Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I. § 161)

Rev. Proc. 2021-20

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor for certain taxpayers that received a loan pursuant to the Paycheck Protection Program (PPP) and, based on guidance issued by the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) prior to the enactment of the COVID-related Tax Relief Act of 2020 (COVID Tax Relief Act), enacted as Subtitle B of Title II of Division N of the Consolidated Appropriations Act, 2021 (Appropriations Act), Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020), did not deduct certain otherwise deductible expenses paid or incurred during the taxpayer's taxable year(s) ending after March 26, 2020, and on or before December 31, 2020 (2020 taxable year) that resulted in, or were expected to result in, forgiveness of the loan. Under the safe harbor, such taxpayers may elect to deduct these expenses on the taxpayer's timely filed original Federal income tax return or information return, as applicable, for the taxpayer's first taxable year following the taxpayer's 2020 taxable year rather than filing an amended return or administrative adjustment request for the taxpayer's 2020 taxable year.

SECTION 2. BACKGROUND

.01 PPP Prior to Enactment of the Appropriations Act.

(1) Sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281, 286-93 (Mar. 27, 2020), established the PPP as a loan program administered by the U.S. Small Business Administration (SBA) as part of its "7(a) Loan Program" (15 U.S.C. 636(a)) to provide economic assistance to small businesses nationwide adversely impacted by the COVID–19 emergency. See Business Loan Program Temporary Changes; Paycheck Protection Program, 85 FR 20811 (Apr. 15, 2020). Under the PPP as it existed prior to enactment of the Appropriations Act, the SBA was permitted to guarantee the full principal amount of a covered loan, defined by § 1102(a)(2) of the CARES Act as a loan made under the PPP during the period beginning on February 15, 2020, and ending on December 31, 2020 (original PPP covered loan). See § 1102(a)(2) of the CARES Act; Paycheck Protection Program Flexibility Act of 2020, Public Law 116-142, 134 Stat. 641 (June 5, 2020).

(2) Prior to the enactment of the Appropriations Act, under § 1106(b) of the CARES Act, an individual or entity that was eligible to receive an original PPP covered loan (original eligible recipient) could receive forgiveness of the full principal amount of the loan up to an amount equal to the following costs incurred and payments made during

the original PPP covered period: (1) payroll costs, (2) interest on a covered mortgage obligation, (3) any covered rent obligation payment, and (4) any covered utility payment (original eligible expenses).

(3) Prior to the enactment of the Appropriations Act, § 1106(i) of the CARES Act provided that, for purposes of the Internal Revenue Code (Code), "any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income." Section 1106(i) of the CARES Act excluded the amount from gross income regardless of whether the amount would be (1) income from the discharge of indebtedness under § 61(a)(11) of the Code, or (2) otherwise includible in gross income under § 61.

.02 Guidance Issued Prior to Enactment of the COVID-related Tax Relief Act of 2020. On April 30, 2020, the Treasury Department and the IRS released Notice 2020-32, 2020-21 IRB 837 (May 18, 2020), which clarified that no deduction was allowed for an otherwise deductible expense if the payment of the expense resulted in forgiveness of an original PPP covered loan. On November 18, 2020, the Treasury Department and the IRS released Rev. Rul. 2020-27, 2020-50 IRB 1552 (December 7, 2020), which held that a taxpayer that incurred otherwise deductible expenses in its 2020 taxable year could not deduct those expenses if, at the end of the taxpayer's 2020 taxable year, the taxpayer had a reasonable expectation of reimbursement of the expenses in the form of covered loan forgiveness. Also on November 18, 2020, the Treasury Department and the IRS released Rev. Proc. 2020-51, 2020-50 IRB 1599 (December 7, 2020), which provided a safe harbor to address situations covered by Rev. Rul. 2020-27 when the taxpayer's expectation of covered loan forgiveness was not realized in a subsequent taxable year.

.03 Enactment of the COVID-related Tax Relief Act.

