

SENATE, No. 3234

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 7, 2020

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)

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.



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

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

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

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

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

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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.