

**DEPARTMENT OF TAXATION
2023 Fiscal Impact Statement**

1. **Patron** J. Chapman Petersen
3. **Committee** Senate Finance and Appropriations
4. **Title** Income Tax; Paycheck Protection Program
Loan Deduction

2. **Bill Number** SB 950
House of Origin:
 X **Introduced**
 Substitute
 Engrossed
- Second House:**
 In Committee
 Substitute
 Enrolled

5. Summary/Purpose:

This bill would repeal the \$100,000 limitation on the individual and corporate income tax deduction for certain Paycheck Protection Program (“PPP”) loan forgiveness recipients. Under current law, the deduction is limited to \$100,000 for taxable years beginning before January 1, 2021.

If this bill is enacted during the 2023 Regular Session of the General Assembly, it would become effective July 1, 2023.

6. **Budget amendment necessary:** Yes.
Item(s): Page 1, Revenue Estimates

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2023-24	(\$157.7 million)	GF

8. Fiscal implications:

Administrative Costs

The Department of Taxation (“the Department”) considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

The bill would have an estimated negative General Fund revenue impact of \$157.7 million in Fiscal Year 2024. The timing of such revenue impact would depend upon when taxpayers choose to file amended returns and how much tax liability and carryovers that they have in a particular taxable year, among other factors. As a result, a portion of the \$157.7 million negative revenue impact could be shifted from Fiscal Year 2024 to subsequent fiscal years. The extent to which this would occur is unknown.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Federal CARES Act

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act (H.R.748) was signed into law. The CARES Act provided for PPP loans for small businesses with 500 or fewer employees. Such loans may be forgiven, in whole or in part, to the extent a business uses loan funds on the payment of:

- Payroll costs;
- Interest on certain mortgage obligations;
- Certain rent obligations; and,
- Certain utility payments.

When a loan is forgiven, taxpayers are generally required to recognize income in the amount of the forgiven debt. However, the CARES Act excludes such loan forgiveness on certain PPP loans from taxation.

On April 30, 2020 the Internal Revenue Service (“IRS”) released Notice 2020-32 in which it ruled that the PPP loan forgiveness would trigger the prohibition on taking deductions against tax-free income. As a result, at the federal level, borrowers were prohibited from claiming business expense deductions for expenditures paid for with funds from forgiven PPP loans. This treatment was changed under the federal Consolidated Appropriations Act, 2021.

Federal Consolidated Appropriations Act, 2021

On December 27, 2020, the Consolidated Appropriations Act, 2021 (H.R.133) (“the CAA”) was signed into law. The CAA allows a taxpayer to claim deductions for expenses funded by a forgiven PPP loan. Therefore, there is no longer a prohibition on claiming both the exclusion for PPP loan forgiveness and deductions for expenses paid using the funds from such forgiven loans. In addition, this legislation expanded the scope of expenses that qualify for purposes of loan forgiveness to include covered:

- Operations expenditures;
- Property damage costs;
- Supplier costs; and,
- Worker protection expenditures.

Virginia PPP Deduction

During the 2021 Session, the General Assembly enacted legislation that partially deconformed from the full federal deductibility of business expenses funded by forgiven PPP loan proceeds. Instead, for Taxable Year 2020 only, Virginia allowed an individual and corporate income tax deduction of up to \$100,000 for business expenses funded by forgiven PPP loan proceeds.

During the 2022 Session, the General Assembly enacted legislation that made the following changes regarding PPP:

- **Taxable Year 2021 and after:** Virginia fully conformed to the federal tax treatment of PPP for Taxable Year 2021 and subsequent tax years. As a result, the \$100,000 limitation does not apply on Taxable Year 2021 and subsequent tax year returns.
- **Taxable Year 2019:** Virginia retroactively extended the deduction for up to \$100,000 in business expenses funded by forgiven PPP loan proceeds to also be permitted in Taxable Year 2019. This allowed fiscal year filers to benefit from the deduction for such expenses received during 2020 that was reflected on their Taxable Year 2019 returns.

Proposed Legislation

This bill would repeal the \$100,000 limitation on the individual and corporate income tax deduction for certain Paycheck Protection Program (“PPP”) loan forgiveness recipients. Under current law, the deduction is limited to \$100,000 for taxable years beginning before January 1, 2021.

If this bill is enacted during the 2023 Regular Session of the General Assembly, it would become effective July 1, 2023.

cc : Secretary of Finance

Date: 1/22/2023 RWC
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