



## April 2020 COVID-19 WEBINAR QUESTIONS AND ANSWERS

We are providing general guidance in the Q&A below. All businesses and individuals should consult with their tax and business advisors, legal counsel, and lenders for information specific to their circumstances. Additionally, all businesses and individuals should visit the [US Dept of Treasury](#) for authoritative detailed information.

### 1. 500 employee/including affiliate limitation work?

Eligible employers for the Paycheck Protection program include the following:

- a. Any business with a NAICS code beginning in 72 (hospitality); or
- b. 500 or fewer employees; or
- c. SBA employee-based or revenue based size standard corresponding to primary industry (see SBA website for a list of alternate size standards by NAICS code [here](#) ; or
- d. "Alternative size standard", which is:
  - i. Maximum tangible net worth of the business is not more than \$15M; and
  - ii. The average net income after federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5M
- e. The affiliation rules are complex and are located at [here](#). Generally, the SBA rules look to common ownership interest, common management, and economic dependence when considering affiliation. If you are concerned about the affiliation rules putting you near the 500-employee limit, we strongly suggest consulting legal counsel for assistance.

### 2. Are we allowed to provide prepackaged samples of wine? Since we can't have people in the tasting room, can we send the samples to go? (meaning closed container, not to be consumed until they're home).

- a. This is permissible, but only if the wine is sold in "manufacturer-sealed" containers. True "samples" in closed, but non-manufacturer-sealed, containers, are likely not permissible.
- b. Domestic wineries may sell manufacturer-sealed containers of wine "to go," whether through the tasting room, curbside service or delivery. To request curbside service or delivery, please submit the [Added Activities](#) form to [nonretailliquorlicensing@lcb.wa.gov](mailto:nonretailliquorlicensing@lcb.wa.gov).



### 3. Are wineries successfully receiving PPP loans?

- a. Yes – wineries are successfully applying for PPP loans, and we are aware of a couple of wineries that have been approved and received funding very recently.

### 4. Can CARES loan be forgiven if employees on furlough?

- a. The amount of the loan that is eligible to be forgiven is the amount spent in the 8-week period after funding on qualified expenses, including: payroll costs, insurance, mortgage interest payments, rent and utilities. Based on the Interim Final Rule in place, 75% of loan proceeds need to be used to cover payroll related costs and 25% can be used for other qualified expenses (although this is an interim rule and is not specifically covered in the CARES Act). The same guidelines are applicable to loan forgiveness.
- b. Payroll costs include:
  - i. Salaries, wages, commissions, or similar compensation
  - ii. Payments for vacation, parental, family, medical or sick leave
  - iii. Allowance for dismissal or separation
  - iv. Payment required for the provisions of group health care benefits, including insurance premiums
  - v. Payment of any retirement benefits
  - vi. Payment of state or local tax assessed on the compensation of the employees
  - vii. Potentially, 3<sup>rd</sup> party contractors who are issued 1099-MISC from your business; however, there is conflicting information within the Interim Final Rule on this area and you should consult with your tax advisor, legal counsel, and lender if this applies.
- c. Payroll costs do not include:
  - i. Sick leave which qualifies for credit under Sections 7001 or 7003 of the Families First Coronavirus Response Act
  - ii. Total compensation of employees whose principal place of residence is outside the U.S.
  - iii. For employees earning greater than \$100,000, the cash compensation above that amount (according to the FAQs released, this excludes other payroll costs in excess of \$100,000 cash compensation)
- d. In a simple example using the Interim Final Rule, if your payroll costs in the 8 weeks after funding were equal to \$75,000, then another \$25,000 of the proceeds could be used for other eligible expenses. These would be the amounts eligible for loan forgiveness.
- e. If you had to furlough or lay off employees during the covered period (February 15 to June 30), then your loan forgiveness will be reduced unless your headcount numbers come back up to what they were on February 15 by June 30. If you restore your headcount by June 30, then the full amount for the 8-week period after funding would be eligible for loan forgiveness.



