

December XX, 2020

The Honorable Nancy Pelosi
Speaker, House of Representatives
United States Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader, House of Representatives
United State Capitol
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

Dear Speaker Pelosi, Leader McConnell, Leader McCarthy, and Leader Schumer:

We, the undersigned organizations, representing **hundreds of thousands/millions** of businesses who employ tens of millions of American workers, **urge Congress to pass legislation before the end of the year that includes a technical correction addressing the tax treatment of loan forgiveness under the Paycheck Protection Program (PPP)**. At the onset of the COVID-19 pandemic, Congress responded with speed, cooperation, and an eye to preventing the worst potential economic outcomes. We ask that you bring that same spirit of urgency and cooperation during this “lame duck” session to prevent an avoidable catastrophe for millions of small businesses that, without Congressional action, will face a surprising, and, in many cases, insurmountable tax bill next year.

One of the most effective economic relief measures for our members was the PPP, passed as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The terms of the PPP are simple: if qualifying small businesses use a federally-guaranteed loan to pay their employees and cover certain non-payroll expenses, the loan will be forgiven. From April 3, when the program launched, through August 8, when its authorization expired, the Small Business Administration (SBA) guaranteed \$525 billion in PPP loans to 5.2 million qualifying small businesses nationwide, preserving tens of millions of paychecks for their employees as the pandemic spread throughout the country.

Included in the CARES Act was a provision stating that any portion of a PPP loan that qualified for loan forgiveness “shall be excluded from gross income” for tax purposes. This tax-free treatment of any forgiven loan amount was a key provision in the law and featured prominently in the debate leading up to and following the legislation’s enactment.

Despite this clear intent, the Internal Revenue Service (IRS) issued Notice 2020-32, which specified that “no deduction is allowed under the Internal Revenue Code...if the payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the [CARES Act].” The effect of this ruling is to transform *tax-free* loan forgiveness into *taxable income*, raising the specter of **a surprise tax increase of up to 37 percent on small businesses when they file their taxes for 2020**.

Additionally, the IRS recently issued Revenue Ruling 2020-27, stating that expenses funded through a PPP loan are not deductible for 2020 if “the taxpayer *reasonably expects to receive forgiveness of the covered loan* on the basis of the expenses it paid or accrued during the covered period, *even if the taxpayer has not submitted an application for forgiveness of the covered loan by the end of such taxable year*” [emphasis added].

Since the IRS issued Notice 2020-32, Congress has signaled that it intends to overturn the ruling. The Democratic and Republican Chairmen of the House Ways and Means and Senate Finance Committees issued public statements saying that the IRS Notice, and, more recently, the IRS Revenue Ruling, is flawed and contrary to Congressional intent. Additionally, a legislative provision to overturn Notice 2020-32 was included in the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act that passed the House of Representatives in May.

The most recent IRS Revenue Ruling creates a renewed sense of urgency for Congress to address this pivotal issue before the end of the year. Allowing the IRS position to remain unchallenged will result in a significant tax increase on small business owners already suffering from the effects of COVID-19 shutdowns. This tax will hit small business owners *after* their PPP loan has already been spent, and just as many states are re-imposing mandatory closures of thousands of businesses in the face of spiking numbers of COVID-19 cases.

Many PPP loan recipients retained employees on their payrolls, even when there was little to no work to perform, in compliance with the intent of the program to keep people employed and off the unemployment rolls. The IRS changed the rules after businesses took out PPP loans, and business owners are now being asked to pay what amounts to a surtax on their workforce. Without Congressional action, businesses will face an unexpected tax bill when they file their taxes for 2020, as they continue to struggle with government mandated shutdowns or slowdowns. Many of those businesses will close and never re-open. This senseless tax policy stands both the letter and spirit of the PPP on its head.

For all these reasons, the undersigned business organizations implore you to act before the end of 2020 to address this important matter.

Sincerely,