



ATTORNEYS AT LAW

THE THURSDAY REPORT

Issue 284 - Thursday, June 11, 2020

Edited by: Ken Crotty

Having trouble viewing this report? Use [this link](#)

PPP Rules That Need To Be Clarified - What Your CPA Would Like To Be Sure Of

Pending Florida Legislature Regarding Trusts And Estates

On This Day In History

Humor

June 25, 2020 - SCGRAT Webinar

June 6, 2020 - Single Practitioner Webinar

Upcoming Event Calendar

"We kept driving for a reality. The fantasy was a concept, but the reality was what sold it. The concept of flying bicycles is a fantasy right out of our 8-year-old dreams, but the concept of how real the sun should look and how much would it flare the lens — that's

the reality that sold the shots." -**Steven Spielberg** describes production of *E.T. the Extra-Terrestrial* (released June 11, 1982)

"I'm embarrassed I've never watched E.T. so I'm not sure of a joke, but thought it was interesting." -**Law Clerk** describes production of the Thursday Report (released June 11, 2020)



PPP Rules That Need To Be Clarified - What Your CPA Would Like To Be Sure Of

By: Alan Gassman



Tens of thousands of American businesses were relieved by the passage of the new Paycheck Protection Program Flexibility Act that was signed Friday by President Trump.

We reviewed and summarized the primary aspects of this Act in our article entitled [Senate Passes House Bill H.R. 7010 - PPP Borrowers Breathe A Great Sigh Of Relief](#), which explains how the new Act changes the forgiveness calculations.

Since then we have received hundreds of emails with questions as to how this will impact specific borrowers.

While we wait for more guidance from the SBA, which will hopefully be forthcoming, the primary questions that are to some extent unanswered but to a great extent predictable are as follows:

1. Are my only choices an 8-week testing period or a 24-week testing period?

If I can get all of the proper expenses paid in 12 or 14 weeks why do I have to wait for the 24th week before filing my application to get forgiveness?

We expect that the SBA will require a full 24 week report or a full 8 week report before the filing of the Application for forgiveness in order to have confirmation as to how many employee hours were paid for and whether any employees have a more than 25% reduction in rate of pay, in order to determine what reduction in forgiveness should apply.

While the new law certainly makes it much easier to spend the proper amount, the provisions of the original CARES Act still provide for the reduction of forgiveness in general proportion to how many fewer employee hours are being paid for and what applied before the virus crisis occurred.

2. What the heck is the December 31st date, which used to be the June 30th date for “employee reduction amnesty?”

Before Friday an employer that had a reduction in employee hours/number of employees during the 8-week testing period could nevertheless escape having a reduction in forgiveness as long as a sufficient number of employees were restored to the business on or before June 30th. This June 30th date was moved back to December 31st.

By the language of the Rules this amnesty provision will only apply if there was a reduction in employee hours/employees that occurred between February 15th and April 26th 2020.

Now businesses that will be done with their 8-week period on or before June 30th and who have had reduction in employee hours/employees during the 8-week period will have to wait until December 31st to be able to avoid or reduce the reduction in forgiveness.

This will cause thousands of businesses to have the entire PPP loan on their books until well into 2021, which will make it more difficult for them to get conventional financing, and may cause their 2020 income tax situation to also be uncertain, if the IRS position that expenses paid with forgiven loans will not be deductible is upheld.

3. What is the 60% cliff and what happened to the 75% rule?

After the CARES Act was passed the SBA announced that at least 75% of the PPP loan amount had to be spent on payroll, state payroll taxes, group health insurance, and retirement plans in order to have full forgiveness, even if expenses for rent, interest, and utilities made up more than 25% of the loan amount.

What this really meant was that interest, rent, and utilities applied to allow for forgiveness could not exceed 33% of the above combined “payroll costs.”