**5. Can you do both PPP and EIDL?**

- a. Yes – you can apply for both the PPP and the EIDL; however, if you received an EIDL loan between January 31 and April 3 – to the extent it was used for payroll costs, your PPP loan must be used to refinance your EIDL loan, and proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan. That \$10,000 advance on the EIDL is treated like a grant, so there is a reduction in the amount of loan forgiveness available under PPP based on getting that \$10,000 of grant. If you have NOT applied yet, consider doing a calculation of anticipated expenditures from PPP first (include all payroll costs). Remember that the proceeds from the PPP need to be used at least 75% for payroll and up to 25% for the other allowable expenses. From there, any PPP “allowable expenses” that exceed the 25%, could be paid using EIDL proceeds, and you could also use the EIDL proceeds on other allowable expenses under that program – fixed debts, accounts payable and other bills that a business cannot pay because of the ongoing COVID-19 crisis. Documentation is important. Ensure documentation of what the PPP loan proceeds are being used for and ensure payroll is included in PPP. Separately document EIDL loan proceeds and expenditures you used those proceeds on. Consider maintaining separate ledgers for each loan and expenses loan proceeds were used to pay.

**6. Customs, duties, tariffs changes for importers?**

- a. Consult with your customs broker for this information.

**7. Do you know of any grants available?**

- a. The WA State Small Business Grant is a grant available through the Governor’s Strategic Reserve Fund. There are a limited number of grants of up to \$10,000 available to eligible small businesses.
  - i. Eligibility requirements include:
    1. In business for at least one year
    2. Up to 10 full-time employees
    3. Intended to support businesses specifically impacted by COVID-19
  - ii. Qualifying small businesses should apply through their local county/regional economic development organization
- b. Eligible EIDL applications may also be able to receive a \$10,000 emergency grant that is supposed to be funded within three days of application (see #27 regarding timing), with no obligation to repay; however, if you secure a PPP loan as well, this \$10,000 grant is subtracted from the forgiveness amount.



**8. How are the self-employed, without any additional employees, eligible for PPP?**

- a. Eligible sole proprietors, independent contractors, and self-employed individuals can apply for the PPP if they were in operation on February 15, 2020.
- b. You are allowed to apply for 2.5 times your average monthly payroll costs, which for sole proprietors and independent contractors is:
  - i. 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 1 year, as prorated for the covered period.
  - ii. Income that applies to the PPP must be subject to either payroll tax or self-employment tax.

**9. I have contacted my insurance company, and naturally they claim my insurance does not cover loss of business due to an event such as this. Is there any guidance or recourse on this issue?**

- a. We suggest that you request a complete copy of your policy(ies), and speak with your attorney to independently determine whether the policy(ies) cover the loss. You may be able to resolve the dispute without a lawsuit. Note that you may be barred from filing a claim if you do not move quickly, though.

**10. If not sick, but pregnant, can employee use EPSLA?**

- a. Consult with your legal counsel regarding specific questions related to this and other specific employment law topics.

**11. I'm wondering if we have any assurances that vineyard & winery work won't be affected by any intensifying shelter in place orders?**

- a. At present, we are not aware of any intent to deem vineyard and winery production staff as "non-essential workers," or to otherwise preclude these employees from working. Depending upon events in the upcoming weeks or months, though, this certainly could change.

**12. Is there relief for growers when wineries break their contracts?**

- a. It depends upon the actual language in the contract. If allowed under the relevant agreement, a non-terminating party may seek termination fees, damages for breach of contract, or other types of relief. We suggest speaking with your attorney to determine your rights and obligations under the contract.



### **13. Loans available for working capital?**

- a. The PPP is available to cover qualified expenses only: payroll, insurance, rent, mortgage interest payments, and utilities.
- b. The maximum EIDL is a \$2M working capital loan at a rate of 3.75% for businesses. The EIDL can be used to cover: fixed debts, payroll, accounts payable and other bills that a business cannot pay because of the ongoing COVID-19 crisis. Loan payments on COVID-19 loans are deferred for one year.
- c. Last week, the Federal Reserve announced a number of programs to provide up to \$2.3 trillion in loans, including up to \$600 billion in loans to small and midsize businesses. This provides funding not covered by the PPP, and is available to U.S. companies with up to 10,000 employees and less than \$2.5 billion in 2019 revenue. Businesses seeking this funding will need to apply through banks and other lenders, and the estimated timing for this to be up at running through banks is 2-3 weeks. Consult with your lender for additional information and eligibility requirements. You can find additional information in the Federal Reserve's [Press Releases](#).
- d. Another option for obtaining working capital for operations would be to work with your existing lender to secure a line of credit or other short-term borrowing vehicle at a low rate. You can also discuss flexible repayment options with your lender.

