

Rev. Proc. 2020-51

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor allowing a taxpayer to claim a deduction in the taxpayer's taxable year beginning or ending in 2020 (2020 taxable year) for certain otherwise deductible eligible expenses, as defined in section 2.03 of this revenue procedure, if (1) the eligible expenses are paid or incurred during the taxpayer's 2020 taxable year, (2) the taxpayer receives a loan (covered loan) guaranteed under the Paycheck Protection Program (PPP) authorized under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)), which at the end of the taxpayer's 2020 taxable year the taxpayer expects to be forgiven in a taxable year after the 2020 taxable year (subsequent taxable year), and (3) in a subsequent taxable year, the taxpayer's request for forgiveness of the covered loan is denied, in whole or in part, or the taxpayer decides never to request forgiveness of the covered loan, as described in section 3 of this revenue procedure. A taxpayer described in section 3.01 or 3.02 of this revenue procedure may be able to deduct some or all of the eligible expenses on (1) the taxpayer's timely filed, including extensions, original income tax return or information return, as applicable, for the 2020 taxable year; (2) an amended return or an administrative adjustment request (AAR) under section 6227 of the Internal Revenue Code (Code) for the 2020 taxable year, as applicable; or (3) the taxpayer's timely filed, including extensions, original income tax return or information return, as applicable, for the subsequent taxable year.

SECTION 2. BACKGROUND

.01 Sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281, 286-93 (March 27, 2020), established the PPP as a new loan program administered by the U.S. Small Business Administration (SBA) as part of its section 7(a) Loan Program (15 U.S.C. 636(a)) that was designed to assist small businesses nationwide adversely impacted by the COVID-19 emergency to pay payroll costs and other eligible expenses. See Business Loan Program Temporary Changes; Paycheck Protection Program, 85 FR 20811 (April 15, 2020). Under the PPP, the SBA is permitted to guarantee the full principal amount of a covered loan, defined by section 1102(a)(2) of the CARES Act as a loan made under the PPP during the covered period; a covered loan may be forgiven under section 1106 of the CARES Act.

.02 The covered period for making covered loans refers to the period beginning on February 15, 2020, and ending on December 31, 2020 (covered period). The covered period initially was to end on June 30, 2020. See section 1102(a)(2) of the CARES Act. The Paycheck Protection Program Flexibility Act of 2020, Public Law 116-142, 134 Stat. 641 (June 5, 2020), extended the end date of the covered period to December 31, 2020.

.03 An individual or entity that is eligible to receive a covered loan (eligible recipient) can receive forgiveness of the full principal amount of the covered loan up to an amount equal to the following costs incurred and payments made during the covered period: (1) payroll costs, (2) interest on a covered mortgage obligation, (3) any covered rent obligation payment, and (4) any covered utility payment (eligible expenses). See section 1106(b) of the CARES Act.

.04 Under section 1106(i) of the CARES Act, for purposes of the Code, “any amount which (but for [section 1106(i)]) would be includible in gross income of the eligible recipient by reason of forgiveness described in [section 1106](b) shall be excluded from gross income.” Section 1106(i) of the CARES Act excludes the amount from gross income regardless of whether the amount would be (1) income from the discharge of indebtedness under section 61(a)(11) of the Code, or (2) otherwise includible in gross income under section 61.

.05 Section 161 of the Code provides that, in computing taxable income under section 63 of the Code, certain deductions are allowed.

.06 Revenue Ruling 2020-27, 2020-50 IRB ____ (Dec. 7, 2020), holds that a taxpayer computing taxable income on the basis of a calendar taxable year may not deduct eligible expenses in its 2020 taxable year if, at the end of the 2020 taxable year, the taxpayer has a reasonable expectation of reimbursement in the form of covered loan forgiveness on the basis of the eligible expenses it paid or accrued during the covered period (citing *Burnett v. Commissioner*, 356 F. 2d 755 (5th Cir. 1966) cert. denied 385 U.S. 832 (1966); *Canelo v. Commissioner*, 53 T.C. 217, 225-226 (1969), aff’d. 447 F.2d 484 (9th Cir.1971); *Herrick v. Commissioner*, 63 T.C. 562 (1975); *Silverton v. Commissioner*, T.C. Memo. 1977-198 (1977)). Revenue Ruling 2020-27 alternatively relies on section 265(a)(1) of the Code and §1.265-1 of the Income Tax Regulations, which provide that no deduction is allowed for any amount otherwise allowable as a deduction to the extent the amount is allocable to one or more classes of income other than interest wholly exempt from the taxes imposed by subtitle A of the Code. See generally section 265(a)(1); §1.265-1. This rule applies “whether or not any amount of

income of that class or classes is received or accrued.” Id.

SECTION 3. TAXPAYERS ELIGIBLE FOR SAFE HARBOR

Taxpayers who meet the requirements of section 3.01 or 3.02 of this revenue procedure and comply with the requirements of section 4 of this revenue procedure are eligible for the safe harbor procedures provided in sections 4.01 or 4.02 of this revenue procedure, as applicable.

.01 A taxpayer meets the requirements of this section 3.01 if:

(1) The taxpayer paid or incurred eligible expenses in the 2020 taxable year for which no deduction is permitted because at the end of the 2020 taxable year the taxpayer reasonably expects to receive forgiveness of the covered loan based on those eligible expenses (non-deducted eligible expenses);

(2) The taxpayer submitted before the end of the 2020 taxable year, or as of the end of the 2020 taxable year intends to submit in a subsequent taxable year, an application for covered loan forgiveness to the lender; and

(3) In a subsequent taxable year, the lender notifies the taxpayer that forgiveness of all or part of the covered loan is denied.

