

## NEW GUIDANCE ON CLAIMING DEDUCTIONS IN CONTEXT OF A PPP LOAN

The US Department of Treasury and IRS recently issued administrative guidance addressing the deductibility of certain expenses paid with proceeds from a Paycheck Protection Program (PPP) loan.

**BACKGROUND** The PPP loan program was designed to assist small businesses impacted by the COVID-19 emergency with payroll costs (and certain other expenses). The period for receiving a PPP loan started on February 15, 2020 and was extended through December 31, 2020 (the covered period). If certain requirements are satisfied, the principal amount of a PPP loan can be forgiven up to an amount equal to eligible expenses paid (or incurred) during the covered period. Eligible expenses include: (1) payroll costs; (2) interest on a covered mortgage obligation; (3) any covered rent obligation payment; and (4) any covered utility payment. Taxpayers do not have to include the amount of such loan forgiveness in taxable gross income. Likewise, a taxpayer is not allowed to claim a deduction for the payment of an eligible expense that results in the forgiveness of a PPP loan.

**REV. RUL. 2020-27** This administrative ruling addresses whether a taxpayer can take a deduction for eligible expenses (described above) for the 2020 tax year if:

- (1) taxpayer received a PPP loan in 2020;
- (2) taxpayer paid eligible expenses in 2020 (and satisfied all other requirements for PPP loan forgiveness); and
- (3) filed an application for PPP loan forgiveness with the lender in 2020 and did not receive loan forgiveness approval yet (or, did not file an application for PPP loan forgiveness in 2020, but expects to file for PPP loan forgiveness with the lender in 2021).

Under these facts, a taxpayer is not entitled to a deduction for the eligible expenses because the taxpayer had a reasonable expectation of reimbursement (in the form of debt forgiveness). This holds true even if the taxpayer has not submitted an application for forgiveness of the PPP loan by the end of the 2020 tax year but expects to file an application in 2021. The ruling does not specify what constitutes a reasonable expectation of reimbursement. However, the mere fact that a taxpayer filed an application for loan forgiveness (and satisfies the quantitative requirements) could be treated as a reasonable expectation of reimbursement. The ruling further states that deduction is not allowed if the loan forgiveness is foreseeable.

**REV. PROC. 2020-51** This administrative procedure sets forth a “safe harbor” allowing a taxpayer to claim a deduction for eligible expenses (described above) if a taxpayer expects a PPP loan to be forgiven after the 2020 tax year, but the request for forgiveness of the PPP loan is fully or partially denied (or, if the taxpayer decides to forego an application for loan forgiveness) after the 2020 tax year.

Under these facts, a taxpayer may be able to deduct eligible expenses (attributable to the portion of a PPP loan that is not forgiven) on:

- (1) the taxpayer's timely filed original income tax return (including extensions) for the 2020 tax year;
- (2) an amended return (or an administrative adjustment request) for the 2020 tax year; or
- (3) the taxpayer's timely filed original income tax return (including extensions) for the subsequent tax year.

A taxpayer will not be eligible for the safe harbor procedure unless the taxpayer attaches a statement to the tax return for the year the taxpayer chooses to deduct the eligible expenses. The required statement must be titled "Revenue Procedure 2020-51 Statement," and must include the following information:

- (1) The taxpayer's name, address and social security number or EIN;
- (2) A statement specifying whether the taxpayer is an eligible taxpayer under either section 3.01 or section 3.02 of the revenue procedure;
- (3) A statement that the taxpayer is applying section 4.01 or section 4.02 of the revenue procedure;
- (4) The amount and date of disbursement of the taxpayer's PPP loan;
- (5) The total amount of PPP loan forgiveness that the taxpayer was denied or decided to no longer seek;
- (6) The date the taxpayer was denied or decided to no longer seek PPP loan forgiveness; and
- (7) The total amount of eligible expenses and non-deducted eligible expenses that are reported on the return.