### **14. PPP eligible with no payroll only rent etc.?**

- a. This would depend on how you are reporting the activity. If you have no payroll, but your business activity is being reported as self-employment income, then you may be eligible for the PPP as a sole proprietor or self-employed individual if you are reporting it as self-employment income. See question #8 for additional detail.

### **15. PPP loan qualification with a contracted workforce?**

- a. While the CARES Act may potentially indicate amounts paid to independent contractors would qualify, there is inconsistent language included in the Act, in the Interim Final Rule released on April 2, 2020 as well as in the FAQ released on April 8, 2020 as it relates to whether an employer can include amounts paid to an independent contractor in its payroll costs. There is a 30-day period from the date the Interim Final Rule was released to submit comments. Our understanding is the California Wine Institute, in particular, is working with Senator Marco Rubio's team in writing a technical correction to address this issue.
- b. Comments can be submitted, identified by number SBA-2020-0015, through the Federal [eRulemaking Portal](#). Follow the instructions for submitting comments.
- c. If this significantly impacts you or your business, discuss your options with legal counsel and your lender as soon as possible.



**16. We are small winery and as owners do not regularly take draws or pull cash out of the business. Do we qualify for PPP?**

- a. If you are a sole proprietor, you would still qualify for PPP, assuming the business activity has been subject to self-employment tax on your personal return. See question #8, above, for additional information on how you may benefit. You may also want to consider an EIDL if the PPP does not provide you with enough funds. Additionally, you may qualify for the WA State Small Business Grant – check with your local county//regional economic development organization

**17. What can you use Cares act money for?**

- a. See question #4, above.

**18. What is the status of H2A and border movement?**

- a. This is a very fluid subject that seems to change daily. For updated information click [here](#)

**19. As small winery owners we do not regularly take salaries, but we know we are missing huge sales opportunities and our bank account is suffering. What kind of relief should we apply for and what can we reasonably expect? How do we document missed sales opportunities?**

- a. Discuss your specific situation with your tax advisor and legal counsel; however, you may consider looking at the WA State Small Business Grant, the PPP based on your self-employment income (and associated loan forgiveness available) as well as the EIDL to the extent the first two do not provide enough cash flow, and potentially the SBA Express Bridge Loan, which you can find information [here](#)
- b. Many small businesses are hurting. Continue to look for creative ways to market your products and make sales, and consider how long-term shifts in consumer behavior may impact your business and start planning now. There are some resources available on the U.S. Chamber's website that may be helpful [here](#) There is also some very insightful information for small businesses in their Coronavirus Small Business Survival Guide, [here](#)

**20. Vineyards aren't closed but it is highly likely that we will not sell any or for sure not all the crop this year. However, we will need to perform work throughout the growing season. Will applications for those with only a vineyard be qualified?**

- a. Yes, vineyards are eligible to apply and receive funding through the PPP. While it doesn't appear anything in the CARES Act precludes agriculture enterprises from being eligible for an EIDL, the application found online still includes a certification requiring applicants



to certify they are not an agricultural enterprise other than an aquaculture enterprise, agricultural cooperative or nursery. It is unknown if this will be resolved.

- b. If you participate in Whole Farm Revenue Protection (WFRP), make sure you are having discussions with your agent with respect to your decline in revenue. If you do not have WFRP, discuss with your agent what, if any, protection is covered under your existing crop insurance or other business interruption policies in place.
- c. It is unknown if specific programs will be available to agriculture enterprises in the future. The FSA has created a page with the USDA updates on programs and services in response to COVID-19 and the CARES Act, which can be found [here](#)

**21. I've applied for the EIDL but haven't heard back. When should I expect to hear from the SBA?**

- a. It appears there is a delay at the SBA. We are hearing of delays in EIDL loan funding as well as delays in the emergency grant. You can check your application status online or try to reach the SBA; however, there will likely be significant delays.
- b. We have heard of a handful of companies having PPP applications approved and loans funded; however, this is largely dependent on the speed at which banks are approving applications on their side. These applications are then submitted to the SBA for approval, and as we understand funds should be disbursed within 10 days of successful approval by the SBA.