With the passage of the PPP Flexibility Act of 2020 the 75% test became a 60% test. The language of the new Act, however, made it an all or nothing cliff. If the PPP loan was \$100,000 and the “payroll costs” were only \$59,000, then there would be no PPP loan forgiveness whatsoever!

Senator Rubio has asked that the SBA change this Rule, and in a press release on June 8th, Treasury Secretary Steve Mnuchin indicated that the “cliff” rule would not take effect and borrowers who failed to meet the 60% test would still be eligible for forgiveness.

4. How does the new act effect independent contractors - why would an independent contractor have to use the 24 week period to get complete forgiveness?

Independent contractors were inadvertently caught in a mathematical error when the 75% rule was passed.

By independent contractors we mean individuals who have their own business and file a Form Schedule-C on their income tax returns to report the business, as opposed to filing as an S-corporation or an LLC or other entity taxed as a partnership.

The PPP rules for independent contractors who do not have separate employees can be very simple.

The amount of the loan is based upon two and a half twelfths (20.83%) of the 2019 net income for the business, which is shown on line 31 of the 2019 Form Schedule-C, which has to be filled out, at least in draft form, and submitted with the loan application.

The maximum amount of net income from line 31 that this can be based upon is \$100,000, so the maximum loan for an independent contractor who does not have separate employees is \$20,833.

The original SBA regulations for independent contractors permitted forgiveness to automatically include 8/52 from the line 31 2019 Schedule-C income, which came to \$15,385 for an individual with \$100,000 or more of net income on line 31.

This left \$5448, that could be forgiven to the extent spent on rent, interest, and utilities, but \$5448, is more than 33% of \$15,385, so it was impossible under these 8-week rules for an independent contractor to have full forgiveness.

The amount not forgiven, based upon \$100,000 or more of line 31 net income was \$300.

The numbers will be proportional for an independent contractor with less than \$100,000 of line 31 net income for 2019 who elects to use the 8-week period to get the loan forgiven earlier rather than later. For example, if the line 31 net income is \$50,000, then the loan amount will be \$10,417 dollars and the automatic forgiveness amount will be \$7,692.

One third of \$7,692 is \$2564, of reduction that can apply if the rent, interest, and utilities that can be counted towards reduction equaling or exceeding \$10,256.

This would leave \$161 unforgiven.

Now an independent contractor can elect to use a 24-week amount, which we believe means that there will be automatic forgiveness of the entire loan. This is because 24/52 of \$100,000 is \$46,154, which certainly exceeds \$20,833.

The same ratio and amounts above would apply in proportion where the line 31 2019 net income is less than \$100,000

For example, at the \$50,000 level the loan would still have been \$10,417, and the automatic forgiveness would be \$23,078.

It is noteworthy that independent contractors cannot count state employment taxes, or their own health insurance or retirement plan contributions, and that covered period (during the 8-weeks or 24-weeks) expenditures for rent, interest, and utilities can only be included if that particular category of expense was paid in 2019, as evidenced by lines 20, 16, and 25, respectively of the Form 1040.

5. What is an “Owner-Employee” and is the countable compensation for such an individual limited to a pro rata portion of their 2019 compensation?

A big unpleasant surprise in the Interim Rules published by the SBA on May 22nd was the provision which indicated that the compensation of an ‘owner-employee’ counted during the then applicable 8-week testing period could not exceed 8/52 of the 2019 compensation for such Employee-owner.

It is our belief that an “owner-employee” is an independent contractor or sole proprietor who filed a Schedule-C income tax return for 2019, and continues to be considered an individually owned business in 2020.

Nevertheless, the language of the Interim Rules is less than clear, because it appears that whoever wrote these rules accidentally left an extra sentence in that is duplicitous.

If an “owner-employee” is a shareholder who has ownership in an S-corporation or a C-corporation and is also an employee of the corporation, then this will have a profound detrimental impact on many small businesses.

The exact language of the regulation is as follows:

“In particular, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf. Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.”

