

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

Munoz, Daniel J.. "Murphy approves tax breaks for businesses that got COVID-relief loans." NJBIZ (New Brunswick, NJ), May 12, 2021.

RH/CL

§1 - T&E & Note
to C.54A:5-1
§2 - T&E & Notes
to C.54A:5-1 &
C.54:10A-4
§3 - Note

P.L. 2021, CHAPTER 90, *approved May 11, 2021*
Senate, No. 3234 (*Second Reprint*)

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, ¹or any subsequent expansion of the federal
10 Paycheck Protection Program, including the provision of second
11 draw loans pursuant to section 311 of Division N of the
12 “Consolidated Appropriations Act, 2021,” Pub.L.116-260,¹ shall not
13 be included in the calculation of New Jersey gross income subject to
14 tax under the New Jersey Gross Income Tax Act.

15
16 2. a. A taxpayer under the Corporation Business Tax Act (1945),
17 P.L.1945, c.162 (C.54:10A-1 et seq.) shall not be denied a deduction
18 ²for ordinary and necessary business expenses paid for with the
19 proceeds of a federal Paycheck Protection Program loan² by reason of
20 the exclusion from entire net income under P.L.1945, c.162 of ²**[a]**
21 such² loan, or portion thereof, forgiven pursuant to section 1106 of the
22 federal CARES Act, Pub.L.116-136 ¹or any subsequent expansion of
23 the federal Paycheck Protection Program, including the provision of
24 second draw loans pursuant to section 311 of Division N of the
25 “Consolidated Appropriations Act, 2021,” Pub.L.116-260¹.

26 b. A taxpayer under the ¹**[New Jersey Gross Income Tax Act]**
27 “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.¹ shall not
28 be denied a deduction ²for ordinary and necessary business expenses
29 paid for with the proceeds of a federal Paycheck Protection Program
30 loan² by reason of the exclusion from New Jersey gross income under
31 the New Jersey Gross Income Tax Act of ²**[a]** such² loan, or portion
32 thereof, forgiven pursuant to section 1106 of the federal CARES Act,
33 Pub.L.116-136, ¹or any subsequent expansion of the federal Paycheck

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted January 21, 2021.

²Assembly AAP committee amendments adopted February 24, 2021.

1 Protection Program, including the provision of second draw loans
2 pursuant to section 311 of Division N of the “Consolidated
3 Appropriations Act, 2021,” Pub.L.116-260,¹ or pursuant to section 1
4 of this act.

5

6 3. This act shall take effect immediately ²and shall apply
7 retroactively to taxable years beginning on or after January 1, 2020².

8

9

10

11

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

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)

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.

24

25 3. This act shall take effect immediately.

26

27

28

STATEMENT

29

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

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.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3234

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 24, 2021

The Assembly Appropriations Committee reports favorably Senate Bill No. 3234 (1R), with committee amendments.

The bill ensures that forgiven Paycheck Protection Program (PPP) 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 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, and reauthorized by a separate federal law, the "Consolidated Appropriations Act, 2021". 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. However, the "Consolidated Appropriations Act, 2021," clarified that the amount of a PPP loan which is forgiven may be excluded from income for federal tax purposes and that expenses covered by PPP loans may be deducted from income for federal tax purposes. A forgiven PPP loan would not be taxed by the State because New Jersey generally follows the federal treatment of income when determining income of C corporations and S corporations. The bill also includes a provision allowing the deduction of expenses paid for a by a PPP loan, even if the loan is forgiven to ensure that C corporations and taxpayers with S corporation income receive the same tax benefits already provided under federal law.

In the case of pass-through entities, other than S corporations, a forgiven federal loan may be subject to the State's gross income tax. These pass-through entities do not generally pay income tax because the income of the business is passed along to business owners who then pay tax on the income under the State's gross income tax. However, PPP loans awarded to pass-through entities that are forgiven may be subject to New Jersey gross income tax when the business's income is passed-through to the business owners. To prevent such forgiven loans from being taxable, this bill excludes them from the

gross income tax. To match the federal treatment, the bill also allows the deduction of expenses paid for by a forgiven PPP loan.

