



Legislative Fiscal Bureau

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January 22, 2021

TO: Senator Howard Marklein
Room 316 East, State Capitol

FROM: John D. Gentry, Fiscal Analyst

SUBJECT: Tax Treatment of Certain Loan Forgiveness and Other Business Financial Assistance

You requested information on the taxability of income received by businesses under certain financial assistance programs created under recent federal law.

In response to the COVID-19 pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES), which provided several financial aid programs to businesses. Wisconsin enacted 2019 Act 185, which adopted several of the CARES provisions for state corporate income/franchise tax purposes. However, subsequent to enactment of Act 185, Congress passed the Consolidated Appropriations Act of 2021 (CAA), which altered the treatment of certain programs for purposes of federal law.

In relevant part, the CAA provided that, for the programs described below, loan forgiveness and other financial assistance is not considered income for federal tax purposes. The CAA also provided that no deductions paid via the proceeds of these programs should be denied. Further, the CAA provided that distributions to owners of pass-through entities, such as partnerships and tax-option (S) corporations, are tax neutral in that the forgiveness of indebtedness and other financial assistance is treated as an increase in a partner's or shareholder's basis in the ownership interest of a partnership or tax-option (S) corporation.

It is estimated that state adoption of federal tax treatment for the provisions of the CAA described below would reduce state revenue collections by \$232,000,000 in 2020-21, \$164,000,000 in 2021-22, \$48,000,000 in 2022-23, and \$13,000,000 in 2023-24.

Paycheck Protection Program (PPP). As created under CARES, the PPP provided forgivable loans to certain businesses, and non-profits, having less than 500 employees. PPP loans were available under the Small Business Administration's (SBA) Section 7(a) loan program through August 8, 2020, and could be used to cover various business expenses, including payroll and rent payments. As long as certain loan conditions were met, PPP loan recipients could qualify for loan forgiveness. Prior to the CAA, both state and federal law provided that forgiven PPP loan amounts

were not considered taxable income for income and franchise tax purposes; however, business expenses paid with forgiven PPP loan proceeds could not be included as a deductible business expense.

The CAA provided for a second round of PPP loans to businesses having 300 or fewer employees, with certain expansions in eligibility and qualifying expenses compared to the previous round. State law previously conformed to federal law in disallowing deductions for business expenses paid with forgiven PPP loan proceeds so as to avoid providing a double tax benefit on the forgiven loan amounts. However, the CAA later provided that, for purposes of federal law, taxpayers may deduct business expenses paid using forgiven PPP loans for both the first round of PPP loans under CARES and the second round under the CAA.

Under current state law, for the first round of PPP loans under CARES, forgiven amounts are excluded from gross income, but no deductions may be claimed for business expenses paid using those forgiven amounts. By contrast, for the second round of PPP loans, forgiven loans are considered income, but the loan recipient may claim deductions for business expenses (which is roughly equivalent to the forgiven loan amount, given the eligible expenses for which PPP loans may be used).

Economic Injury Disaster Loan (EIDL) program. CARES made the preexisting EIDL program, which is administered by the SBA, available to certain qualifying small businesses having 500 or fewer employees. EIDL loans were intended to meet financial obligations and expenses of businesses resulting from the economic impacts of the COVID-19 pandemic through December 31, 2020. EIDL loans are generally available at 3.75% interest for businesses (2.75% for non-profits) over 30 years. CARES provided for forgivable advances in the amount of \$1,000 per employee, up to a maximum of \$10,000. The CAA provided additional funding for the EIDL program and extended the availability of advances to certain qualifying small businesses having 300 or fewer employees through December 31, 2021. The CAA specified that forgivable EIDL advances are not taxable and recipients may claim deductions on any business expenses paid using EIDL advance proceeds. The CAA also repealed the requirement for PPP loan recipients to reduce the amount of their loan forgiveness by the amount of EIDL advance they received.

Payment Assistance for Certain Loan Payments. CARES required the SBA to make payments of interest, principal, and fees owed by borrowers for certain preexisting loans (including Section 7(a), Section 504, and Microloan programs) for a six-month period. The amounts paid by the SBA are forgiven and borrowers are not required to repay the SBA. The CAA specifies that these federal subsidies are not included in income for federal tax purposes and that deductions for expenses paid with these proceeds are allowed.

Grants to Shuttered Venue Operators. The CAA provides a new grant program for live venue operators, talent representatives, movie theaters, and museums that were fully operational on February 29, 2020 and experienced a revenue reduction of at least 25% in one quarter of 2020 compared to 2019. The CAA specifies that the grants are not included in income for federal tax purposes and that deductions for expenses paid with these proceeds are allowed.

I hope this information is helpful. Please contact me with any questions.