**22. If I have applied already and then the 1099 rule is finally cleared up will I be able to correct my application to cover the 1099s?**

- a. This will likely depend on how the technical correction is written and whether it will allow for any additional benefit to those who have already applied and received funding. Our understanding is the PPP is a single application and single funding; however, please consult with your lender on this matter. If your application has not been processed/approved by your lender, then you should be able to contact them in order to make changes prior to it being submitted to the SBA for approval. If you are making changes prior to any technical correction being made, consult with legal counsel and discuss the matter with your lender to understand their stance on the matter.

**23. If I have already applied for PPP and only included payroll information and DID NOT include contract payments to 3rd parties (I have a vineyard management company who farms and harvests my vineyard) how do I go back and amend my application?**

- a. If your application has not been approved by your lender, you should still be able to make changes to it; however, consult with legal counsel to understand how the ambiguity in the law impacts your business. Also consult with your lender to understand whether they are accepting applications which have payroll costs calculated to include payments made to independent contractors.





**24. Can tractor fuel be counted towards utilities?**

- a. No, tractor fuel would likely not be considered a utility.

**25. Are guaranteed monthly payments to working partners in an LLC eligible to be included as a payroll expense for the 2.5-time calculation?**

- a. Based on existing guidance, it appears guaranteed payments can be included in the payroll cost calculation (provided the cash compensation portion does not exceed \$100,000 to each partner, if so, then the maximum to include is \$100,000).

**26. Are the salaries of owners who are also employees eligible for the paycheck protection program?**

- a. Yes, it appears employee-owner wages are eligible for the PPP, subject to the same \$100,000 limitation.

**27. Is there a time limit? For example, a rent payment might be for the whole month of march. Can the whole month of rent be eligible or just March 16 - March 31?**

- a. For the loan forgiveness, the calculation would be based on the 8-week period after funding is received. For expenses that were paid prior to that date but cover a portion of the period eligible for forgiveness, it would be reasonable to pro-rate them based on the number of days in the pre-funding period vs. the post-funding period.
- b. The same would hold true for expenses paid during the covered period of February 15 – June 30.

**28. Can we get a PPP loan to cover rent, operating costs, etc. if we don't have any payroll (e.g. we're still putting money into the business and haven't begun to pull out any)? No employees just owners.**

- a. You would qualify for the PPP based on your self-employment income (see #8, above, for information). You may also consider the WA State Small Business Grant (see #7, above) as well as the EIDL.

**29. RE SBA Loans, how do we learn if 3rd party contractors are allowed IE Vineyards that use management companies for labor?**

- a. Discuss the current law with legal counsel as well as your lender. If a technical correction comes through, watch for communications from your tax advisor as well as the Washington Wine Institute and Washington Winegrowers Association.





**30. Can you email me info about the NOLs section?**

- a. You can watch a short on-demand webinar on NOL carryback opportunities [here](#)

**31. What if my TTB Bond extends into the middle of the road is my bond not covering this activity?**

- a. Generally speaking, your TTB wine bond covers the liability for federal excise taxes. If you want to recover for COVID-19 related business losses, you likely need to review your commercial property insurance policy to determine whether there is coverage.

**32. Is drinking ... the winemaker swallowing wine during a live Instagram stream tasting ... in compliance with regulations?**

- a. Pursuant to Governor Inslee's "Stay Home, Stay Healthy" Order, the LCB has directed all tasting rooms to cease on-premises consumption. (As you may know, "on-premises" consumption occurs when someone consumes alcohol at the licensed winery premises. "Off-premises" consumption occurs when the winery sells product for consumption off of the licensed premises, like a consumer's home.) Whether it is permissible for the winemaker to swallow wine during a live tasting at the winery premises is touch "gray," in this COVID-19 world. If in doubt, please contact your Enforcement Officer to get his or her input.

**33. Is the LCB looking at extending the penalty waiver for submitting taxes beyond 4/22?**

- a. The LCB recently extended the date, and is now waiving penalties for failure to timely remit tax payments until May 4, 2020. To be eligible for the deferment, you must (1) timely submit your sales reports, even if you are not able to pay the taxes at this time; and (2) request a penalty waiver by email to [beerwinetaxes@lcb.wa.gov](mailto:beerwinetaxes@lcb.wa.gov).

Additional Questions:

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