.02 A taxpayer meets the requirements of this section 3.02 if:

(1) The taxpayer meets the requirements of section 3.01(1) and (2) of this revenue procedure; and

(2) In a subsequent taxable year, the taxpayer irrevocably decides not to seek forgiveness for some or all of the covered loan. For example, a taxpayer that determines that it will not qualify for covered loan forgiveness and withdraws the application submitted to the lender as described in section 3.01.

SECTION 4. SAFE HARBOR PROCEDURES

A taxpayer described in section 3.01 or 3.02 of this revenue procedure may use the safe harbor procedures provided in section 4.01 or 4.02 of this revenue procedure.

.01 Safe harbor for deductions to be claimed in 2020 taxable year. A taxpayer described in section 3.01 or 3.02 of this revenue procedure who satisfies the requirements of section 4.03 and 4.04 of this revenue procedure may deduct non-deducted eligible expenses on the taxpayer's timely filed, including extensions, original income tax return or information return, as applicable, for the 2020 taxable year, or amended return or AAR under section 6227 of the Code for the 2020 taxable year, as applicable.

.02 Safe harbor for deductions to be claimed in subsequent taxable year. A taxpayer described in section 3.01 or 3.02 of this revenue procedure who satisfies the requirements of section 4.03 and 4.04 of this revenue procedure, may deduct non-deducted eligible expenses on the taxpayer's timely filed, including extensions, original income tax return or information return, as applicable, for the subsequent taxable year referenced in section 3.01 or 3.02 of this revenue procedure. Taxpayers described in section 3.01 of this revenue procedure may, but do not need to, use this safe harbor to deduct non-deducted eligible expenses in a subsequent taxable year because those taxpayers may deduct the non-deducted eligible expenses in the year that the loan forgiveness is denied under general tax principles, assuming that the taxpayer does not elect to the use the safe harbor in section 4.01 of this revenue procedure.

.03 Limitation on amount of deduction for eligible expenses. A taxpayer applying section 4.01 or 4.02 of this revenue procedure may not deduct an amount of non-

deducted eligible expenses in excess of the principal amount of the taxpayer's covered loan for which forgiveness was denied or will no longer be sought.

.04 Statement. A taxpayer may not apply the safe harbor procedures in section 4.01 or 4.02 of this revenue procedure to deduct any amount of non-deducted eligible expenses unless the taxpayer attaches the statement described in this section 4.04 to the return on which the taxpayer deducts non-deducted eligible expenses. The statement must be titled "Revenue Procedure 2020-51 Statement," and must include:

- (1) The taxpayer's name, address, and social security number or employer identification number;
- (2) A statement specifying whether the taxpayer is an eligible taxpayer under either section 3.01 or section 3.02 of Revenue Procedure 2020-51;
- (3) A statement that the taxpayer is applying section 4.01 or section 4.02 of Revenue Procedure 2020-51;
- (4) The amount and date of disbursement of the taxpayer's covered loan;
- (5) The total amount of covered loan forgiveness that the taxpayer was denied or decided to no longer seek;
- (6) The date the taxpayer was denied or decided to no longer seek covered loan forgiveness; and
- (7) The total amount of eligible expenses and non-deducted eligible expenses that are reported on the return.

.05 Additional limitations. Nothing in this revenue procedure precludes the IRS from examining other issues relating to the claimed deductions for non-deducted eligible expenses, including the amount of the deduction and whether the taxpayer has

substantiated the deduction claim. It also does not preclude the IRS from requesting additional information or documentation verifying any amounts described in the statement described in section 4.04 of this revenue procedure.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning or ending in 2020.

SECTION 6. PAPERWORK REDUCTION ACT

.01 This revenue procedure provides procedures by which taxpayers described in section 3.01 or 3.02 of this revenue procedure are eligible for the safe harbor provided in section 4 of this revenue procedure. Taxpayers taking advantage of this revenue procedure must file a statement as described in section 4.04 of this revenue procedure with their income tax return or information return. The collection of information will be associated with the income tax returns or information statements to which the 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) under 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 1545-074 for individual filers (https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201808-1545-031).

.02 This information is required to be collected and retained for compliance purposes, namely, to determine whether the taxpayer has made a decision to use the safe harbor, to determine that the amount claimed on the return is correct, and to ensure that any future action that is inconsistent with the decision to use the safe harbor

is handled correctly, potentially by application of equitable estoppel and/or the doctrine of consistency.

.03 The Treasury Department and the IRS estimate that the maximum number of respondents would be 5,212,128. This number was determined by examining the PPP data for the total number of approved covered loans. See https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program?utm_medium=email&utm_source=govdelivery#section-header-11. This data is currently correct through August 8, 2020. Because some taxpayers will not decide to use the safe harbor in this revenue procedure, the number of estimated respondents is on the high end of the estimate.

.04 The maximum estimated number of respondents is 5,212,128. The estimated annual burden per respondent/recordkeeper varies from 0 to 30 minutes, depending on individual circumstances, with an estimated average of 15 minutes. The estimated total annual reporting and/or recordkeeping burden is 1,303,032 hours (5,212,128 respondents * 15 minutes). The estimated annual cost burden to respondents is \$95 per hour. Accordingly, we expect the total annual cost burden for the statements to be \$123,788,040 (5,212,128 * 0.25 * \$95). The estimated annual frequency of responses is once because the statement only has to be filed once.

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Sarah Daya and Charles Gorham of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Daya at (202) 317-4891 (not a toll-free call).