

There Is a Santa Claus After All - Lawmakers Deliver a Wonderful Holiday Gift to Businesses and Their Owners in a Time of Need

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The Consolidated Appropriations Act, 2021

In a bipartisan effort, H.R. 133-116th Congress: [Consolidated Appropriations Act, 2021](#) (the “Consolidated Appropriations Act, 2021”) overwhelmingly passed both the House and the Senate on December 21, 2020. It is now on President Trump’s desk awaiting his signature.

The Consolidated Appropriations Act, 2021, which spans almost 6,000 pages, once signed into law, will bring holiday cheer to many. The new law includes a huge variety of provisions aimed at assisting individuals and businesses during this time of need. One provision in particular is aimed at curing a wrong created by the Internal Revenue Service (“IRS”) in Notice 2020-32.

As we [previously discussed](#), PPP loans authorized by the CARES Act may be forgivable, in whole or in part, if taxpayers use the proceeds for qualifying expenses (namely, payroll, benefits, mortgage interest, rent and utilities). Unlike other debt that is forgiven, PPP loan amounts forgiven pursuant to the CARES Act do not constitute cancellation of debt income. Then, in Notice 2020-32, the IRS delivered a body blow to most U.S. businesses at a time when they were already on the ropes. The message was loud and clear: taxpayers whose PPP loans are forgiven cannot deduct the business expenses for which they used the forgiven loan proceeds. The government’s conclusion, from a purely academic perspective, was probably correct. In normal times, taxpayers should not get a double tax benefit from a forgiven debt (i.e., a deduction with respect to expenses paid from the loan proceeds and an exemption from tax on the forgiven loan). However, these times are anything but normal. Furthermore, the IRS pronouncement clearly was contrary to Congress’s intent when it passed the CARES Act. Unfortunately, the PPP loan provisions of the CARES Act do not provide any details about the deductibility of expenses for which PPP loan funds were used.

In May, [Senate Bill 3612](#) was introduced to reverse the government’s taxpayer-negative conclusion contained in IRS Notice 2020-32. In effect, the bill provided that receipt of PPP loan forgiveness will not cause the denial of tax deductions for business expenses paid for with PPP loan proceeds. Unfortunately, the bill languished in the Senate and ultimately died.

The Consolidated Appropriations Act, 2021 picks up Senate Bill 3612 and goes much further. For one, it nullifies Notice 2020-32. With respect to PPP loan forgiveness in Section 278(a), it provides:

- No amount shall be included in gross income of a borrower by reason of forgiveness of PPP loan debt.
- No deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied by reason of the exclusion from gross income.
- In the case of pass-through entities (i.e., partnerships and S corporations), any amount which, due to PPP loan forgiveness, is excluded from income shall be treated as tax exempt income for purposes of Code Sections 705 and 1366.
- Except as provided by Treasury Regulations, any increase in the adjusted basis of a partner's interest in a partnership under Code Section 705 related to any amount which, due to PPP loan forgiveness, is excluded from income shall be equal to the partner's distributive share of the deductions resulting from the expenditure of the PPP loan proceeds.

Section 278 of the Consolidated Appropriations Act, 2021 goes even further to bring joy to U.S. businesses and their owners. It extends the above listed tax relief provisions to recipients of Economic Injury Disaster Loan Advances made under Section 1110(e) of the CARES Act (excepting advances representing payment for teaching, research or other services required for receiving a qualified financial aid grant). Additionally, the new law extends these tax relief provisions to recipients of the SBA loan payment subsidy program (i.e., payment of six months of principal and interest payments) for certain loans that existed on March 27, 2020 under Section 1112(c) of the CARES Act.

If you did not believe in Santa Claus before lawmakers enacted the Consolidated Appropriations Act, 2021, you should now be a believer. Hopefully, the President will not leave coal in our holiday stockings, but instead will quickly sign the bipartisan efforts of the Senate and the House into law.

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Authored by

[Larry J. Brant](#)

[Principal|Portland](#)

[503.553.3114](tel:503.553.3114) larry.brant@foster.com