In addition, the Application for Forgiveness indicates that an ‘owner-employee’ is not to be counted in the numerator or denominator of the fraction that determines the degree of a reduction in workforce which would cause a loss of forgiveness.

For example, if a business has a full-time S-corporation shareholder and nine other employees as full-time employees during the testing period before the virus and one less full-time employee who was laid off and not rehired after the virus, the fraction based upon 9/10 (90%) if the shareholder/employee is counted, or 8/9 (89%) if they are not counted.

It would make sense that an independent contractor/owner would not be counted because they would have automatic forgiveness for 8/52 or 24/52 of their 2019 net income under the independent contractor rules, but this would not make sense for an S-corporation or a C-corporation “owner-employee.”

Pension consultant Larry Starr has had this to say about the question of what the definition of an “employee-shareholder” is:

“The newly issued instructions for what is known as “PPP Schedule A” provide that the “Payroll” will include total amounts paid by the borrower for “employee health insurance...[and] employer contributions to employee retirement plans...[and] state and local taxes assessed on employee compensation...” Partners in a partnership are not considered to be “employees” for tax purposes, **even though shareholders of S Corporations and C Corporations are employees.**”

There are many other issues, and nuances to issues, that need to be addressed by the SBA in the near future. We certainly hope that they will be.

We will keep you posted as this progresses.

If you would like to be on our email list for future developments please feel free to send me an email and put the words “keep me posted” in the re: line.

Pending Florida Legislature Regarding Trusts And Estates

By: Alexander Sorley



Governor DeSantis will likely sign a number of bills which were recently passed by the Florida Legislature regarding trusts and estates. These could have major implications for trust and estate lawyers, and the following summarizes the changes made.

CS/HB 505

This bill creates a new Florida Statute § 731.1065. The new statute will, provided the Governor’s signature, take effect July 1, 2020 and states as follows:

1. For the purposes of the code, precious metals in any tangible form, such as bullion or coins kept and acquired for their historical, artistic,

collectable, or investment value apart from their normal use as legal tender for payment, are tangible personal property.

2. This section is intended to clarify existing law and applies retroactively to all written instruments executed before, on, or after July 1, 2020, as well as all proceedings pending or commenced before, on, or after July 1, 2020, in which the disposition of precious metals in any tangible form has not been finally determined.

The definition of “property” was amended in Florida Statute § 731.201(32) to state:

“Property” means both real and personal property or any interest in it and anything that may be the subject of ownership, including causes of action of the estate and causes of action the decedent had at the time of death.

Florida Statute § 731.301(2) was revised for probate proceedings to provide that formal notice will not be acceptable for a court’s personal jurisdiction. The exact language of Florida Statute § 731.301(2) is as follows:

In a probate proceeding, formal notice to a person is sufficient notice for the court to exercise its in rem jurisdiction over the person’s interest in the estate property or in the decedent’s protected homestead. The court does not acquire personal jurisdiction over a person by service of formal notice.

This bill revises, “the required contents of a notice of administration” by adding subsection (f) to Florida Statute § 733.212(2). The updated Florida Statute § 733.212(2) is as follows:

That, under certain circumstances and by failing to contest the will, the recipient of the notice of administration may be waiving his or her right to contest the validity of a trust or other writing incorporated by reference into a will.

Florida Statute § 733.610 was expanded to state as follows:

Sale, encumbrance, or transaction involving conflict of interest. -Any sale or encumbrance to the personal representative or the personal representative’s spouse, agent, or attorney, or any corporation, other entity, or trust in which the personal representative, or the personal representative’s spouse, agent, or attorney, has a substantial beneficial or ownership interest, or any transaction that is affected by a conflict of interest on the part of the personal representative is voidable by any interested person except one who has consented after fair disclosure, unless:

1. The will or a contract entered into by the decedent expressly authorized the transaction; or
2. The transaction is approved by the court after notice to interested persons.

