

IRS Clarifies That Expenses Resulting in Paycheck Protection Program Loan Forgiveness Are Not Deductible

By **John B. Waters**

On April 30, 2020 the IRS issued Notice 2020-32 which clarifies that no deduction is allowed under the Internal Revenue Code (“Code”), for an expense that is otherwise deductible if the payment of the expense results in covered loan forgiveness under section 1106(b) of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Public Law 116-136, and such loan forgiveness is excluded from gross income under the Code.

Under Section 1106 of the CARES Act, a recipient of a covered loan under the Paycheck Protection Program can receive loan forgiveness based on the amount of certain payroll, mortgage, rent and utility expenses paid during the 8-week “covered period” beginning on the covered loan’s origination date. Section 1106(i) of the CARES Act excludes such loan forgiveness from gross income under the Code.

The CARES Act is silent on whether the payments of expenses which result in loan forgiveness are deductible. However, in determining that such expenditures are not deductible, the IRS relied on Code Section 265(a)(1), Treasury Regulations Section 1.265-1, Revenue Ruling 83-3, 1983-1 C.B. 7 and cases which deny a deduction to a taxpayer for expenses allocable to income that is exempt from tax or for which the taxpayer receives reimbursement so as to prevent the taxpayer from receiving a double-tax benefit.

For example, if an employer with a covered loan paid covered payroll, rent and utility expenses during the 8-week period following origination of such loan and such expenditures resulted in loan forgiveness, such employer would neither have income from such loan forgiveness nor a tax deduction for those expenses.

For additional information or assistance with the applicability and effect of this development, please contact any of the listed Roetzel attorneys.

Christopher P. Reuscher
Practice Group Manager
Corporate, Tax and Transactional
330.762.7994 | creuscher@ralaw.com

James K. Shaw
312.580.1258 | jshaw@ralaw.com

David Hochman
312.582.1686 | dhochman@ralaw.com

John B. Waters
312.582.1685 | jwaters@ralaw.com

Avery Delott
312.582.1636 | adelott@ralaw.com