

The logo consists of the letters 'KLR' in a bold, green, serif font. Below the letters are two horizontal brown bars of equal length, stacked one above the other.

KLR

The background features a spiral-bound calendar with a white page showing dates from Tuesday to Thursday. A black alarm clock with a white face is positioned in the lower right. The entire scene is set against a solid orange background, with a dark grey horizontal band across the middle containing the text.

# 2021 Year-End Tax Planning Highlights for Businesses and Individuals

*Strategize, Optimize, Maximize*

## Presented by



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# Agenda

- Tax legislation update - newly enacted and proposed legislation
- 2021 / 2022 tax saving opportunities
- Employer Retention Credit update
- PPP forgiveness update





# Tax Legislation Update

The Infrastructure Investment and Jobs Act:

- \$1.2 Trillion Bill signed into law by President Biden November 15, 2021
- Minimal tax changes affecting businesses and individuals. Most notable changes –
  - Termination of ERC as of September 30, 2021
  - Cryptocurrency Reporting
- Notable items dropped from original bill –
  - Increase in corporate tax rate
  - Increase in IRS funding to improve enforcement



# Tax Legislation Update

Build Back Better Act:

- \$1.75 trillion bill passed by House on November 19, 2021 – vote of 220 – 213
- Many initial provisions to raise revenue were eliminated to secure passage in the House. Notable provisions that remain include –
  - Return of the Corporate AMT
  - Income tax surcharge for high income individuals and trusts
  - Expansion of the net investment income tax
  - Increase in SALT deduction from \$10k to \$80k
  - Extension of Child Tax Credit higher amount through 2022
  - Many green energy incentives



A blurred background image of a business meeting. In the foreground, a person's hand is pointing at a tablet displaying a bar chart. Another person's hand is visible near a laptop. The scene is dimly lit, with a focus on the collaborative work environment.

# Year-End Tax Saving Opportunities



# Tax Planning Opportunities and Updates – Individuals

- Individuals not itemizing allowed a \$300 charitable donation (\$600 MFJ)
- RMD reinstated for 2021 – if age 72 by end of 2021
  - Consider QCD
  - Review withholding needs prior to taking RMD, if still possible
- If BBBA is enacted prior to year-end with SALT deduction increase to \$80k, consider making tax payments before year-end



# Tax Planning Opportunities and Updates- Estate & Gift

- No changes included in BBBA so far
- 2021 estate tax exemption - \$11.7M
- 2022 estate tax exemption - \$12.06M
- 2021 annual gift tax exclusion - \$15k
- 2022 annual gift tax exclusion - \$16k
- Many states have much lower lifetime exemptions than Federal – still important to plan to alleviate State burden





# Tax Planning Opportunities and Updates- Businesses

- Consider state pass-through entity tax – elective for RI and MA
- Review state nexus rules if employees work from home in States where the business is not registered.
- Business meals – 100% deduction for restaurant meals (2021 – 2022 only)
- RI PPP loan forgiveness rules
- Employee Retention Credit – still time to amend 2020 and 2021 returns

# ERC Update

# Employee Retention Credit (ERC)

Originally introduced as part of the CARES Act, the ERC originally offered a credit of up to \$5,000 (50% of the first \$10,000 in wages) per employee for wages paid by employers whose 1.) operations were fully or partially suspended by a shutdown order or 2.) incurred gross revenues decline of more than 50% when compared to the same quarter in the prior year.

This credit did not have much press in 2020 because if a business applied for a PPP loan, they were ineligible for this credit. For many businesses, the PPP loan was more beneficial than the credit.





# ERC

In an unexpected move, The Consolidated Appropriations Act of 2021 not only extended the Employee Retention Credit through June 30, 2021 it expanded the eligibility to include those businesses who obtained PPP loans.