Florida Statute § 733.617(8) was added to the statute to provide the following along with sample written statements to acknowledge disclosures:

An attorney serving as a personal representative, or a person related to the attorney, is not entitled to compensation for serving as a personal representative if the attorney prepared or supervised the execution of the will that nominated the attorney or person related to the attorney as personal representative, unless the attorney or person nominated is related to the testator, or the attorney makes the following disclosures to the testator before the will is executed:

1. Subject to certain statutory limitations, most family members, regardless of their residence, and any other persons who are residents of Florida, including friends and corporate fiduciaries, are eligible to serve as a personal representative;
2. Any person, including an attorney, who serves as a personal representative is entitled to receive reasonable compensation for serving as a personal representative; and
3. Compensation payable to the personal representative is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the personal representative.

Florida Statute § 736.0708(4) was added to include sample written statements for disclosures and the following language:

An attorney serving as a trustee, or a person related to such attorney, is not entitled to compensation for serving as a trustee if the attorney prepared or supervised the execution of the trust instrument that appointed the attorney or person related to the attorney as trustee, unless the attorney or person appointed is related to the settlor or the attorney makes the following disclosures to the settlor before the trust instrument is executed:

1. Unless specifically disqualified by the terms of the trust instrument, any person, regardless of state of residence and including a family member, friend, or corporate fiduciary, is eligible to serve as a trustee;
2. Any person, including an attorney, who serves as a trustee is entitled to receive reasonable compensation for serving as trustee; and
3. Compensation payable to the trustee is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services rendered to the trustee.

CS/HB 1089

This bill creates section 1 of Florida Statute § 736.08145 titled Grantor trust reimbursement, and the statute accomplishes the following, the direct language of which can be found in CS/HB 1089:

Authorizing trustees of certain trusts to reimburse persons being treated as the owner of the trust for specified amounts and in a specified manner; prohibiting

certain policies, values, and proceeds from being used for such reimbursement; providing applicability; prohibiting certain trustees from taking specified actions relating to trusts; requiring that specified powers be granted to certain persons if the terms of the trust require a trustee to act at the direction or with the consent of such persons or that specified decisions be made directly by such persons; providing construction; providing an effective date.

CS/HB 1439

This bill amends Florida Statute § 655.059, “specifying that a financial institution is not prohibited from disclosing specified information and providing copies of specified affidavits to certain persons relating to deceased account holders.” The exact language of the amendments can be found in CS/HB 1439.

This bill creates Florida Statute § 735.303 which is titled, “Payment to successor without court proceedings.” This new statute states the following:

A financial institution in this state may pay to the family member of a decedent, without any court proceeding, order, or judgment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of the combined funds in the qualified accounts at the financial institution do not exceed an aggregate total of \$1,000. The financial institution may not make such payment earlier than 6 months after the date of the decedent’s death.

This bill also creates Florida Statute § 735.304 which is titled, “Disposition without administration of intestate property in small estates.” The following is an excerpt from the statute, the entirety of which can be found in CS/HB 1439:

1. No administration shall be required or formal proceedings instituted upon the estate of a decedent who has died intestate leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the claims of creditors under the Florida Constitution, and nonexempt personal property the value of which does not exceed the sum of \$10,000 and the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness, provided the decedent has been deceased for more than 1 year and no administration of the decedent’s estate is pending in this state.”

On This Day In History

- On June 11, 1776, the Continental Congress formed a committee to draft a Declaration of Independence calling for freedom from Britain.
- In 1770, Captain James Cook, commander of the British ship Endeavour, "discovered" the Great Barrier Reef off Australia by running onto it.

- In 1962, three prisoners at Alcatraz in San Francisco Bay staged an escape, leaving the island on a makeshift raft; they were never found or heard from again.
- In 2009, with swine flu reported in more than 70 nations, the World Health Organization declared the first global flu pandemic in 41 years.
- Ten years ago: The FIFA World Cup opened in South Africa; it was the first World Cup to be played in Africa.

