(2) of the Small Business Act [an EIDL] (15 U.S.C. 636(b)(2)).” Thus, if a business applies for an EIDL and requests an emergency grant, it will not be required to repay any of the advance, assuming the money is used for a proper purpose, even if it is denied an EIDL. Unlike forgiveness of a PPP loan, however, the CARES Act does not contain a provision that excludes from income the forgiveness of an emergency grant. It should be noted that IRC § 139 excludes from gross income any amount received by an individual as a qualified disaster relief payment. It is unclear, however, whether an emergency grant that is forgiven constitutes a qualified disaster relief payment.

It is unclear at this time whether a lender who makes a PPP loan or an emergency grant that is forgiven pursuant to the provisions of the CARES Act must file IRS Form 1099-C with the Internal Revenue Service (IRS) and furnish a copy to the debtor. Such forgiveness is not the result of an identifiable event that requires the filing and furnishing of IRS Form 1099-C under § 1.6050P-1(b)(2)(i) of the Income Tax Regulations. Section 1.6050P-1(b)(2)(i) lists seven specific identifiable events that require IRS Form 1099-C to be issued. Forgiveness is dependent on the borrower using the money for the permissible purposes under the CARES Act. It appears, therefore, that the forgiveness occurs on a rolling basis as the borrower expends the loan proceeds for permissible purposes. While the issue is unclear, a persuasive argument can be made that there is no requirement to file or furnish IRS Form 1099-C because no identifiable event has occurred.

If the borrower does not expend the loan proceeds for permissible purposes, but the lender nevertheless forgives all or a portion of the loan, then an identifiable event would occur and the lender would be required to file and furnish an IRS Form 1099-C.

This issue has been raised with the IRS, and it is likely that the IRS will provide guidance.

#### **Related people**

Douglas W. Charnas