TaxNewsFlash

United States

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KPMG report: Treatment of PPP loans (California, Hawaii, Minnesota, Rhode Island) (COVID-19)

Several states have updated their treatment of loans under the Paycheck Protection Program (PPP).

Background

The PPP—a federal program providing financial support lending for small and large businesses that is administered by the Small Business Administration (SBA)—was originally launched by provisions included in the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) (Pub. L. No. 116-136). The CARES Act provided for the forgiveness of covered loans and that any amount that otherwise would be includible in an eligible recipient's gross income by reason of such forgiveness was excluded from gross income for federal income tax purposes.

A provision of the *Consolidated Appropriations Act, 2021* (Pub. L. No. 116-260) (enacted December 27, 2020) clarified the federal tax treatment of the deduction of expenses, and provided that no amount will be included in the gross income of the eligible PPP loan recipient by reason of forgiveness of indebtedness and that no deduction will be denied, no tax attribute will be reduced, and no basis increase will be denied by reason of the exclusion of the PPP loan proceeds from gross income. The legislative change is effective for tax years ending after March 27, 2020 (the date of enactment of the CARES Act).

The PPP was scheduled to expire March 31, 2021, but the program was extended when President Biden on March 30, 2021, signed legislation (Pub. L. No. 117-6) that extended the PPP through June 30, 2021.

State updates of treatment of PPP loans

- **California:** The Franchise Tax Board provided a new webpage addressing the treatment of PPP loans. California enacted legislation earlier this year that allows forgiven PPP loan amounts to be excluded from income and allows the deduction of expenses paid with forgiven PPP loan amounts, as long as the business is not publicly traded and meets the 25% or greater gross receipts reduction test set forth in section 311 of the *Consolidated Appropriations Act*.

- **Hawaii:** The Department of Taxation issued a "tax information release" (TIR) No. 2021-05 that withdraws prior guidance, but provides new guidance on the treatment of PPP loans and expenses paid with those loans. Under the new guidance, forgiven PPP loans are excluded from gross income. Taxpayers, however, cannot deduct expenses paid with PPP loans if the taxpayer has a reasonable expectation of PPP loan forgiveness (even if loan forgiveness is expected in a future tax year). A taxpayer is considered to have a "reasonable expectation of forgiveness" if the expenses paid by the taxpayer entitle it to the PPP loan forgiveness and the taxpayer has applied for loan forgiveness. As a result, for Hawaii income tax purposes, the federal rule preventing "double benefits" applies to amounts received from a PPP loan. Therefore, if the taxpayer is entitled to PPP loan forgiveness and the taxpayer has a reasonable expectation of forgiveness, expenses paid with the PPP loan funds are not deductible. If a taxpayer has already filed its 2020 Hawaii tax return taking the "double benefit," the taxpayer must file an amended return to remove any disallowed deduction. If the loan, however, is not ultimately forgiven, the deductions may be claimed (assuming the expenses paid were otherwise deductible). With respect to penalties and interest incurred from treating the PPP loan in a manner other than allowed under TIR No. 2021-05, taxpayers may submit a written waiver request that is to include a payment for the total tax due. Requests for waiver are due by October 20, 2021, for returns on extension, and by December 31, 2021, for amended returns.

- **Minnesota:** Under the omnibus tax bill (House File 9) forgiven PPP loans will be excluded from income, and businesses that received PPP loan forgiveness may deduct their associated expenses.

- **Rhode Island:** For tax years beginning on or after January 1, 2020, any PPP loan forgiveness amount that exceeds $250,000 is includable in gross income of businesses and individuals. For any PPP loan forgiven during the 2020 tax year, interest and penalties will be waived on the portion of each PPP loan that is taxable under the corporate income tax, the bank excise tax or the individual income tax, provided that the tax is paid in full on or before March 31, 2022.

Read a **July 2021 report** prepared by KPMG LLP