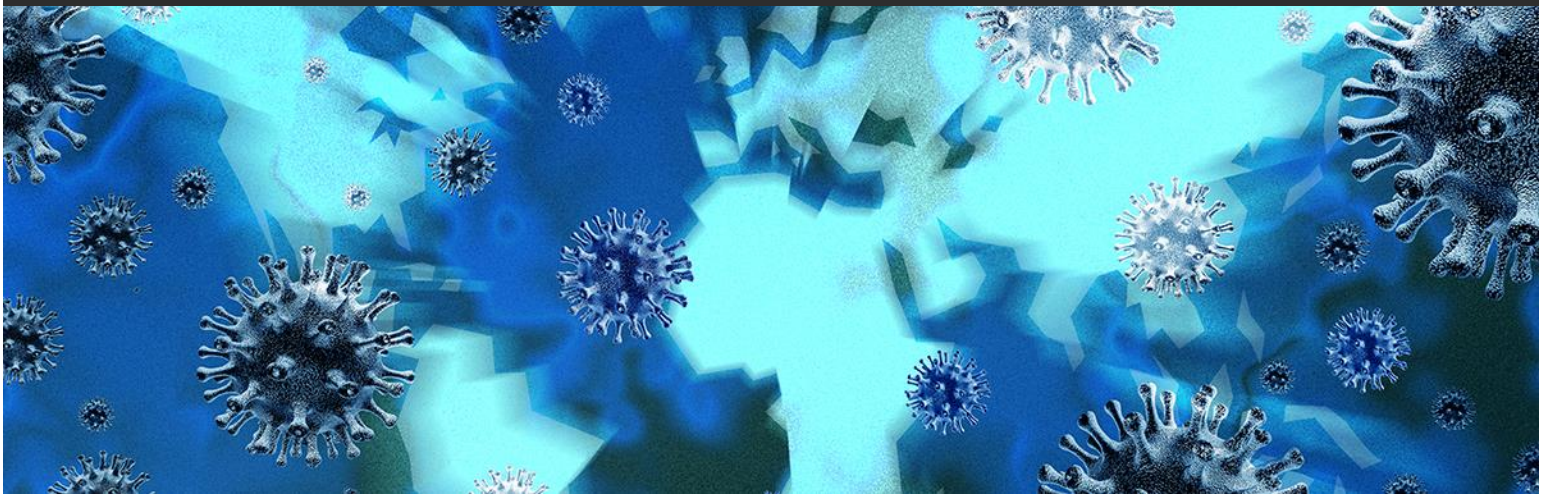


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



May 11, 2020

IRS Denies Deductions for Business Expenses Paid with Proceeds of Forgiven Paycheck Protection Program (PPP) Loans

IRS [Notice 2020-32](#), issued on April 30, 2020, denies deductions for otherwise deductible expenses of businesses that received qualifying business loans under the Paycheck Protection Program (PPP loans) to the extent that such loans are later forgiven as permitted under certain circumstances pursuant to the program. The disallowance of the deduction applies to such otherwise deductible expenses (such as payroll expenses) that were paid using the PPP loan proceeds or otherwise enabled the trade or business to satisfy the conditions of the PPP Loan forgiveness. The deduction disallowance shall apply to the extent of the resulting PPP loan forgiveness up to the aggregate amount forgiven.

The disallowance of such deductions means that the value of the benefit of a forgiven PPP loan amount would be lower than the amount of the loan forgiven by the value to the taxpayer of the tax deductions disallowed to the business under [Notice 2020-32](#). This additional tax cost of not being able to deduct these expenses should be a factor considered by a business in deciding whether to apply for a PPP Loan or whether to ask for forgiveness of a PPP Loan (rather than pay it back).

It should be noted that by applying for and obtaining a PPP Loan, the business forgoes the opportunity to claim the Employee Retention Tax Credit that was introduced by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Pursuant to rules and guidance recently issued by the U.S. Small Business Administration (“SBA”) and Treasury, businesses that applied for and received PPP Loans which

repay such loans by May 14, 2020 will be treated as though the business had not received a covered loan under the PPP loan program for purposes of the Employee Retention Tax Credit. Therefore, such businesses will be eligible for the credit if they are otherwise an “eligible employer” for purposes of the credit if they repay their PPP Loans by May 14, 2020.

The PPP loan program was established by the CARES Act and is administered by the SBA to provide loans to “eligible businesses” (as defined under the program) to be used to pay certain business expenses such as payroll costs, mortgage interest, rent and utility payments. Under the program, such loans may be forgiven if the business establishes that it satisfied certain conditions such as using 75% of its PPP loan proceeds for payroll costs during the 8-week period after the business received the loan and retaining or, in some circumstances, reinstating all of its full-time equivalents and their salaries as compared to a prior period. For more information regarding the PPP Loan Program, please see [Congress Passes CARES Act: Overview of the Relief Available to Small and Other Business Concerns](#).

The program provides that a forgiveness of loan proceeds is not taxable to the borrower business (or its owners). However, it was not clear whether such businesses (or their owners) would also get the tax benefit of tax deduction for otherwise deductible business expenses (such as payroll expenses) where such expenses allow the business to obtain tax-exempt income, i.e., in the form of forgiven loan amounts.

[Notice 2020-32](#) clarifies this issue and disallows such deductions.

[Notice 2020-32](#) has been reviewed by senior level Congressional tax legislators and there appears to be bicameral/bipartisan support for a fix. On May 6, 2020, Senate Finance Committee Chairman Chuck Grassley (R-IA) and ranking member Sen. Ron Wyden (D-OR) introduced bipartisan legislation (The Small Business Expense Protection Act of 2020 (S. 3612)) to permit businesses that have received PPP Loans to deduct covered expenses. While the bill clarifies that Congress wants expenses associated with the small business loan program to be tax deductible, Secretary Mnuchin indicated opposition to this legislation. Negotiations between lawmakers and the IRS are ongoing, and it remains to be seen whether lawmakers will be able to include the language in the next relief package or if the IRS will act first and in what manner.

For more information and updates on the developing situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) or [GT’s COVID-19 Economic Stimulus Team](#).

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