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Isaac M. O'Bannon • Sep. 21, 2022

**PAYCHECK
PROTECTION
PROGRAM**



The Internal Revenue Service recently issued [guidance addressing improper forgiveness of a Paycheck Protection Program loan \(PPP loan\)](#).

The guidance confirms that, when a taxpayer's loan is forgiven based upon misrepresentations or omissions, the taxpayer is not eligible to exclude the forgiveness from income and must include in income the portion of the loan proceeds that were forgiven based upon misrepresentations or omissions. Taxpayers who inappropriately received forgiveness of their PPP loans are encouraged to take steps to come into compliance by, for example, filing amended returns that include forgiven loan proceed amounts in income.

“This action underscores the Internal Revenue Service’s commitment to ensuring

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misrepresentation or omission and either did not qualify to receive a PPP loan or misused the loan proceeds.

The PPP loan program was established by the Coronavirus Aid, Relief and Economic Security Act (CARES Act) to assist small US businesses that were adversely affected by the COVID-19 pandemic in paying certain expenses. The PPP loan program was further extended by the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act.

Under the terms of the PPP loan program, lenders can forgive the full amount of the loan if the loan recipient meets three conditions.

1. The loan recipient was eligible to receive the PPP loan. An eligible loan recipient:
 - is a small business concern, independent contractor, eligible self-employed individual, sole proprietor, business concern, or a certain type of tax-exempt entity;
 - was in business on or before February 15, 2020; and
 - had employees or independent contractors who were paid for their services, or was a self-employed individual, sole proprietor or independent contractor.
2. The loan proceeds had to be used to pay eligible expenses, such as payroll costs, rent, interest on the business’ mortgage, and utilities.
3. The loan recipient had to apply for loan forgiveness. The loan forgiveness application required a loan recipient to attest to eligibility, verify certain financial information, and meet other legal qualifications.

If the three conditions above are met, then under the PPP loan program the forgiven portion is excluded from income. If the conditions are not met, then the amount of

the loan proceeds that were forgiven but do not meet the conditions must be

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