

ASSEMBLY RESOLUTION No. 241

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 5, 2021

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

Opposes IRS guidance on deductibility of business expenses paid with loans forgiven under Paycheck Protection Program; petitions federal government for enactment of remedial legislation.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ASSEMBLY RESOLUTION** opposing Internal Revenue Service
2 guidance that prohibits Paycheck Protection Program loan
3 recipients from deducting certain expenses from federal taxable
4 income and petitions federal government for enactment of
5 remedial legislation.
6
7 **WHEREAS**, The ongoing COVID-19 pandemic continues to place an
8 extraordinary number of small businesses at the brink of
9 insolvency; and
10 **WHEREAS**, Following the outbreak of COVID-19, Congress enacted
11 the “Coronavirus Aid, Relief, and Economic Security Act”
12 (CARES Act), which established the Paycheck Protection Program
13 (PPP) to provide small businesses with the liquidity needed to
14 survive the pandemic; and
15 **WHEREAS**, Under the program, the United States Small Business
16 Administration approved approximately \$525 million in loans for
17 small businesses to support payroll expenses and other specified
18 non-payroll operating costs, such as business mortgage interest
19 payments and business utility costs; and
20 **WHEREAS**, To incentivize loan recipients to maintain existing staff,
21 the program allowed a loan to be forgiven if the borrower met
22 certain payroll and employment retention criteria during a
23 designated period, which criteria required 60 percent of the loan to
24 be dedicated towards payroll costs and prevented the borrower from
25 significantly reducing the salaries of full-time equivalent
26 employees; and
27 **WHEREAS**, In an attempt to protect loan recipients from any adverse
28 tax consequences that may arise from the forgiveness of a loan, the
29 CARES Act explicitly required the amount of any such forgiveness
30 to be excluded from the borrower’s federal taxable income; and
31 **WHEREAS**, Contrary to congressional intent, the Internal Revenue
32 Service (IRS) subsequently issued guidance, IRS Notice 2020-32,
33 that prohibited loan recipients from deducting any business
34 expenses supported by a forgiven loan (e.g., payroll expenses,
35 business mortgage interest payments, utility costs) from the
36 borrower’s federal taxable income; and
37 **WHEREAS**, Given that the business expenses supported by these funds
38 were previously deductible for federal tax purposes, the IRS’s
39 denial of deductibility for such expenses effectively treats loan
40 forgiveness as fully-taxable income, thereby undermining the intent
41 of the CARES Act; and
42 **WHEREAS**, Worse yet, IRS guidance exacerbates the financial
43 hardships borne from the COVID-19 pandemic by increasing the
44 taxable income of small businesses that elected to retain existing
45 employees; and
46 **WHEREAS**, Absent the enactment of federal legislation to reverse this
47 guidance, many responsible small businesses, whose solvency

1 depends on the receipt of forgivable loans, will nevertheless bear
2 the full costs of loan forgiveness through increased taxes; and
3 **WHEREAS**, As a model for such legislation, the “Small Business
4 Expense Protection Act of 2020,” pending before Congress as
5 S.3612 and H.R.6821, and the “Protecting the Paycheck Protection
6 Program Act of 2020,” pending before Congress as H.R.6754,
7 would each allow PPP loan recipients to deduct otherwise qualified
8 business expenses that were paid with a loan that was forgiven
9 under the program; and
10 **WHEREAS**, Remedial legislation of this nature promises to provide the
11 comprehensive relief for small businesses that was originally
12 intended in the CARES Act; and
13 **WHEREAS**, Accordingly, this House respectfully petitions the federal
14 government to enact such legislation as is necessary to reverse the
15 IRS guidance and support small businesses during this time of
16 need; now, therefore,

17
18 **BE IT RESOLVED** *by the General Assembly of the State of New*
19 *Jersey:*

20
21 1. This House opposes recent guidance from the Internal
22 Revenue Service that prohibits small business loan recipients under
23 the Paycheck Protection Program from deducting otherwise
24 qualified business expenses from federal taxable income when the
25 expenses were supported by a loan that was forgiven under the
26 program.

27
28 2. This House also respectfully petitions the federal
29 government to enact legislation, such as the “Small Business
30 Expense Protection Act of 2020” or the “Protecting the Paycheck
31 Protection Program Act of 2020,” to allow loan recipients under the
32 Paycheck Protection Program to deduct otherwise qualified
33 business expenses from federal taxable income when the expenses
34 were supported by a loan that was forgiven under the program.

35
36 3. Copies of this resolution, as filed with the Secretary of State,
37 shall be transmitted by the Clerk of the General Assembly to the
38 President and Vice-President of the United States, the Majority and
39 Minority Leaders of the United States Senate, the Speaker and
40 Minority Leader of the United States House of Representatives, and
41 each member of the United States Congress elected from the State
42 of New Jersey.

43
44

45 STATEMENT

46
47 This House opposes guidance from the Internal Revenue Service
48 (IRS) that prohibits Paycheck Protection Program (PPP) loan

1 recipients from deducting certain expenses and petitions the federal
2 government for the enactment remedial legislation.

3 Following the outbreak of COVID-19, Congress enacted the
4 “Coronavirus Aid, Relief, and Economic Security Act” (CARES
5 Act), which established the PPP to provide small businesses with
6 the liquidity needed to survive the pandemic. Under the program,
7 the United States Small Business Administration approved
8 approximately \$525 million in loans for small businesses to support
9 payroll expenses and other specified non-payroll operating costs,
10 such as business mortgage interest payments and business utility
11 costs. To incentivize loan recipients to maintain existing staff, the
12 program allowed a loan to be forgiven if the borrower met certain
13 payroll and employment retention criteria during a designated
14 period.

15 However, contrary to congressional intent, the IRS subsequently
16 issued guidance, IRS Notice 2020-32, that prohibited loan
17 recipients from deducting any business expenses supported by a
18 forgiven loan (e.g., payroll expenses, business mortgage interest
19 payments, utility costs) from the borrower’s federal taxable income.
20 Given that the business expenses supported by these funds were
21 previously deductible for federal tax purposes, the IRS’s denial of
22 deductibility for such expenses effectively treats loan forgiveness as
23 fully-taxable income, thereby undermining the intent of the CARES
24 Act; and

25 Absent the enactment of federal legislation to reverse this
26 guidance, many responsible small businesses, whose solvency
27 depends on the receipt of forgivable loans, will nevertheless bear
28 the full costs of loan forgiveness through increased taxes. As a
29 model for such legislation, the “Small Business Expense Protection
30 Act of 2020,” pending before Congress as S.3612 and H.R.6821,
31 and the “Protecting the Paycheck Protection Program Act of 2020,”
32 pending before Congress as H.R.6754, would each allow PPP loan
33 recipients to deduct otherwise qualified business expenses that were
34 paid with a loan that was forgiven under the program.

35 Remedial legislation of this nature promises to provide the
36 comprehensive relief for small businesses that was originally
37 intended in the CARES Act. Accordingly, this House respectfully
38 petitions the federal government to enact such legislation as is
39 necessary to reverse the IRS guidance and support small businesses
40 during this time of need.