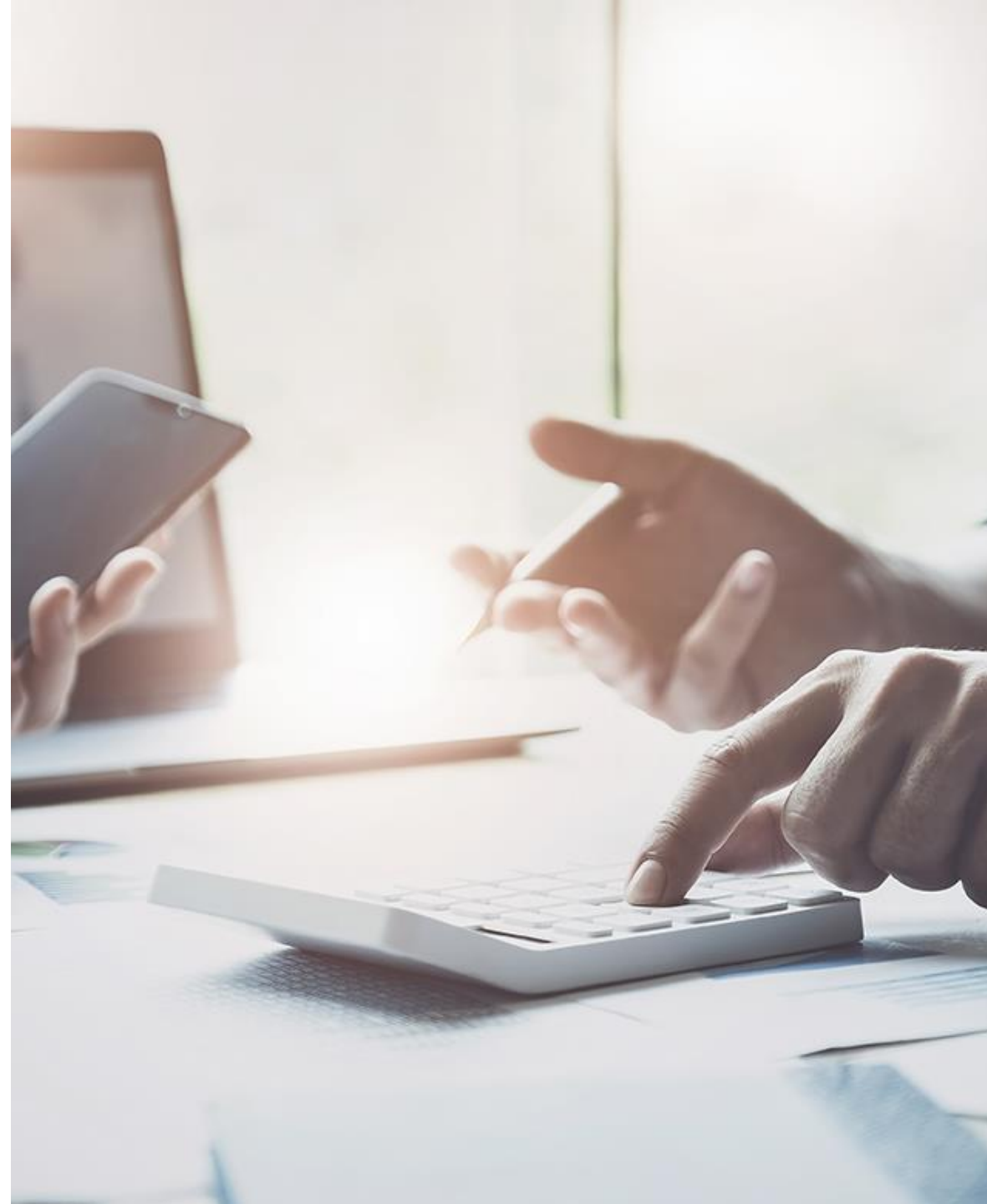
*This change in eligibility is retroactive to the Cares Act effective date!*

**Let's discuss the ERC in two sections –**

**Section 1 – 2020 (3/13/2020 to 12/31/2020)**

**Section 2 - 2021 (1/1/2021 to 9/30/2021)**

(The American Rescue Plan Act of 2021 extended the Employee Retention Credit through December 31, 2021, and the Infrastructure Investment and Jobs Act ended the credit effective September 30, 2021 )



# ERC 2020 (Section 1)

## Eligibility -

Generally speaking, the ERC is available to businesses whose –

Operations were fully or partially suspended by a government shutdown order

or

Gross revenues declined more than 50% when compared to the same quarter in 2019.