As amended and reported by the committee, Senate Bill No. 3234 (1R), is identical to Assembly Bill No. 5149, which also was amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments clarify that a taxpayer will be allowed a deduction from income for ordinary and necessary expenses paid for with the proceeds of a PPP loan, and Clarify that the bill applies retroactively to taxable year 2020.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill will have no impact on State finances because its enactment codifies the implementation of a policy already announced by the State. Accordingly, this bill is not certified for a fiscal note.

On February 9, 2020, the New Jersey Department of the Treasury announced that the State will conform to the federal treatment of PPP loans for tax purposes. The corporation business tax already conformed to the federal treatment, but as a result of Treasury's announcement the gross income tax will also conform to the federal treatment. As a result, PPP loans that are forgiven are excludable from income, and business expenses paid for with PPP loans are deductible from income.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3234

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 21, 2021

The Senate Budget and Appropriations Committee favorably reports Senate Bill No. 3234, with committee amendments.

The bill ensures that forgiven Paycheck Protection Program (PPP) 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 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, and reauthorized by a separate federal law, the "Consolidated Appropriations Act, 2021". 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. However, the "Consolidated Appropriations Act, 2021," clarified that the amount of a PPP loan which is forgiven may be excluded from income for federal tax purposes and that expenses covered by PPP loans may be deducted from income for federal tax purposes. A forgiven PPP loan would not be taxed by the State because New Jersey generally follows the federal treatment of income when determining income of C Corporations and S Corporations. The bill also includes a provision allowing the deduction of expenses paid for a by a PPP loan, even if loan is forgiven, to ensure that C Corporations and taxpayers with S corporation income receive the same tax benefits already provided under federal law.

In the case of pass-through entities, other than S corporations, a forgiven federal loan maybe subject to the State's gross income tax. These pass-through entities do not generally pay income tax because the income of the business is passed along to businesses owners who then pay tax on the income under the State's gross income tax. However, PPP loans awarded to pass-through entities that are forgiven may be subject to New Jersey gross income tax when the business's

income is passed-through to the business owners. To prevent such forgiven loans from being taxable, this bill excludes them from the gross income tax. To match the federal treatment, the bill also allows the deduction of expenses paid for by a forgiven PPP loan.

COMMITTEE AMENDMENTS:

The committee amendments:

- clarify that the provisions of the bill apply to PPP loans awarded pursuant to the “CARES Act” and the “Consolidated Appropriations Act, 2021”; and
- make a technical correction.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will result an indeterminate loss of State revenues in Fiscal Years 2021 and 2022. There is no information available regarding the purposes for which Paycheck Protection Program (PPP) loans were used and the total amount of loans forgiven.

According to the Small Business Administration (SBA), New Jersey businesses and non-profit organizations received \$17.3 billion through the PPP as of January 2021. After adjusting the Statewide total to exclude amounts awarded to corporations and non-profit organizations, the OLS estimates that \$6.4 billion in loans awarded through the first round of PPP funding may be excluded from gross income. Applying current New Jersey tax rates to the \$6.4 billion that may be excluded yields a maximum State revenue of \$688.0 million from the first round of PPP loans.

