

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, § 61.)

Rev. Proc. 2021-48

SECTION 1. PURPOSE

This revenue procedure provides that taxpayers may treat amounts that are excluded from gross income (tax-exempt income) in connection with the forgiveness of Paycheck Protection Program (PPP) Loans as received or accrued: (1) as eligible expenses are paid or incurred, (2) when an application for PPP Loan forgiveness is filed, or (3) when PPP Loan forgiveness is granted. To the extent tax-exempt income resulting from the forgiveness of a PPP Loan is treated as gross receipts under a particular Federal tax provision, including but not limited to §§ 448(c) and 6033 of the Internal Revenue Code (Code), this revenue procedure applies for purposes of determining the timing and, to the extent relevant, reporting of such gross receipts.

SECTION 2. BACKGROUND

.01 Overview.

(1) The PPP is a loan program administered by the U.S. Small Business Administration (SBA) and the Administrator of the SBA (Administrator) as part of the SBA's "7(a) Loan Program" under § 7(a) of the Small Business Act (15 U.S.C. § 636(a)).¹ Congress established the PPP to assist small businesses nationwide adversely impacted by the COVID-19 pandemic in paying payroll costs and other eligible expenses.² Under the PPP, the Administrator may guarantee the full principal amount of a "covered loan," as defined in § 7(a)(36)(A)(ii) of the Small Business Act, which for purposes of the PPP is a loan made under the PPP to an "eligible recipient," as defined in § 7(a)(36)(A)(iv) of the Small Business Act, during the period beginning on February 15, 2020, and ending on May 31, 2021 (PPP First Draw Loan).³ Under § 7(a)(37) of the Small Business Act, the Administrator may guarantee under the same terms, conditions, and processes as a PPP First Draw Loan the full principal amount of a subsequent loan made under the PPP to an "eligible entity," as defined in § 7(a)(37)(A)(iv) of the Small Business Act, that has used or will use the full amount of a

¹ See §§ 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281, 286-94, 297-301 (Mar. 27, 2020), as amended by §§ 2 and 3 of the Paycheck Protection Program Flexibility Act of 2020, Public Law 116-142, 134 Stat. 641 (June 5, 2020); the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act) enacted as Title III of Division N of the Consolidated Appropriations Act, 2021 (CAA), Public Law 116-220, 134 Stat. 1182 (Dec. 27, 2020); § 276 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 CAA; and § 2 of the PPP Extension Act of 2021, Public Law 117-6, 135 Stat. 250 (Mar. 30, 2021). Section 304(b)(1)(A) of the Economic Aid Act redesignated § 1106 of the CARES Act (15 U.S.C. § 9005) as § 7A and transferred redesignated § 7A to be inserted to appear after § 7 of the Small Business Act (15 U.S.C. § 636).

² See Business Loan Program Temporary Changes; Paycheck Protection Program, 85 FR 20811 (Apr. 15, 2020).

³ See § 7(a)(2) of the Small Business Act and § 2 of the PPP Extension Act of 2021.

PPP First Draw Loan on or before the expected date on which the subsequent loan is disbursed to the eligible entity (PPP Second Draw Loan).⁴ Section 1109(b) of the CARES Act allows the Department of the Treasury (Treasury Department), the Farm Credit Administration, and other Federal financial regulatory agencies to authorize bank and nonbank lenders, including insured credit unions, to participate in loans made under the PPP and provide PPP loans under § 1109 (Section 1109 Loans).⁵ Under § 1109(d)(2)(D) of the CARES Act, regulations establishing the terms and conditions of Section 1109 Loans must provide for forgiveness of Section 1109 Loans under terms and conditions that, to the maximum extent practicable, are consistent with the terms and conditions for loan forgiveness of PPP First Draw Loans under § 1106 of the CARES Act.

(2) A taxpayer that receives a PPP First Draw Loan, a PPP Second Draw Loan, and/or a Section 1109 Loan, each a “PPP Loan” and collectively “PPP Loans,” may be eligible to receive forgiveness of the principal amount of the PPP Loan up to an amount (loan forgiveness amount) equal to the costs incurred and payments made during the “covered period,” as defined in § 7A(a)(4) of the Small Business Act, for the following “eligible expenses”: (1) payroll costs, (2) interest on a covered mortgage obligation, (3) any covered rent obligation payment, (4) any covered utility payment, (5) covered operations expenditures, (6) covered property damage costs, (7) covered supplier costs, and (8) covered worker protection expenditures.⁶ However, a taxpayer’s loan forgiveness amount may be reduced under “PPP loan forgiveness reduction rules” if the

⁴ See § 7(a)(37) of the Small Business Act (as added by § 311(a) of the Economic Aid Act).

⁵ 134 Stat., at 304-306.

