

Publications

Federal Tax Bulletin: IRS Guidance Clarifies Non-Deductibility of PPP-Funded Expenses Where Loan Forgiveness is Reasonably Expected

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Paycheck Protection Program (PPP) borrowers have been waiting for additional guidance on the deductibility of PPP-funded expenses. In late April, the IRS issued **guidance** stating that borrowers may not claim a deduction for expenses that result in the tax-free forgiveness of their loan. This week, the IRS expanded upon this guidance by addressing the situation where a PPP loan has not yet been forgiven by the end of the tax year in which such expenses were incurred.

Under the new IRS **guidance**, a calendar year borrower who received a PPP loan in 2020 which loan has not been forgiven by the end of 2020 may not deduct expenses incurred with PPP loan proceeds if (i) the expenses are qualifying expenses under the PPP rules (i.e., qualifying payroll costs, mortgage interest, utility payments and rent) and (ii) the borrower reasonably expects that its loan will be forgiven. This rule applies even if the borrower has not yet submitted an application for forgiveness in 2020, so long as the borrower intends to submit an application in 2021 and reasonably expects forgiveness. (Although this guidance specifically addresses calendar year taxpayers, similar principles would apply to fiscal year taxpayers as well.)

The IRS has also released a related **safe harbor** that provides flexibility for borrowers who forgo forgiveness, or who are denied forgiveness, in their 2021 tax year (either in whole or in part). In such cases, the borrower may elect to deduct the previously non-deductible expenses on its federal income tax return for either its 2020 or 2021 tax year. Borrowers that undergo a change in beneficial ownership in 2020 or 2021 should be especially mindful of the electivity of the IRS's new safe harbor.

If you have any questions about the PPP or this latest guidance, please contact your Vorys attorney.

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