(1) On December 27, 2020, the Appropriations Act was enacted. Section 304(b)(1)(A) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), which was enacted as Title III of Division N of the Appropriations Act, redesignated § 1106 of the CARES Act as § 7A of the Small Business Act, transferred the section to the Small Business Act (15 U.S.C. § 631 et seq.), and inserted that section so as to appear after § 7 of the Small Business Act (15 U.S.C. § 636)). Section 276(a)(1) of the COVID-related Tax Relief Act amended § 7A(i) of the Small Business Act to provide new rules regarding the Federal income tax consequences of forgiveness of original PPP covered loans. Specifically, § 7A(i) of the Small Business Act provides, in relevant part, that "no amount shall be included in the gross income of the eligible recipient by reason of forgiveness of indebtedness [on an original PPP covered loan]," and "no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of [that] exclusion from gross income."

(2) Rev. Rul. 2021-2, 2021-4 IRB 495 (Jan. 25, 2021), which was released on January 6, 2021, obsoleted Notice 2020-32 and Rev. Rul. 2020-27 due to the enactment of § 276(a) of the COVID-related Tax Relief Act. Rev. Rul. 2021-2 provides that, as of December 27, 2020, the conclusion stated in Notice 2020-32 and the holding stated in Rev. Rul. 2020-27 are no longer accurate statements of the law. Likewise, the legal premise underlying Rev. Proc. 2020-51 is no longer accurate and, as of December

27, 2020, taxpayers could not have complied with the requirements of section 3.01 or 3.02 of Rev. Proc. 2020-51.

SECTION 3. SAFE HARBOR TO DEDUCT ORIGINAL ELIGIBLE EXPENSES IN IMMEDIATELY SUBSEQUENT TAXABLE YEAR

.01 Safe Harbor. Subject to the limitations described in section 3.05 of this revenue procedure, a taxpayer may elect to deduct otherwise deductible original eligible expenses on the taxpayer's timely filed, including extensions, original Federal income tax return or information return, as applicable, for the taxpayer's immediately subsequent taxable year, rather than on an amended return or administrative adjustment request for the taxpayer's 2020 taxable year in which the expenses were paid or incurred, if the taxpayer--

(1) Is a "Covered Taxpayer," as defined in section 3.02 of this revenue procedure; and

(2) Satisfies all of the requirements described in section 3.04 of this revenue procedure.

.02 Covered Taxpayer. A Covered Taxpayer is a taxpayer that satisfies all of the following:

(1) The taxpayer received an original PPP covered loan;

(2) The taxpayer paid or incurred original eligible expenses during the taxpayer's 2020 taxable year;

(3) On or before December 27, 2020, the taxpayer timely filed, including extensions, a Federal income tax return or information return, as applicable, for the taxpayer's 2020 taxable year; and

(4) On the taxpayer's Federal income tax return or information return, as applicable, the taxpayer did not deduct the original eligible expenses because--

(a) The expenses resulted in forgiveness of the original PPP covered loan; or

(b) The taxpayer reasonably expected at the end of the 2020 taxable year that the expenses would result in such forgiveness.

.03 Expenses Not Covered by the Safe Harbor. This revenue procedure does not apply to expenses described in sections 3.03(1) or (2) of this revenue procedure.

(1) Section 304(b)(2) of the Economic Aid Act expanded the list of expenses for which an individual or entity that received an original PPP covered loan could receive forgiveness. See § 7A(a) of the Small Business Act (as amended by § 304(b)(2) of the Economic Aid Act). However, because those new expenses were not included as part of the original eligible expenses, those expenses are not eligible to be deducted through an election by a Covered Taxpayer to apply the safe harbor provided by section 3.01 of this revenue procedure.

(2) Section 311(a) of the Economic Aid Act amended § 7(a) of the Small Business Act to authorize Paycheck Protection Program Second Draw Loans (PPP Second Draw Loans) under the same terms, conditions, and processes as original PPP covered loans. See § 7(a)(37)(B) of the Small Business Act (as added by § 311(a) of the Economic Aid Act). PPP Second Draw Loans are not original PPP covered loans, and therefore eligible expenses that may result in forgiveness of such loans are not covered by this revenue procedure.