# ERC 2020 (Section 1)

## Eligibility (cont.) -

### Fine Print –

1. For Employers with **more** than 100 average full-time employees for 2019: Only wages paid to employees who are not providing services due to the shutdown order.
2. For Employers with **less** than 100 average full-time employees for 2019: all wages paid to employees count, regardless of whether or not they actually worked.





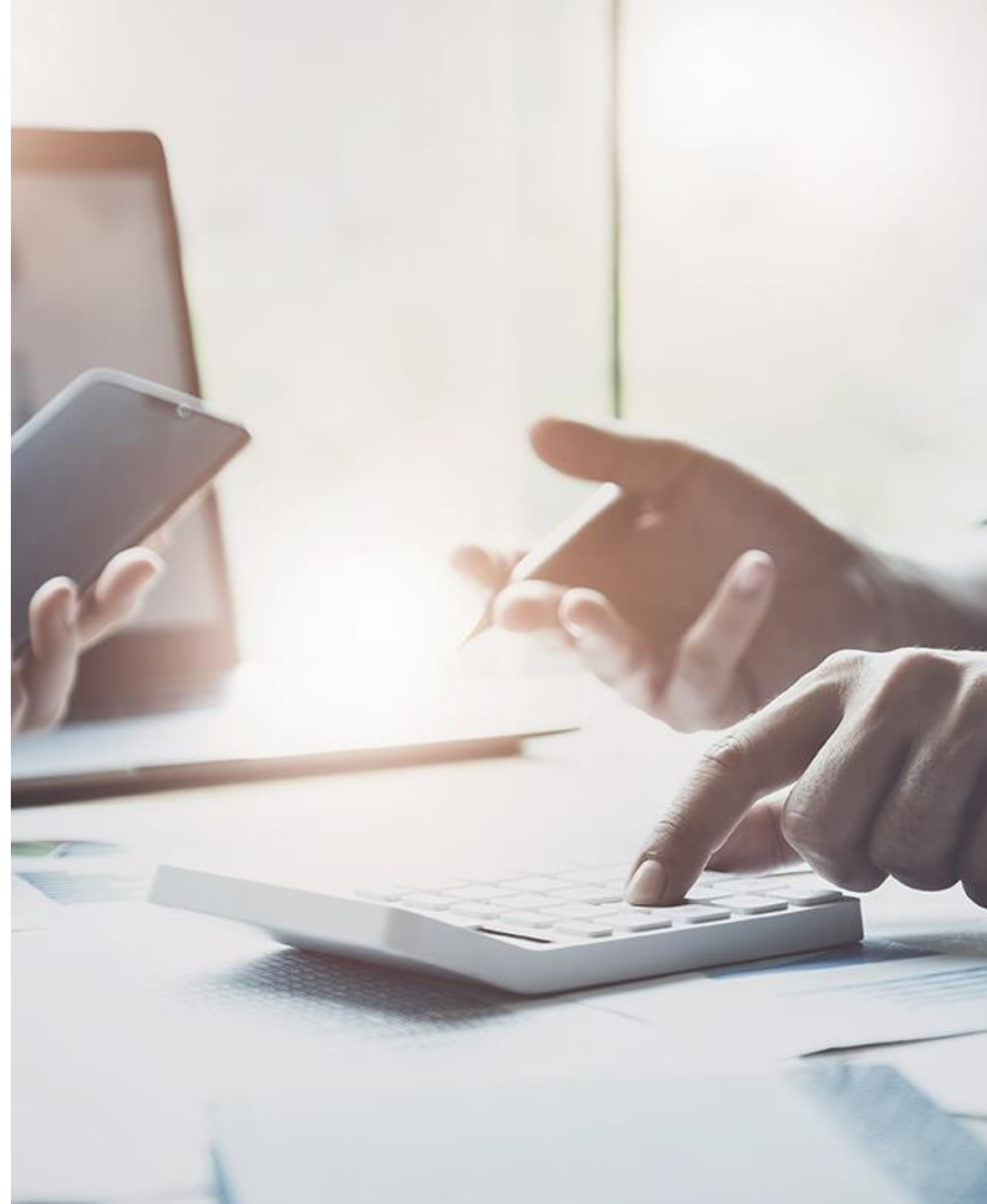
# ERC 2020 (Section 1)

