



# TaxNewsFlash

United States



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## IRS guidance on tax treatment of PPP loan forgiveness based on misrepresentations or omissions (COVID-19)

The IRS recently issued a legal advice memorandum<sup>1</sup> (from the Office of the Chief Counsel) confirming that when a taxpayer's Paycheck Protection Program (PPP) loan is forgiven based upon misrepresentations or omissions, the taxpayer is not eligible to exclude the forgiveness from income and must include in income the portion of the loan proceeds that were forgiven based upon misrepresentations or omissions.

Read [202237010](#) [PDF 125 KB] (released September 16, 2022, and dated August 19, 2022)

The IRS stated in a related release—[IR-2022-162](#) (September 21, 2022)—that taxpayers who inappropriately received forgiveness of their PPP loans are encouraged to take steps to come into compliance by, for example, filing amended returns that include forgiven loan proceed amounts in income.

### Background

The PPP loan program was established by the "Coronavirus Aid, Relief and Economic Security Act" (CARES Act) (Pub. L. No. 116-136) to assist small businesses that were adversely affected by the coronavirus (COVID-19) pandemic in paying certain expenses.

The PPP loan program was further extended by the "Consolidated Appropriations Act, 2021" (Pub. L. No. 116-260) (the "Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act" is one of the titles of the legislation enacted December 27, 2020).

Under the terms of the PPP loan program, lenders can forgive a PPP loan, and such forgiveness is excluded from the loan recipient's income, if:

<sup>1</sup> \*Legal advice memoranda are signed by executives in the National Office of the Office of Chief Counsel and issued to Internal Revenue Service personnel who are national program executives and managers. The memos are issued to assist IRS personnel in administering their programs by providing authoritative legal opinions on certain matters, such as industry-wide issues. The memos cannot be used or cited as precedent.

- The loan recipient was eligible to receive the PPP loan
- The loan proceeds were used to pay eligible expenses, such as payroll costs, rent, interest on the business' mortgage, and utilities
- The loan recipient applied for loan forgiveness and attested to eligibility, verified certain financial information, and met other legal qualifications

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