Humor

By: The Law Clerks



- Gene Wilder was born on June 11th, what did his Last Will and Testament Say? "You get nothing! You lose! Good day, Sir!" - Willy Wonka & the Chocolate Factory (1971)
- Joe Montana was born on June 11th, did you hear about the joke he told his receivers? It went over their heads.
- This face mask is fogging up my glasses worse than a humid Florida day.
- On June 11th 1986, Ferris Bueller's Day Off was released. Alan Gassman's clients think that he hasn't had a day off since they watched Ferris crash his dad's Ferrari.
- On June 11th 1770, Captain James Cook "discovered" the Great Barrier Reef off Australia by running onto it. 2020 seems like a shipwreck, so we can only hope we run into something as beautiful!



June 25, 2020 - SCGRAT Webinar

By: Ken Crotty



[REGISTER HERE](#)

A SCGRAT is an acronym for a planning technique which combines the use of a self-cancelling installment note ("SCIN") with a grantor retained annuity trust

("GRAT"). When used together they form a SCGRAT. A SCGRAT can help to minimize the risk of a client making a taxable gift when a SCIN is signed.

Many practitioners were comfortable using SCINs as a planning technique for certain clients, whereby a grantor would sell assets to a trust in exchange for the SCIN. Unlike a normal promissory note, any amounts outstanding and owed on a SCIN are cancelled upon death so that the trust would not need to make any payments on the SCIN after the death of the grantor. Because of the chance that the note may not be repaid in full, a risk premium needs to be incorporated into the note whereby either the principal owed on the note is increased or the interest rate on the note is increased above the typical applicable federal rate.

As a result of the *Davidson* case, the use of SCINs became more risky and less clear. Specifically, many practitioners are concerned about establishing the right risk premium associated with the note. If the risk premium is not sufficient, then the grantor could be deemed to have made a gift to the trust equal to the difference between what the risk premium should have been and what was actually signed.

The SCGRAT combines the use of a GRAT with a SCIN to help minimize the risk that the grantor may unintentionally make a gift to the trust.

June 6, 2020 - Single Practitioner Webinar

By: Ken Crotty



[WATCH THE RECORDING](#)

[DOWNLOAD THE SLIDES](#)

Last weekend I presented a webinar on estate planning for single physicians.

One topic which viewers have wanted additional information on is the use of inheritance trusts. Under Florida law, the parents of a single practitioner can leave assets for the single practitioner's benefit in trust and provide that the single practitioner can be the sole trustee of the trust. Assuming that the trust is limited to providing distributions for the practitioner's health, education, maintenance, and support, and the same standard applies for other beneficiaries, then a creditor would not be able to force a distribution from the trust, notwithstanding the fact that the single practitioner is the primary beneficiary and the sole trustee of the trust. This is because the practitioner is not the grantor of the trust. The funds used to create the trust came from the practitioner's parents and not the practitioner individually.

If the single practitioner wants to create a trust that he/she can benefit from with his/her own funds, then the practitioner needs to think about forming a trust offshore or possibly forming the trust in a domestic asset protection jurisdiction, such as Nevada or Alaska.

The slides linked above include a useful checklist for various items used in planning, a list of some of the exempt assets, and also a list of items that single practitioners should think about with respect to their practice to help it work better. There is also a detailed discussion of insurance coverages.

