

## PPP Forgiveness Tax Implications

Our belief has been that until/unless Congress takes action (see the end of this alert for a sample email you can send), costs paid for with PPP funds expected to be forgiven will not be deductible in 2020, regardless of whether the forgiveness application is done in 2020 or 2021.

- Back in April the IRS came out with Notice 2020-32 which stated that even though forgiveness income would not be taxable, no tax deduction would be allowed for an expense paid for with non-taxable PPP forgiveness funds.
- Most clients applied for a PPP loan in April, so the end of the 24-week covered period was in October. Therefore all costs for which forgiveness has been or will be requested were incurred during 2020. The IRS Notice focused on the costs/ deduction, not the income.
- There were some who believed that waiting to apply for forgiveness until 2021 might defer the tax implications another year.
- Last week, the IRS issued additional guidance confirming our position that the timing of the application makes no difference, and giving options if the loan request is denied or the forgiveness request is not made.

### Timing of forgiveness application doesn't matter if you "reasonably expect" the loan to be forgiven

Revenue Ruling 2020-27 gave two example situations:

- Taxpayer A applied for forgiveness by the end of 2020 but doesn't hear back by the end of 2020 on whether the loan was forgiven;
- Taxpayer B did not apply for forgiveness by the end of 2020 but expects to apply in 2021.
- In both situations, the taxpayer satisfied all other requirements for forgiveness.

The IRS repeated in the revenue ruling what it said previously, that "no deduction is allowed for an eligible expense that is otherwise deductible if the payment of the eligible expense results in forgiveness of a covered loan." The guidance also references other authorities holding that deductions for otherwise deductible expenses are disallowed if the taxpayer receives reimbursement for such expenses or if there is a "reasonable expectation" of reimbursement. The guidance acknowledges that there is a "tax benefit rule" when a taxpayer may take a proper deduction in one year, then in a later tax year an event occurs (such as an unforeseen refund of deducted expenses) which requires the taxpayer to take the amount into income – but the IRS concludes that in the case of PPP forgiveness, taking the deductions in 2020 is inappropriate since the reimbursement of eligible expenses, in the form of covered loan forgiveness, is "reasonably expected" to occur rather than being "unforeseeable."

### What happens if forgiveness is denied or the loan is paid back?

Revenue Procedure 2020-51 provides a safe harbor which allows a taxpayer to claim a deduction for the 2020 tax year, if the taxpayer expects to receive forgiveness after 2020 but in a subsequent year forgiveness is denied (in whole or part) or the taxpayer decides not to request

forgiveness for some or all of the covered loan. In that case, the taxpayer can deduct some or all of the eligible expenses on:

1. A timely filed (including extensions) original tax return for the 2020 tax year;
2. An amended return or administrative adjustment request for the 2020 tax year; or
3. A timely filed (including extensions) original income tax return for the subsequent taxable year.

The revenue procedure requires that a “Revenue Procedure 2020-51 Statement” be attached to the tax return.

#### What can you do?

The AICPA created a template email that can be sent to your U.S. Senators and Representatives, [click here](#) for contact information.

I am writing you today to strongly encourage you to include in any year-end, must-pass legislation language that will allow millions of small business owners a tax deduction for expenses paid with Paycheck Protection Program (PPP) forgiven loans.

Bills have been introduced in the Senate (S.3612 sponsored by Senator Cornyn (R-TX)) and in the House (H.R. 6821 sponsored by Representative Holding (R-NC) or H.R. 6754 sponsored by Representative Fletcher (D-TX)) that would ensure that PPP loan recipients are provided the full benefits intended in the CARES Act.

All Americans have been impacted by the COVID-19 pandemic, and your actions in Congress have provided much-needed assistance to millions of struggling businesses.

It is important that you ensure that these same businesses are not also subject to additional and unexpected taxes as they continue to struggle to survive.

Borrowers who are eligible for forgiveness of their PPP loans have spent the funds as the program directed. Unless they are allowed to deduct these expenses, they may be forced to spend additional funds to pay taxes on the loan proceeds – funds they may not have. Passing this legislation as quickly as possible will provide small business owners more certainty as they focus on year-end business planning that is especially important in these challenging economic times.

I ask that you contact your Senate and House leaders to ensure that PPP loan forgiveness deductibility language is passed by Congress before the end of the year.

Please reach out to your GMS Surgent team member if you have questions.

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"Personal Attention – Valuable Results", is the principal component of our mission statement. It highlights the GMS Surgent commitment to forging strong relationships and ensuring constructive communication while earning consistently effective results for our clients. It plays an essential role throughout every aspect of our firm, guides our actions and acts as a benchmark for the services we provide.

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