The OLS notes that the federal government recently appropriated an additional \$284.4 billion for PPP loans. If this bill becomes law, eligible second round PPP loan funds may be excluded and deducted from calendar year 2021 gross income. Calendar year 2021 tax returns will be filed in April 2022, or in Fiscal Year 2022.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 3234
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JANUARY 22, 2021

SUMMARY

- 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.
- Type of Impact:** State revenue loss to the General Fund and Property Tax Relief Fund.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Years 2021 & 2022</u>
State Revenue Loss	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill will result an indeterminate loss of State revenues in Fiscal Years 2021 and 2022. There is no information available regarding the purposes for which Paycheck Protection Program (PPP) loans were used and the total amount of loans forgiven.
- According to the Small Business Administration (SBA), New Jersey businesses and non-profit organizations received \$17.3 billion through the PPP as of January 2021. After adjusting the Statewide total to exclude amounts awarded to corporations and non-profit organizations, the OLS estimates that \$6.4 billion in loans awarded through the first round of PPP funding may be excluded from gross income. Applying current New Jersey tax rates to the \$6.4 billion that may be excluded yields a maximum State revenue of \$688.0 million from the first round of PPP loans.
- The OLS notes that the federal government recently appropriated an additional \$284.4 billion for PPP loans. If this bill becomes law, eligible second round PPP loan funds may be excluded and deducted from calendar year 2021 gross income. Calendar year 2021 tax returns will be filed in April 2022, or in Fiscal Year 2022.

BILL DESCRIPTION

The bill ensures that forgiven PPP 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 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, and reauthorized by a separate federal law, the "Consolidated Appropriations Act, 2021". 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. However, the "Consolidated Appropriations Act, 2021," clarified that the amount of a PPP loan which is forgiven may be excluded from income for federal tax purposes and that expenses covered by PPP loans may be deducted from income for federal tax purposes. New Jersey generally follows the federal treatment of income when determining income of C Corporations and S Corporations, so C Corporations and taxpayers with S corporation income have already been granted the same benefit given by this bill through the operation of federal and preexisting State law. C Corporations and taxpayers with S corporation income will therefore not be affected by this bill.

In the case of pass-through entities, other than S corporations, a forgiven federal loan maybe subject to the State's gross income tax. These pass-through entities do not generally pay income tax because the income of the business is passed along to businesses owners who then pay tax on the income under the State's gross income tax. However, PPP loans awarded to pass-through entities that are forgiven may be subject to New Jersey gross income tax when the business's income is passed-through to the business owners. To prevent such forgiven loans from being taxable, this bill excludes them from the gross income tax. To match the federal treatment, the bill also allows the deduction of expenses paid for by a forgiven PPP loan.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will result in an indeterminate loss of State revenues in Fiscal Years 2021 and 2022. The bill excludes from gross income the amount of a PPP loan that is forgiven by the federal government and allows a deduction from gross income for the amount of business expenses paid for with proceeds of a PPP loan. The exclusion and deduction of these amounts from gross income will reduce the amount of income subject to taxation, thereby reducing State tax collections. This bill would affect revenues generated by the gross income tax (deposited in the Property Tax Relief Fund) and the pass-through business alternative income tax (deposited in the General Fund). The bill will affect PPP loan recipients that have a New Jersey gross income tax liability and are not impacted by the changes to federal law regarding the taxability of PPP loans.

The OLS cannot provide a specific estimate of the revenue loss resulting from the bill. However, based on currently available PPP data, the OLS concludes that the changes to State tax law proposed by the bill could have a significant impact on State tax collections. According to the

SBA, New Jersey businesses received \$17.3 billion in assistance through the first round of PPP funding. Deducting the amount of PPP loans awarded to corporations and non-profit organizations reduces this amount by approximately \$10.9 billion to \$6.4 billion. This amount represents the maximum that may be *excluded* from gross income. The bill also allows expenses covered by a PPP loan to be *deducted* from gross income. The OLS anticipates that the amount deducted from gross income will be much lower because these expenditures may already deductible under current law as normal business expenses.

The maximum amount of first round PPP loan funding that may be excluded from gross income is \$6.4 billion. Taxpayers will see varying tax benefits from the exclusion under the bill, as State marginal tax rates range between 1.4 percent and 10.75 percent. Applying these rates to the \$6.4 billion that may be excluded yields a potential State revenue loss up to \$688.0 million.

