

LEGAL UPDATES

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## Service

Tax

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## IRS Issues Guidance on Deductions Related to PPP Loan Proceeds

On April 30, 2020, the Internal Revenue Service (IRS) issued Notice 2020-32 (the Notice) which concluded that the expenses paid with loans which are forgiven under the Paycheck Protection Program (PPP) are not deductible. Generally, forgiveness of a debt creates income for the taxpayer who does not have to repay the loan. Overturning this general rule, the Coronavirus Aid, Relief, and Economic Security Act (CARES) clearly stated that income from the forgiven PPP loans was not to be included in taxpayers' income. Significantly, however, the CARES Act was silent on the treatment of the deductions related to the payments. In reaching its conclusion, the IRS reasoned that the income specifically excluded by Congress is considered a "class of exempt income" under regulations promulgated under section 265. Where there is such income, a deduction is not allowed for related expenditures. The IRS concluded that expenses paid with loans forgiven under the PPP are, therefore, not deductible.

Had the loans been includible in a taxpayer's income, the reasoning in the Notice would not have applied and the expenses would have been deductible. From a practical standpoint, not allowing the deductions of expense has the same impact as making the loans taxable and allowing the deduction. Congress clearly intended that the income not be taxable or it would not have said so. It is unclear whether the Notice will stand but until Congress takes action to overturn the result, taxpayers should not deduct the associated expenses. We will update this notice as to new developments.

### Contact us

If you have further questions or require more information regarding this update, please contact Daniel Geraghty, Rachel Scott or your Husch Blackwell attorney.

## **Comprehensive CARES Act and COVID-19 guidance**

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.