⁶ See § 7A(a) of the Small Business Act (as amended by § 304(b)(2) of the Economic Aid Act).

taxpayer experiences reductions in full-time equivalent employees or employee salary and wages during the covered period and the taxpayer does not qualify for any of the statutory or regulatory exemptions from the PPP loan forgiveness reduction rules.⁷

.02 Forgiveness of PPP Loans.

(1) Section 276(a)(1) of the COVID Tax Relief Act amended § 7A(i) of the Small Business Act to provide guidance on the Federal income tax consequences of the forgiveness of PPP First Draw Loans. Section 276(b) of the COVID Tax Relief Act provides substantially similar guidance with regard to PPP Second Draw Loans, as do §§ 278(a)(1) and (2) with regard to Section 1109 Loans. Specifically, § 7A(i) of the Small Business Act and §§ 276(b) and 278(a) of the COVID Tax Relief Act provide that, for purposes of the Code, no amount is included in the gross income of an eligible recipient or an eligible entity, as appropriate, by reason of the forgiveness of a PPP Loan, and no deduction is denied, no tax attribute is reduced, and no basis increase is denied, by reason of such exclusion from gross income.

(2) Revenue Procedure 2021-20, 2021-19 I.R.B. 1150 (May 10, 2021), provides a safe harbor that allows certain taxpayers that, under prior guidance issued by the Treasury Department and the Internal Revenue Service, did not deduct certain otherwise deductible PPP-related expenses on a tax return that was filed prior to the enactment of the COVID Tax Relief Act to deduct such expenses in the next taxable year (that is, the taxable year following the taxable year in which such expenses were paid or incurred).

⁷ See § 7A(d) of the Small Business Act (as amended by § 304(b)(2) of the Economic Aid Act) and Business Loan Program Temporary Changes; Paycheck Protection Program – Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid Act, 86 F.R. 8290 (Feb. 5, 2021).

(3) For eligible recipients and eligible entities, as appropriate, that are partnerships or S corporations, § 7A(i) of the Small Business Act and §§ 276(b) and 278(a)(3) of the COVID Tax Relief Act provide that any amount excluded from gross income under § 7A(i) of the Small Business Act or § 276(b) or § 278(a) of the COVID Tax Relief Act, as applicable, is treated as tax-exempt income for purposes of §§ 705 and 1366 of the Code. Section 7A(i) of the Small Business Act and §§ 276(b) and 278(a) of the COVID Tax Relief Act further provide that, except as provided by the Secretary of the Treasury or her delegate, any increase in the adjusted basis of a partner's interest in a partnership under § 705 of the Code with respect to amounts treated as tax-exempt income under § 7A(i) of the Small Business Act, § 276(b) of the COVID Tax Relief Act, or § 278(a) of the COVID Tax Relief Act, as applicable, equals the partner's distributive share of deductions resulting from costs giving rise to the forgiveness of the PPP Loans. Revenue Procedure 2021-49, 2021-49 I.R.B. ____, released November 18, 2021, provides guidance for partners and their partnerships regarding allocations under § 704(b) of the Code of amounts excluded from gross income under § 7A(i) of the Small Business Act and § 276(b) or 278(a) of the COVID Tax Relief Act, as applicable, allocations under § 704(b) of the Code of deductions resulting from expenditures attributable to the use of certain PPP Loan proceeds, and corresponding adjustments to partners' bases in their partnership interests under § 705 of the Code. Revenue Procedure 2021-49 also provides guidance under § 1502 of the Code and § 1.1502-32 of the Income Tax Regulations regarding the corresponding basis adjustments for stock of subsidiary members of consolidated groups as a result of tax-exempt income resulting from forgiveness of PPP Loans. To allow their partners or shareholders to

make proper basis adjustments under §§ 705, 1367, and 1502 of the Code, as applicable, entities that are partnerships, S corporations, or subsidiary members of consolidated groups, must determine when tax-exempt income from the forgiveness of a PPP Loan is received or accrued.

(4) Certain eligible recipients and entities may need to determine when tax-exempt income resulting from the forgiveness of a PPP Loan is received or accrued to apply Federal tax provisions for which the amount of gross receipts is relevant. For example, certain eligible recipients and entities may need to determine when such tax-exempt income is included in gross receipts under § 448(c) or 6033 of the Code. However, Revenue Procedure 2021-33, 2021-34 I.R.B. 327 (August 23, 2021) provides a safe harbor that permits eligible recipients and entities to exclude the amount of forgiveness of a PPP Loan from gross receipts solely for purposes of determining eligibility to claim the employee retention credit under § 2301 of the CARES Act, as amended by §§ 206 and 207 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted as Division EE of the CAA, and extended by § 9651 of the American Rescue Plan Act of 2021, Public Law 117-2, 135 Stat. 4 (March 11, 2021). That safe harbor is not mandatory, and it does not allow eligible recipients and entities to exclude the amount of forgiveness of a PPP Loan from gross receipts under § 448(c) or 6033 of the Code for any other Federal tax purpose.

