

# ASSEMBLY, No. 5149

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 14, 2020

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Co-Sponsored by:**

**Assemblywoman Murphy, Assemblymen Karabinchak, Dancer and Bergen**

**SYNOPSIS**

Allows deduction from tax of certain expenses when taxpayer's federal paycheck protection program loan is forgiven and excludes those forgiven loans from gross income tax.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/24/2021)**

1 AN ACT concerning the tax treatment of forgiven federal paycheck  
2 protection program loans.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Notwithstanding N.J.S.54A:5-1, a loan, or portion thereof,  
8 forgiven pursuant to section 1106 of the federal CARES Act,  
9 Pub.L.116-136, shall not be included in the calculation of New  
10 Jersey gross income subject to tax under the New Jersey Gross  
11 Income Tax Act.

12

13 2. a. A taxpayer under the Corporation Business Tax Act  
14 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) shall not be denied a  
15 deduction by reason of the exclusion from entire net income under  
16 P.L.1945, c.162 of a loan, or portion thereof, forgiven pursuant to  
17 section 1106 of the federal CARES Act, Pub.L.116-136.

18

19 b. A taxpayer under the New Jersey Gross Income Tax Act shall  
20 not be denied a deduction by reason of the exclusion from New  
21 Jersey gross income under the New Jersey Gross Income Tax Act of  
22 a loan, or portion thereof, forgiven pursuant to section 1106 of the  
23 federal CARES Act, Pub.L.116-136, or pursuant to section 1 of  
24 this act.

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25 3. This act shall take effect immediately.

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STATEMENT

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30 The bill ensures that forgiven paycheck protection program loans  
31 will not be subject to the State's gross income tax. This bill also  
32 allows the deduction of expenses paid for by a paycheck protection  
33 program loan even if the loan is forgiven.

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35 The paycheck protection program (PPP) was established by the  
36 "Coronavirus Aid, Relief, and Economic Security Act" or "CARES  
37 Act," a federal law enacted in response to the economic impact of  
38 the COVID-19 pandemic. The PPP offers loans to small businesses  
39 as an incentive to keep employees on their payroll during the  
40 pandemic. Some or all of the loan may be forgiven if certain  
41 conditions are met. Federal law generally considers forgiven loans  
42 to be taxable income, but the CARES Act excluded forgiven PPP  
43 loans from federal income tax.

43

44 For businesses subject to the State's corporation business tax, a  
45 forgiven PPP loan would not be taxed by the State because the  
46 corporation business tax generally follows federal treatment of  
47 income. For pass-through businesses, which generally do not  
48 independently pay tax, the income of the business gets passed along  
49 to the business owners who then pay tax on the income under the

1 State's gross income tax. Forgiven loans of those businesses may be  
2 subject to tax when the business's income is passed-through to  
3 business owners. To ensure that forgiven PPP loans are not  
4 ultimately taxed, this bill explicitly excludes such forgiven loans  
5 from the State's gross income tax.

6 The bill also allows the deduction of expenses paid for by a PPP  
7 loan even if the loan is forgiven. Though a forgiven loan is not  
8 federally taxable, the IRS issued Notice 2020-32 denying tax  
9 deductions for expenses paid with a PPP loan that was later  
10 forgiven, claiming that treatment is necessary to prevent taxpayers  
11 from receiving a double tax benefit. Because the corporation  
12 business tax generally follows federal treatment of income, the IRS  
13 ruling flows through to such State taxpayers. This bill eliminates  
14 the result of the IRS ruling for corporation business taxpayers and  
15 ensures that a similar State ruling cannot be made under the gross  
16 income tax.

17 The sponsor of this bill notes that the result of the IRS ruling is  
18 the same as if the loan forgiveness was fully taxable. The CARES  
19 Act provision excluding a forgiven loan from taxable income  
20 becomes moot if IRS Notice 2020-32 is allowed to stand. This bill  
21 remedies the issue under the State's taxes by allowing taxpayers to  
22 deduct otherwise deductible expenses even if the expenses were  
23 paid with a PPP loan that is forgiven and not taxable.