Loan recipients were permitted to use first round funding (supported by the CARES Act) to support the following expenses: payroll costs; costs related to the continuation of health benefits and medical insurance, employee salaries and compensation, payment of mortgage interest, rent, utilities, and interest on any other debt obligations incurred February 15, 2020 and June 30, 2020. Loan funding used to pay four categories of costs (payroll, interest on mortgage obligations, rent, and utilities) incurred eight weeks after loan origination may be forgiven.

Recently enacted federal legislation made additional changes to the PPP that will impact the revenue losses resulting from the bill. PPP loans may now be used to pay operating costs, property damage costs, supplier costs and worker protection expenditures and loan funds used to these purposes are eligible for loan forgiveness. The covered period (the period during which loan proceeds may be applied) for all PPP loans has been extended to March 31, 2021. The forgiveness period for all loans has been lengthened to from eight weeks after loan origination to between eight weeks and 24 weeks after loan origination, as chosen by recipient. This additional flexibility regarding the use of loan funds and the forgiveness period will allow for additional exclusions and deductions from income and contribute to the State revenue loss.

The CARES Act appropriated \$349 billion to support loans to eligible businesses. The Consolidated Appropriations Act, 2021 provided an additional \$284.4 billion for the PPP, thereby increasing total program funding to \$633.4 billion. The SBA began accepting applications for PPP loans through the second round of funding on January 13, 2021. There is no information available on the amount of additional loan funding awarded to date.

Section: Revenue, Finance and Appropriations
Analyst: Scott A. Brodsky
Principal Fiscal Analyst
Approved: Thomas Koenig
Assistant Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3234

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: JANUARY 28, 2021

SUMMARY

- 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.
- Type of Impact:** State revenue loss to the General Fund and Property Tax Relief Fund.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Years 2021 & 2022</u>
State Revenue Loss	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill will result an indeterminate loss of State revenues in Fiscal Years 2021 and 2022. There is no information available regarding the purposes for which Paycheck Protection Program (PPP) loans were used and the total amount of loans forgiven.
- According to the Small Business Administration (SBA), New Jersey businesses and non-profit organizations received \$17.3 billion through the PPP as of January 2021. After adjusting the Statewide total to exclude amounts awarded to corporations and non-profit organizations, the OLS estimates that \$6.4 billion in loans awarded through the first round of PPP funding may be excluded from gross income. Applying current New Jersey tax rates to the \$6.4 billion that may be excluded yields a maximum State revenue of \$688.0 million from the first round of PPP loans.

The OLS notes that the federal government recently appropriated an additional \$284.4 billion for PPP loans. If this bill becomes law, eligible second round PPP loan funds may be excluded and deducted from calendar year 2021 gross income. Calendar year 2021 tax returns will be filed in April 2022, or in Fiscal Year 2022.

BILL DESCRIPTION

The bill ensures that forgiven PPP 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 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, and reauthorized by a separate federal law, the "Consolidated Appropriations Act, 2021". 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. However, the "Consolidated Appropriations Act, 2021," clarified that the amount of a PPP loan which is forgiven may be excluded from income for federal tax purposes and that expenses covered by PPP loans may be deducted from income for federal tax purposes. A forgiven PPP loan would not be taxed by the State because New Jersey generally follows the federal treatment of income when determining income of C Corporations and S Corporations. The bill also includes a provision allowing the deduction of expenses paid for a by a PPP loan, even if the loan is forgiven, to ensure that C corporations and S corporations receive the same tax benefits already provided under federal law.

