More Paycheck Protection Program Guidance

The IRS has released more guidance concerning the tax treatment of Paycheck Protection Program (PPP) loans. Congress established the PPP to assist small businesses nationwide adversely impacted by the COVID-19 pandemic. The program helps taxpayers pay for payroll costs and other eligible expenses. If the taxpayer uses the loan proceeds to pay for certain eligible expenses, then the PPP loan may be eligible to receive forgiveness of the principal amount. Loan forgiveness may be reduced, however, if the taxpayer reduces the number of full-time equivalent employees or employee salary and wages during a covered period and the taxpayer does not qualify for any of the exemptions from the loan forgiveness reduction rules.

The law also states that no amount is included in the gross income of the recipient 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.

Rev. Proc. 2021-20 provides a safe harbor that allows taxpayers to deduct certain otherwise deductible PPP-related expenses on the 2021 tax return if the 2020 tax return (the year the expense was paid) was filed prior to the enactment of the law that said taxpayers could deduct the expenses, even though such expenses were paid for with tax-exempt PPP loan forgiveness amounts.

Rev. Proc. 2021-48. This guidance deals with the timing of tax-exempt income. 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 income is relevant. For example, IRC section 448(c) allows taxpayers with gross receipts that do not exceed $25 million to use the cash method of accounting. Even though a PPP loan forgiveness may be excluded from gross income, it is not excluded from gross receipts for purposes of the IRC section 448(c) test.

Likewise, IRC section 6033 requires exempt organizations to file certain information returns when gross receipts exceed $5,000. A PPP loan forgiveness amount that is excluded from gross income is still included in gross receipts for purposes of the IRC section 6033 test.

Under Rev. Proc. 2021-48, 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 the taxpayer pays or incurs eligible expenses. If the taxpayer elects to use the safe harbor under Rev. Proc. 2021-20, the taxpayer is treated as paying or incurring the eligible expenses during the immediately subsequent tax year following the 2020 tax year in which the expenses were actually paid or incurred,

2) When the taxpayer files an application for forgiveness of the PPP loan, or

3) When the PPP loan forgiveness is granted. Taxpayers may report tax-exempt income on a timely filed original or amended tax return. 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 tax return.

Rev. Proc. 2021-49. This revenue procedure provides guidance for partners and their partnerships regarding allocations under IRC section 704(b) and the corresponding adjustments to be made with respect to the partners' bases in their partnership interests. The revenue procedure also provides guidance regarding the corresponding basis adjustments for stock of subsidiary members of consolidated groups as a result of tax exempt income arising from the forgiven PPP loans.

Rev. Proc. 2021-50. This revenue procedure allows partnerships subject to the centralized partnership audit regime to file amended Forms 1065 and furnish amended Schedules K-1 to partners on or before December 31, 2021, to adopt the guidance set forth in Rev. Proc. 2021-48 and Rev. Proc. 2021-49 if certain requirements are met.