

DEPARTMENT OF TAXATION

2021 Fiscal Impact Statement

1. **Patron** Joseph P. McNamara

3. **Committee** House Finance

4. **Title** Individual Income Tax; Exclusion of Forgiven
Paycheck Protection Program Loans

2. **Bill Number** HB 1787

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would provide an individual income tax exclusion to the extent a taxpayer is granted a federal tax exclusion for Paycheck Protection Program ("PPP") loan forgiveness.

This bill would be effective for taxable years beginning on and after January 1, 2020.

6. **Budget amendment necessary:** No.

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

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

Because conformity to the federal tax exclusion for PPP loan forgiveness is assumed in the Introduced Executive Budget, this bill would have no impact on General Fund revenue. The impact of allowing an exclusion would be offset by the disallowance of deductions for any business expenses paid using such forgiven PPP loans.

If this bill is amended to allow taxpayers to also deduct business expenses funded by such forgiven PPP loans, it would have a significant negative General Fund revenue impact, estimated between \$150 million and \$190 million in Fiscal Year 2021 and between \$190 million and \$310 million in Fiscal Year 2022.

9. **Specific agency or political subdivisions affected:**

Department of Taxation

10. Technical amendment necessary:

As currently drafted, this bill would provide an exclusion for PPP loan forgiveness solely to individual income taxpayers. That is because this bill amends only *Va. Code* § 58.1-321, which is the section for individual income tax exemptions and exclusions. If the Patron intends for this exclusion to apply also to corporate income taxpayers, the Department recommends that this exclusion also be added to *Va. Code* § 58.1-401, which is the section for corporate income tax exemptions and exclusions.

In addition, the bill as currently drafted would allow an exclusion for PPP loan forgiveness, but would not permit taxpayers to deduct business expenses funded by such forgiven PPP loans. If the intent is to also allow such deductions, an amendment is necessary.

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.

Loan forgiveness is generally taxable for federal income tax purposes. As a result, 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, borrowers were prohibited from claiming business expense deductions for expenditures paid for with funds from forgiven PPP loans.

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 Law

Virginia's date of conformity to the IRC is currently fixed to the IRC as it existed on December 31, 2019. Therefore, Virginia does not currently conform to any provisions of the CARES Act and CAA, including those providing tax-free PPP loan forgiveness and that permit a taxpayer to claim deductions for expenses funded by a forgiven PPP loan.

Proposed Legislation

This bill would provide an individual income tax exclusion to the extent a taxpayer is granted a federal tax exclusion for Paycheck Protection Program ("PPP") loan forgiveness.

This bill would be effective for taxable years beginning on and after January 1, 2020.

Similar Bills

Senate Bill 1394 would exclude PPP loan forgiveness from income and would also permit taxpayers to deduct expenses forgiven by a forgiven PPP loan.

House Bill 1935 and **Senate Bill 1146** would advance Virginia's date of conformity to the Internal Revenue Code.

House Bill 1788 would generally conform Virginia to the Internal Revenue Code on a rolling basis.

cc : Secretary of Finance

Date: 1/16/2021 RWC
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