

# 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 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.