In the case of pass-through entities, other than S corporations, a forgiven federal loan may be subject to the State's gross income tax. These pass-through entities do not generally pay income tax because the income of the business is passed along to businesses owners who then pay tax on the income under the State's gross income tax. However, PPP loans awarded to pass-through entities that are forgiven may be subject to New Jersey gross income tax when the business's income is passed-through to the business owners. To prevent such forgiven loans from being taxable, this bill excludes them from the gross income tax. To match the federal treatment, the bill also allows the deduction of expenses paid for by a forgiven PPP loan.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will result in an indeterminate loss of State revenues in Fiscal Years 2021 and 2022. The bill excludes from gross income the amount of a PPP loan that is forgiven by the federal government and allows a deduction from gross income for the amount of business expenses paid for with proceeds of a PPP loan. The exclusion and deduction of these amounts from gross income will reduce the amount of income subject to taxation, thereby reducing State tax collections. This bill would affect revenues generated by the gross income tax (deposited in the Property Tax Relief Fund) and the pass-through business alternative income tax (deposited in the General Fund). The bill's provisions concerning C corporations and S corporations codify how those entities would be treated under current law, so the OLS finds no fiscal impact from those provisions. The bill will affect PPP loan recipients that have a New Jersey gross income tax liability and are not impacted by the changes to federal law regarding the taxability of PPP loans.

The OLS cannot provide a specific estimate of the revenue loss resulting from the bill. However, based on currently available PPP data, the OLS concludes that the changes to State tax

law proposed by the bill could have a significant impact on State tax collections. According to the SBA, New Jersey businesses received \$17.3 billion in assistance through the first round of PPP funding. Deducting the amount of PPP loans awarded to corporations and non-profit organizations reduces this amount by approximately \$10.9 billion to \$6.4 billion. This amount represents the maximum that may be *excluded* from gross income. The bill also allows expenses covered by a PPP loan to be *deducted* from gross income. The OLS anticipates that the amount deducted from gross income will not change from the current regime, because these expenditures are generally already deductible under current law as normal business expenses.

The maximum amount of first round PPP loan funding that may be excluded from gross income is \$6.4 billion. Taxpayers will see varying tax benefits from the exclusion under the bill, as State marginal tax rates range between 1.4 percent and 10.75 percent. Applying these rates to the \$6.4 billion that may be excluded yields a potential State revenue loss up to \$688.0 million.

Recently enacted federal legislation made additional changes to the PPP that will impact the revenue losses resulting from the bill. PPP loans may now be used for additional purposes, and the period during which loan proceeds may be applied for all PPP loans has been extended to March 31, 2021. The forgiveness period for all loans has been lengthened to from eight weeks after loan origination to between eight weeks and 24 weeks after loan origination, as chosen by recipient. This additional flexibility regarding the use of loan funds and the forgiveness period will allow for additional exclusions and deductions from income and contribute to the State revenue loss.

Section: Revenue, Finance and Appropriations
Analyst: Scott A. Brodsky
Principal Fiscal Analyst
Approved: Thomas Koenig
Assistant Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

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 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.

24

25 3. This act shall take effect immediately.

26

27

28

STATEMENT

29

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

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.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5149

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 24, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5149, with committee amendments.

As amended, this 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 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, and reauthorized by a separate federal law, the "Consolidated Appropriations Act, 2021". 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. However, the "Consolidated Appropriations Act, 2021," clarified that the amount of a PPP loan which is forgiven may be excluded from income for federal tax purposes and that expenses covered by PPP loans may be deducted from income for federal tax purposes. A forgiven PPP loan would not be taxed by the State because New Jersey generally follows the federal treatment of income when determining income of C corporations and S corporations. The bill also includes a provision allowing the deduction of expenses paid for a by a PPP loan, even if loan is forgiven, to ensure that C corporations and taxpayers with S corporation income receive the same tax benefits already provided under federal law.

In the case of pass-through entities, other than S corporations, a forgiven federal loan may be subject to the State's gross income tax. These pass-through entities do not generally pay income tax because the income of the business is passed along to business owners who then pay tax on the income under the State's gross income tax. However, PPP loans awarded to pass-through entities that are forgiven may be subject to New Jersey gross income tax when the business's income is passed-through to the business owners. To prevent such forgiven loans from being taxable, this bill excludes them from the gross income tax. To match the federal treatment, the bill also allows the deduction of expenses paid for by a forgiven PPP loan.