## What wages are eligible?

1. Only wages paid during the **shutdown period**.
2. First day of quarter in 2020 where gross receipts declined more than 50% vs. the same quarter in 2019 (period ends first day of the calendar quarter after the quarter for which gross receipts are greater than 80% of gross receipts for the same calendar quarter in 2019).

Healthcare costs paid on behalf of employees are eligible to be included as qualified wages.

Wages paid in accordance with the Families First Coronavirus Response Act are ineligible.



# ERC 2020 (Section 1)

\*Important\* - Wages paid for with PPP funds are not eligible. We're going to discuss this later.

## Related party wages

Generally speaking, owner's wages are eligible for the credit, but wages paid to the relatives of a greater than 50% owner are not eligible.



# ERC 2020 (Section 1)

## **How do I receive the credit?**

The credit is applied against payroll taxes paid on the employer's payroll tax filings.

The credit is claimed on the employer's quarterly 941 payroll tax return.

For those employers now retroactively claiming the credit, they will need to file amended Form 941 payroll tax returns.





# ERC 2020 (Section 1)

## Important notes (IRS FAQs)–

1. Can't be voluntarily, needs to be govt order.
2. Government asking for social distancing does not count.
3. If the work could be replaced by teleworking, you will not qualify.
4. Think reductions in capacity or complete closure orders from the government (Restaurants).



# ERC 2020 (Section 1)

## How do non-profits determine gross receipts?

Generally speaking, a decrease in gross receipts is determined by looking at all the income sources of the non-profit (investment income, service income, sales income, gifts, etc.) as reported on the entity's Form 990. (Note: Investment income does not include unrealized gains and losses on investments)

Important to note, that *while in-kind donated goods would be considered a gross receipt, in-kind donated services would not be considered a gross receipt.*



# ERC 2020 (Section 1)

*Unlike the PPP, any income realized from the ERC is subject to income taxes.*





# ERC 2021 (Section 2)

## ERC changes effective 1/1/21 –

- Increases the rate from 50% of wages to 70% of wages.
- Increases the limit of wages from \$10,000 per year, per employee to **\$10,000 per QUARTER, per Employee.**
  - Effectively raises the potential annual credit from up to \$5,000 per employee to up to \$21,000 per employee.
- Reduces the quarterly gross receipts test from 50% to 20%
  - Note – **There are some exceptions to this rule.**



# ERC 2021 (Section 2)

## ERC changes effective 1/1/21 –

Increases the average full-time employee cutoff from 100 to 500 when determining small employer status.



# PPP Update



# PPP Loan Interaction

As we noted earlier, PPP funded wages are ineligible to be used when claiming the ERC. The IRS released Notice 2021-20 which address how the ERC and PPP interact. The notice is over 100 pages long, so we are going to focus on the two main questions that employers typically have -

1. Are all the wages reported on my loan forgiveness application ineligible even though they exceed my original loan amount?
2. How do I determine which wages are PPP vs ERC?



# PPP Loan Interaction

**Are all the wages reported on my loan forgiveness application ineligible even though they exceed my original loan amount?**

Good news! Even if a PPP borrower reports more wages on their PPP loan forgiveness application than their original loan amount, only the wages up to the original loan amount will be considered ineligible. For example, if a PPP borrower reports \$250,000 in wages, but their original loan amount was only \$150,000, the excess of \$100,000 in wages would be eligible for the ERC.

Furthermore, if the PPP borrower reported \$25,000 in non-payroll costs, those non-payroll costs would further increase the eligible wages for ERC to \$125,000.





