SENATE, No. 3234

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED DECEMBER 7, 2020

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)
Senator ANTHONY M. BUCCO
District 25 (Morris and Somerset)

Co-Sponsored by:
Senators Oroho, Pou, Greenstein and O'Scanlon

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: 1/21/2021)

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

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

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

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

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

3. This act shall take effect immediately.

STATEMENT

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

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

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

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

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

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