.04 Time and Manner for Making Election to Apply Safe Harbor. To make a valid election to apply the safe harbor provided by section 3.01 of this revenue procedure, a

Covered Taxpayer must satisfy the following conditions:

(1) Election deadline. A Covered Taxpayer must make the election by attaching the statement described in section 3.04(2) of this revenue procedure to the Covered Taxpayer's timely filed, including extensions, Federal income tax return or information return, as applicable, for the Covered Taxpayer's first taxable year following the Covered Taxpayer's 2020 taxable year in which the original eligible expenses were paid or incurred.

(2) Requirements for statement. The statement required by section 3.04(1) of this revenue procedure must be titled "Revenue Procedure 2021-20 Statement" (and named RevProc2021-20.pdf for e-file attachments) and include the following information:

(a) The Covered Taxpayer's name, address, and social security number or taxpayer identification number;

(b) A statement that the Covered Taxpayer is applying the safe harbor provided by section 3.01 of this revenue procedure;

(c) The amount and date of disbursement of the taxpayer's original PPP covered loan; and

(d) A list, including descriptions and amounts, of the original eligible expenses paid or incurred by the Covered Taxpayer during the Covered Taxpayer's 2020 taxable year that are reported on the Federal income tax return or information return, as applicable, for the Covered Taxpayer's first taxable year following that 2020 taxable year.

.05 Safe Harbor Limitations. The safe harbor provided by section 3.01 of this revenue procedure does not preclude the IRS from--

(1) Examining any issues relating to the claimed deductions for original eligible expenses, including determining whether a taxpayer is a Covered Taxpayer under this revenue procedure, the amount of the deduction, and whether the Covered Taxpayer has substantiated the deduction claim; or

(2) Requesting additional information or documentation verifying any amounts described in the statement required by section 3.04(1) of this revenue procedure.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2020-51 is obsolete.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for any taxable year ending in calendar year 2020 and for the immediately subsequent taxable year.

SECTION 6. PAPERWORK REDUCTION ACT

.01 This revenue procedure provides procedures by which Covered Taxpayers may apply the safe harbor provided by section 3.01 of this revenue procedure. To elect to apply that safe harbor, Covered Taxpayers must file a statement in accordance with all of the requirements described in section 3.04(2) of this revenue procedure. The collection of information will be associated with the Federal income tax returns or information returns to which that statement will be attached. That collection of information has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under--

(1) control number 1545–0123 for business filers (https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-

1120-nd); and

(2) control number 1545-074 for individual filers (https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201808-1545-031).

.02 The information described in section 6.01 of this revenue procedure is required to be collected and retained for compliance purposes. Specifically, that information will be used by the IRS to (1) determine whether a Covered Taxpayer has elected to apply the safe harbor provided by section 3.01 of this revenue procedure, (2) determine that the amount claimed on the Federal income tax or information return filed by the Covered Taxpayer is correct, and (3) ensure that any future action that is inconsistent with the election by the Covered Taxpayer to apply the safe harbor provided by section 3.01 of this revenue procedure is properly addressed, including through the potential application of equitable estoppel or the doctrine of consistency.

.03 The Treasury Department and the IRS estimate that the maximum number of respondents under this revenue procedure would be 6,762,181. This number was determined by examining the PPP data for the total number of approved original PPP covered loans. See https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program/ppp-data. This data is current through March 28, 2021. Because some taxpayers will not elect to apply the safe harbor provided by section 3.01 of this revenue procedure, the number of estimated respondents is on the high end of the estimate.

.04 The maximum estimated number of respondents under this revenue procedure is 6,762,181. The estimated annual burden per respondent or recordkeeper varies between 0 and 30 minutes, depending on individual circumstances, with an estimated average of 15 minutes. The estimated total annual reporting and/or recordkeeping burden is approximately 1,690,545 hours (6,762,181 respondents * 15 minutes). The estimated annual cost burden to respondents is $95 per hour. Accordingly, the Treasury Department and the IRS expect the total annual cost burden for the statements required by section 3.04(1) of this revenue procedure to be approximately $160,601,799 (6,762,181 * 0.25 * $95). The estimated annual frequency of responses is once because that statement must be filed only once.

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Sarah Daya and Charles Gorham of the Office of the Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, please contact Morgan Lawrence at (202) 317-7011 (not a toll-free call).