# PPP Loan Interaction

**Are all the wages reported on my loan forgiveness application ineligible even though they exceed my original loan amount? (concluded)**

Strategy Note - If you have not already applied for forgiveness and are ERC eligible, you should look to maximize the amount of non-payroll costs included in your application up to the maximum 60% payroll/40% non-payroll allocation limits.





# PPP Loan Interaction

## How do I determine which wages are PPP vs ERC?

Now that the amount of PPP funded wages can be determined, PPP borrowers looking to calculate the ERC must determine when their ERC eligible wages were paid.

Generally speaking, for 2020 this is going to be the typical timeline for determining which wages are potentially eligible for the ERC before applying the shutdown or gross receipts test –

- Wages paid from March 13, 2020, through the date a PPP loan was received are eligible.
- Wages paid from the date the PPP loan was received until the PPP funded wages were exhausted would be ineligible.
- Wages paid from the date PPP wages were exhausted until the end of the year would be eligible.



# PPP Loan Interaction

## How do I determine which wages are PPP vs ERC? (continued)

For example, if a PPP borrower received a PPP loan on April 13, 2020 and paid wages totaling its loan amount through June 13th, then wages potentially eligible for ERC purposes would be those wages paid from March 13, 2020 through April 12, 2020 and from June 14, 2020 through the end of the year.

Important note for PPP2 borrowers – PPP2 borrowers would follow the same methodology noted above. For example, if a PPP2 borrower received a PPP2 loan on February 15, 2021 and paid wages totaling its loan amount through April 15, 2021, then wages potentially eligible for ERC purpose would be those wages paid from January 1, 2021 through February 14, 2021 and from April 16, 2021 through September 30, 2021.





# PPP Loan Interaction

## How do I determine which wages are PPP vs ERC? (concluded)

The timing of when the wages are paid is very important for ERC purposes. As a reminder, if an entity is qualifying for the ERC under the:

**Shutdown Order** – Only wages paid during the shutdown order period qualify. Wages paid outside of the shutdown order period are ineligible. For example, if the shutdown order only existed during the PPP wage period, then no wages would be eligible for the ERC.

**Gross Receipts** – If an entity qualifies under the gross receipts requirement, then any wages paid during that quarter qualify. Each quarter must be tested under the ERC to determine if that quarter is eligible. For example, if the borrower only qualifies in the 2nd quarter of 2020, only wages paid from April 1st through the PPP loan disbursement date would be eligible for the ERC.





# PPP Loan Interaction

Bonus Question - **Why would I have to start using PPP wages as soon as I got my PPP loan? Can't I wait to start using PPP money in order to maximize the credit?**

To be clear, there is nothing in the IRS notice that says you can't do that. However, when PPP loan recipients applied for their loans, they attested that *"Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."*

If an employer decides that it will first use ERC wages and will start using PPP funded wages at a later date, then the SBA could question whether or not the original PPP loan was economically necessary. Employers who decide to delay the start of PPP funded wages should document their understanding why their PPP loan was economically necessary, yet they did not start using those loan funds until a later date.



# PPP Loan Interaction

Bonus Question - **Why would I have to start using PPP wages as soon as I got my PPP loan? Can't I wait to start using PPP money in order to maximize the credit?**

