

SENATE RESOLUTION No. 103

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 7, 2020

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

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 **A SENATE 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 Senate of the State of New Jersey:*

19
 20 1. This House opposes recent guidance from the Internal
 21 Revenue Service that prohibits small business loan recipients under
 22 the Paycheck Protection Program from deducting otherwise
 23 qualified business expenses from federal taxable income when the
 24 expenses were supported by a loan that was forgiven under the
 25 program.

26
 27 2. This House also respectfully petitions the federal
 28 government to enact legislation, such as the “Small Business
 29 Expense Protection Act of 2020” or the “Protecting the Paycheck
 30 Protection Program Act of 2020,” to allow loan recipients under the
 31 Paycheck Protection Program to deduct otherwise qualified
 32 business expenses from federal taxable income when the expenses
 33 were supported by a loan that was forgiven under the program.

34
 35 3. Copies of this resolution, as filed with the Secretary of State,
 36 shall be transmitted by the Secretary of the Senate to the President
 37 and Vice-President of the United States, the Majority and Minority
 38 Leaders of the United States Senate, the Speaker and Minority
 39 Leader of the United States House of Representatives, and each
 40 member of the United States Congress elected from the State of
 41 New Jersey.

42
 43 **STATEMENT**

44
 45 This House opposes guidance from the Internal Revenue Service
 46 (IRS) that prohibits Paycheck Protection Program (PPP) loan
 47 recipients from deducting certain expenses and petitions the federal
 48 government for the enactment remedial legislation.

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

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

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

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