When	Organizer	Upcoming Events	Get Involved
Friday, June 12, 2020	CPA Academy	Alan Gassman presents: Real Estate Strategies For The Age Of Covid-19 -- What Your Best Clients Need To Know And Do - (PART 1) from 9 to 10 AM ET	Register
Monday, June 15, 2020	CPA Academy	Alan Gassman presents: The Essentials Of Physician Planning - Asset Protection And Practice Strategies from 3 to 4 PM ET	Register
Thursday, June 18, 2020	CPA Academy	Alan Brandon and Kevin present: PPP Q&A - Stump The Panel from 9 to 10 AM ET	Register
Thursday, June 18, 2020	Free webinar from our firm	Christopher Denicolo presents: Understanding Charitable Remainder Trusts - Add New Tools to Your Belt from 12:30 to 1 PM ET	Register

When	Organizer	Upcoming Events	Get Involved
Friday, June 19, 2020	CPA Academy	Alan Gassman, Brandon Ketron and Kevin Cameron present: PPP PhD from 9 to 10 AM ET	Available Soon
Monday, June 22, 2020	CPA Academy	Alan Gassman, Brandon Ketron and Kevin Cameron present: PPP Trivia - Test Your Knowledge To Win Books And More from 9 to 10 AM ET	Available Soon
Tuesday, June 23, 2020	CPA Academy	Alan Gassman presents: More Real Estate Strategies For The Age Of Covid-19 -- What Your Best Clients Need To Know And Do - (PART 2) from 9 to 10 AM ET	Register
Tuesday, June 23, 2020	Maui Mastermind Legal Protection Webinar	Alan Gassman presents: The ABCs Of Business Investment Entity Planning from 12 to 1 PM ET	Learn More
Thursday, June 25, 2020	Free webinar from our firm	Ken Crotty presents: SCRAT from 12:30 to 1 PM ET	Register
Thursday, June 25, 2020	CPA Academy	Alan Gassman presents: Creditor Protection For Your Best Clients from 9 to 10 AM ET	Available Soon
Monday, June 29, 2020	CPA Academy	Alan Gassman presents: CPAs Guide To Bankruptcy from 5 to 6 PM ET	Available Soon
Thursday, July 2, 2020	Free webinar from our firm	Ken Crotty presents: Gift Tax Return Tips and Traps from 12:30 to 1 PM ET	Register
Thursday, July 9, 2020	Free webinar from our firm	Ken Crotty presents: LLC Drafting Tune Ups And Checklist from 12:30 to 1 PM ET	Register
Thursday, July 16, 2020	Free webinar from our firm	Ken Crotty presents: Inheritance Trust Implementation And Planning from 12:30 to 1 PM ET	Register
Thursday, July 23, 2020	Free webinar from our firm	Ken Crotty presents: Estate Tax Return Tips and Traps 12:30 PM to 1 PM ET	Register

When	Organizer	Upcoming Events	Get Involved
Tuesday, September 15, 2020	Estate Planning Council of Northern Nevada	Alan Gassman presents: Dynamic Planning With Irrevocable Trusts After TRA from 9 to 12 PM PDT	Register
Thursday, October 29, 2020	46th Annual Notre Dame Tax & Estate Planning Institute	Christopher Denicolo presents: Two Hours Re: SECURE Act	Register
Friday, October 30, 2020	46th Annual Notre Dame Tax & Estate Planning Institute	Alan Gassman and David Herzig present: CARES Act Loans And Their Aftermath Alan Gassman participates in a panel to discuss Termination Of Charitable Lead Annuity Trusts (Ideas Are Welcome)	Register
Monday, November 16, 2020	AICPA Sophisticated Tax Conference in Washington, D.C.	Alan Gassman presents: Tax, Financial And Estate Planning For The Professional from 4:45 to 5:35 PM ET	Register
Tuesday, November 17, 2020	AICPA Sophisticated Tax Conference in Washington, D.C.	Alan Gassman and Brandon Lagarde present: COVID-19: Lessons Learned/What Did I Miss? from 10:40 AM to 12:20 PM ET	Register
Tuesday, December 1, 2020	Ohio Bar Association's Great Lakes Asset Protection Institute	Alan Gassman presents: 60 Minutes On Asset Protection	Learn More

1245 Court Street

Clearwater, FL 33756

[Unsubscribe here](#)