

New IRS Guidance Provides Clarity on PPP Deductibility



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On November 18, 2020, the IRS issued [Revenue Ruling 2020-27](#) and [Revenue Procedure 2020-51](#) to provide clarity regarding the potential deductibility of 2020 expenses when the PPP loans are not forgiven until 2021.

In effect, this causes the PPP loan forgiveness to become taxable income.

Background

Under the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#), passed and signed on March 27, 2020, the PPP loan forgiveness is clearly stated to be excludable income per code section 1106(i). On May 2, 2020, the Treasury Department issued [IRS Notice 2020-32](#), which states 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.” In effect, this causes the PPP loan forgiveness to become taxable income.

As the program was expanded from a brief period of 8 weeks to a much-longer 24 weeks of expenses, the concept of the forgiveness occurring in 2021 resulted in new concerns. ***Since the income is not excludable until 2021, what do we do about the 2020 expenses that were funded using PPP loans?***

Safe Harbor

Revenue Ruling 2020-27 states that if a taxpayer reasonably expects to receive forgiveness in 2021, then the expenses are still nondeductible for 2020. Thus, ***whether you apply for forgiveness in 2020 or 2021, the non-deductibility of the expenses holds true as if you were to receive the***

forgiveness in 2020.

Revenue Procedure 2020-51 provides additional guidance that allows taxpayers to deduct expenses in the event that their application for loan forgiveness is fully or partially denied in a subsequent taxable year. In addition, a safe harbor will apply when a taxpayer irrevocably decides not to seek loan forgiveness for some or all of expenses in a subsequent taxable year.

In these situations, taxpayers who meet the eligibility requirements for the safe harbor will have three options to deduct the expenses:

1. Deduct the expenses on the timely filed tax return, including extensions, for 2020;
2. File an amended return or an administrative adjustment request (AAR) for the 2020 taxable year; or
3. Deduct the expenses on the timely filed tax return, including extensions, for 2021.

In order to qualify for the safe harbor, an election statement must be attached to the return titled “Revenue Procedure 2020-51 Statement,” and it must include the following:

1. The taxpayer’s name, address, and social security number or employer identification number;
2. A statement specifying whether the taxpayer is an eligible taxpayer under the Revenue Procedure;
3. A statement that the taxpayer is applying section 4.01 (deduction claimed in 2020) or section 4.02 (deduction claimed in 2021);
4. The amount and date of disbursement of the taxpayer’s covered loan;
5. The amount of covered loan forgiveness that the taxpayer was denied or decided not to continue seeking;
6. The date the taxpayer was denied or decided to no longer seek covered loan forgiveness; and
7. The total amount of eligible expenses and non-deducted eligible expense that are reported on the return.

Importantly, taxpayers who choose to deduct expenses on a timely filed tax return for a subsequent tax year may opt not to follow the safe harbor procedures to deduct non-deducted eligible expenses as long as their application for expenses was denied during that subsequent tax year. However, those taxpayers may still opt to use the safe harbor procedure in order to ensure appropriate processing of their return and to minimize any potential confusion surrounding the deductibility of their expenses.

Finally, members of Congress are working to include language to further clarify that these expenses are fully deductible.

Continuing Uncertainty

With this newest guidance, Republican Senate Finance Committee Chairman Chuck Grassley and Senator Ron Wyden, the leading Democrat on the Senate Finance Committee, expressed their disagreement with the IRS’s interpretation of the CARES Act provision and have previously been on the

record explaining that the congressional intent was for the forgiveness to be excludable income and the expenses fully deductible. As of this writing, they have stated that members of Congress are working to include language to further clarify that these expenses are fully deductible.

P&N professionals are closely following these developments, as we have throughout the year. If you have questions about how this guidance may impact your tax obligations, we encourage you to [contact us](#).