PPP Related Expenses Not Previously Deducted

The deductibility of expenses connected with PPP monies changed over the past 18 months. Back in March 2020 the law that created the PPP loans and forgiveness clearly stated the PPP loan forgiveness was not taxable. The law did not address the deductibility of the expenses that resulted in the forgiveness. On April 30, 2020, IRS released Notice 2020-32 which stated the expenses were not deductible based on IRC Section 265. On November 18, 2020, IRS released Revenue Ruling 2020-27 which further explained the nondeductibility rules, including cases where the forgiveness had not yet taken place before the end of the applicable year. In December 2020 Congress changed the law and provided an exception to 265 and made the expenses deductible (Covid Tax Relief Act 2020, which was part of the 5,593-page Consolidated Appropriations Act, 2021 signed by President Trump on December 27, 2020).

In between the release of IRS Notice 2020-32 and the Covid Tax Relief Act 2001, many taxpayers filed their tax returns and did NOT claim the expenses.

Now IRS has released Revenue Procedure 2021-20 addressing the expenses that were not originally deducted. The RP provides a safe harbor taxpayers can use if they desire.

Under this safe harbor procedure, instead of amending the original (OLD) return, “covered” taxpayers can elect to deduct these expenses on the taxpayer’s subsequent year’s (NEW) timely filed, including extensions, original Federal return.

A “covered” taxpayer is a taxpayer who:
1) Received an original PPP covered loan.
2) Paid or incurred original eligible expenses during the OLD taxable year.
3) On or before December 27, 2020, timely filed the OLD return.
4) Did not deduct the original expenses because of IRS guidance.

To make a valid election the taxpayer must attach a statement to the NEW return showing:
1) The name, address, and SSN/EIN.
2) A statement that the safe harbor election is being made.
3) The amount and date of disbursement of the original PPP loan.
4) A list, including descriptions and amounts, of the original expenses paid or incurred during the OLD taxable year that are reported on the NEW return.

Editorial comment - Even though Section 1, Purpose, of the RP refers to taxable years ending after March 26, 2020, and on or before December 31, 2020, in order to be a “covered” taxpayer the return had to have been filed on or before December 27, 2020. We cannot account for the difference in these dates. We also cannot account why IRS is assuming all taxpayers and tax professionals knew about the deductibility of the expenses by the end of the date President Trump signed the Act, since a return filed the next date is not eligible for this safe harbor procedure.

(If you read the actual RP, you will find IRS referring to “2020” returns. Don’t forget IRS identifies the “year” by the calendar year in which the entity’s taxable year end falls and not the date it begins. For example, a fiscal year return starting April 1, 2019, and ending March 31, 2020, is a "2020" return.)

This text has been shared courtesy of: David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065 (fax 920-496-9111).