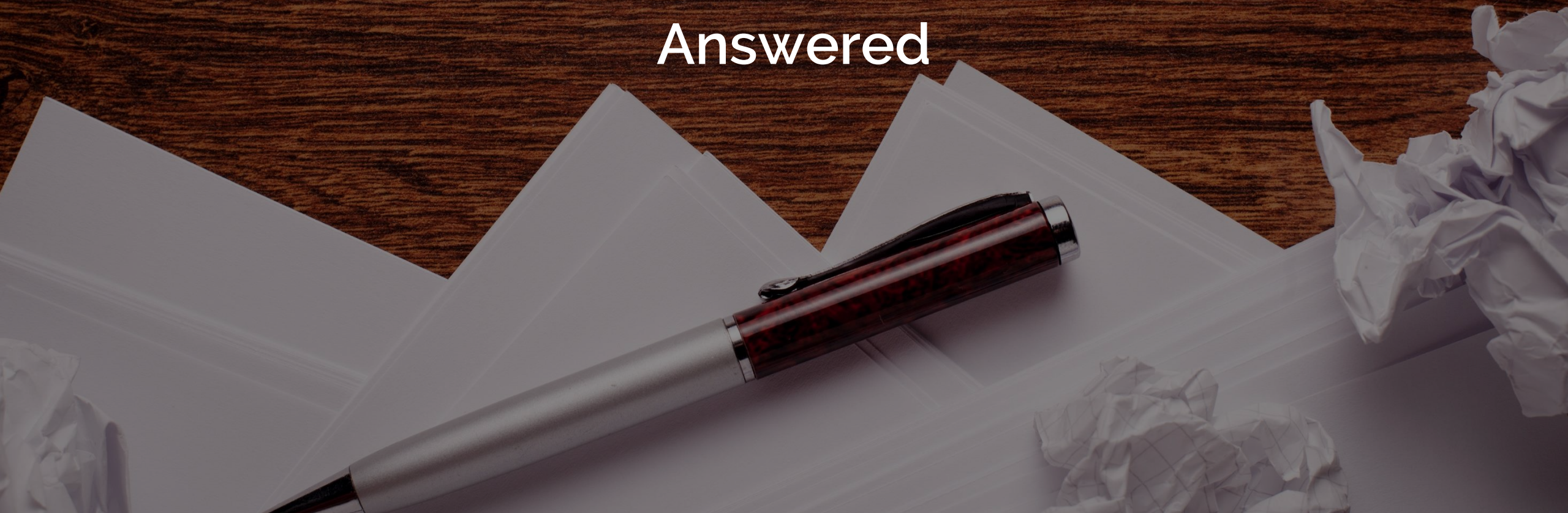
It is a misconception that the SBA \$2 million dollar economic safe harbor means that the SBA will not evaluate a PPP borrower's economic necessity. If a PPP loan under \$2 million is selected for review by the SBA, all facets of the loan can be reviewed.

This brings up something that we've talked about since the inception of the PPP loan & ERC program. All borrowers should be maintaining a due diligence file for all their COVID relief program activities. The most important documents in that file are a memo documenting management's decision that a PPP loan was economically necessary for the business, and documentation of ERC eligibility and related credit calculations.





# Your Questions Answered





# Questions

- What's your outlook for corporate tax rates and individual tax rates considering latest political pushback from certain moderate Democrats?
- What do you think will happen with the step up in basis rules at death, if anything?
- What are the rules for 2021 and 2022 re: 100% write off of new equipment?
- Are there anticipated changes to the SALT deduction for 2021?
- I submitted my PPP forgiveness application in August, when should I expect to hear from the SBA ?
- Is there a way to check with IRS on the status of our ERTC? We submitted a revised 941 back in the spring (mailed on paper).

A background image showing a group of people in a professional setting, likely a meeting or collaborative workspace. They are seated at a wooden table, with laptops, documents, and pens visible. The image is dimmed to serve as a background for the text.

# Questions

- Does it make sense to convert some or all of our traditional IRA to a Roth IRA this year?
- Should we consider making gifts in 2021 to use of some/all of the existing federal estate tax exemption?
- Some PPP proceeds are taxable in RI but not in MA. What if you live in RI but your LLC (disregarded entity) is in MA?
- My total portfolio value (which I live off) is at least 50% unrealized LT Capital Gains. NO IRA and 65 years old. Suggestions?
- What's the latest on the potential changes to QSBS (Section 1202)?



A person in a light blue shirt is seated at a wooden desk. They are holding a black smartphone in their left hand and gesturing with their right hand, which is holding a pen. A silver laptop is open in front of them. On the desk, there is a white spiral-bound notebook, a pair of glasses, and several sheets of paper, including one with a blue bar chart. Another person's hand, holding a pen, is visible on the right side of the desk. The text "Final Thoughts" is overlaid in the center of the image.

## Final Thoughts



# We're Here.



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Please note that the proposed BBBA legislation is not yet finalized, and as such, clarifications and additional guidance on various tax changes will be issued if/when necessary. KLR is dedicated to providing you the most up to date information and we are following developments in congress closely.