(5) The Administrator has provided guidance regarding the process for taxpayers to receive forgiveness of PPP First Draw Loans and PPP Second Draw Loans. See Business Loan Program Temporary Changes; Paycheck Protection Program – Loan Forgiveness Requirements and Loan Review Procedures as Amended by Economic Aid

Act, 86 F.R. 8283 (Feb. 5, 2021) (Loan Forgiveness Requirements); Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act, 86 F.R. 3692 (Jan. 14, 2021); Business Loan Program Temporary Changes; Paycheck Protection Program – COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment, 86 F.R. 40921 (July 28, 2021). To receive forgiveness of PPP First Draw Loans and PPP Second Draw Loans, the taxpayer must, among other things, complete and submit a “PPP Loan Forgiveness Application.” The amount of information and documentation, if any, that the taxpayer must provide to seek forgiveness and whether the taxpayer’s loan forgiveness amount is subject to a reduction depends on the facts and circumstances. The forgiveness approval process undertaken by lenders also depends on the facts and circumstances and the type of PPP Loan Forgiveness Application submitted by the taxpayer. Loan Forgiveness Requirements at 8295-96.

SECTION 3. TIMING OF TAX-EXEMPT INCOME

.01 Overview. Subject to section 3.03 of this revenue procedure, a taxpayer that received a PPP Loan may treat tax-exempt income resulting from the partial or complete forgiveness of such PPP Loan as received or accrued:

(1) As, and to the extent that, the taxpayer pays or incurs eligible expenses as described in section 2.01(2). Under this section 3.01(1), a taxpayer that has elected to use the safe harbor provided under Revenue Procedure 2021-20 will be treated as paying or incurring the eligible expenses during the taxpayer’s immediately subsequent taxable year following the taxpayer’s 2020 taxable year in which the expenses were actually paid or incurred, as described in Revenue Procedure 2021-20;

- (2) When the taxpayer files an application for forgiveness of the PPP Loan; or
- (3) When the PPP Loan forgiveness is granted.

.02 Amended returns. Taxpayers may report tax-exempt income pursuant to section 3.01 on a timely filed original or amended Federal income tax return, information return or administrative adjustment request (AAR) under § 6227 of the Code. See also Revenue Procedure 2021-50, 2021-49 I.R.B. ____, released November 18, 2021, allowing an eligible partnership to file an amended Form 1065, *U.S. Return of Partnership Income*, as an alternative to filing an AAR, and furnish a corresponding amended Schedule K-1 (Form 1065), *Partner's Share of Income, Deductions, Credits, etc.*, to each of its partners. Partners and shareholders that receive amended Forms K-1 as provided in this section 3.02 must file amended Federal income tax returns, information returns or AARs, as applicable, consistent with the Forms K-1 received.

.03 When PPP Loan is not fully forgiven. Unless otherwise provided in the 2021 filing year form instructions, if the taxpayer receives forgiveness for an amount of the PPP Loan that is less than the amount that the taxpayer previously treated as tax-exempt income, the taxpayer must make appropriate adjustments on an amended Federal income tax return, information return or AAR, as applicable, for the taxable year(s) in which the taxpayer treated tax-exempt income from the forgiveness of such PPP Loan as received or accrued. Partners and shareholders that receive amended Forms K-1 as provided in this section 3.03 must file amended Federal income tax returns, information returns or AARs, as applicable, consistent with the Forms K-1 received.

.04 Reporting consistent with this revenue procedure. The IRS will publish form

instructions for the 2021 filing season that will detail how taxpayers can report consistently with sections 3.01 through 3.03 of this revenue procedure. However, taxpayers do not need to wait until the instructions are published to apply this revenue procedure.

.05 Gross receipts application. To the extent tax-exempt income resulting from the partial or complete forgiveness of a PPP Loan is treated as gross receipts under a particular Federal tax provision, including but not limited to §§ 448(c) and 6033 of the Code, section 3 of this revenue procedure applies for purposes of determining the timing and, to the extent relevant, reporting of such gross receipts.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for any taxable year in which a taxpayer paid or incurred eligible expenses, as described in section 2.01(2) of this revenue procedure, any taxable year in which the taxpayer applied for forgiveness of a PPP Loan, or any taxable year in which the taxpayer's PPP Loan forgiveness is granted.

SECTION 5. PAPERWORK REDUCTION ACT

Any collection of information associated with this notice has been submitted to the Office of Management and Budget for review under OMB control numbers 1545-0123 (for business filers), 1545-074 (for individual filers) and 1545-0047 (for exempt organizations) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are Morgan Lawrence and Charles

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