As amended and reported by the committee, Assembly Bill No. 5149 is identical to Senate Bill No. 3234 (1R), which also was amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments:

- Clarify that a taxpayer will be allowed a deduction from income for ordinary and necessary business expenses paid for with the proceeds of a PPP loan;
- Provide that the provisions of the bill apply to PPP loans awarded pursuant to the “CARES Act” and the “Consolidated Appropriations Act, 2021”;
- Clarify that the bill applies retroactively to taxable year 2020; and
- Make a technical correction.

FISCAL IMPACT:

The Office of Legislative Services (OLS) finds that the bill will have no impact on State finances because its enactment codifies the implementation of a policy already announced by the State. Accordingly, this bill is not certified for a fiscal note.

On February 9, 2020, the New Jersey Department of the Treasury announced that the State will conform to the federal treatment of PPP loans for tax purposes. The corporation business tax already conformed to the federal treatment, but as a result of Treasury’s announcement the gross income tax will also conform to the federal treatment. As a result, PPP loans that are forgiven are excludable from income, and business expenses paid for with PPP loans are deductible from income.

Governor Murphy Takes Action on Legislation

05/11/2021

TRENTON – Today, Governor Murphy signed the following bills into law:

S-767/A-4552 (Gopal, Greenstein/Houghtaling, Benson, Tully) – Exempts New Jersey Infrastructure Bank projects from certain local bond requirements

S-942/A-2890 (Singleton/Lopez, Chiaravalloti, Timberlake) – Requires certain standards for professional and occupational boards considering applicants with criminal history records

S-1937/A-1597 (Madden, Sweeney/Mejia, Timberlake, Vainieri Huttle) – Establishes Task Force to Promote Employment by State Agencies of People with Disabilities

S-2486/A-4264 (Sweeney/Taliaferro, Lampitt, Vainieri Huttle) – Establishes Clayton Model Pilot Program in DOE to provide school-based social emotional learning to students in grades kindergarten through five at certain public schools

S-2728/A-4835 (Sweeney, A.M. Bucco/Verrelli, Burzichelli, Wirths) – Adds two members to State Board of Examiners of Heating, Ventilating, Air Conditioning and Refrigeration (HVACR) Contractors

S-2832/A-5295 (Ruiz, Beach/Quijano, Lampitt) – Allows student enrolled in institution of higher education who has completed 30 semester-hour credits to serve as substitute teacher; extends time period substitute teacher may serve during public health emergency

S-3145/A-2308 (Greenstein, Pou/Vainieri Huttle, Johnson, Downey) – Concerns names required on applications for professional and occupational licensure

S-3198/A-5078 (Codey, Gopal/Dancer, Caputo) – Extends time outstanding parimutuel ticket may be claimed from six months to 12 months; allows additional time to claim outstanding parimutuel tickets and unclaimed cash vouchers due to Public Health Emergency

S-3234/A-5149 (Singleton, A.M. Bucco/Greenwald, Benson, Johnson) – 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

Governor Murphy conditionally vetoed the following bills:

S-853/A-5064 (Sweeney, Beach/Verrelli, Giblin, Danielsen) – **CONDITIONAL** – "New Jersey Buy American Act"; requires certain State agency highway and bridge construction contracts to include iron and steel products made in U.S.

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S-890/A-1061 (Pou, Codey/Jasey, Johnson, Verrelli) – **CONDITIONAL** – Requires DOH and DHS to identify and take appropriate steps to secure federal sources of funding to support maternal mental health

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S-1676/A-3326 (Smith, Vitale/Conaway, Reynolds-Jackson, Vainieri Huttle) – CONDITIONAL – Allows hospitals to construct housing and provide wrap-around services for individuals who are homeless or housing insecure

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