



## **SB 137: Subject forgiven PPP loans to tax**

Testimony for Senate Finance and Revenue – Bennett Minton – 5.25.2020

I'm Bennett Minton, on behalf of Tax Fairness Oregon, a network of volunteers who advocate for a rational and equitable tax code.

Congress's decision to forego taxation of forgiven loans and also allow deductions on the expenditures associated with those loans is contrary to sound tax principles. Rather than see the legislature do nothing, we support the -2 amendment—or something like it—that would subject to tax the income attributable to the forgiven loans.

In the normal course, a business pays income tax on its profits—revenue less expenses. Under the CARES Act, loans expended on purposes as Congress stipulated would be forgiven and not subject to tax. That is a departure from the principle that a forgiven loan is taxable, but as an incentive for the recipients to pay employees and other expenses to bolster the economy, it's a rational policy.

But in December Congress passed H.R. 133, the Consolidated Appropriations Act. It included a provision that allows recipients to deduct expenses associated with the forgiven loans. That violates "Tax 101," as [Treasury Secretary Steven Mnuchin](#) put it. In short, Congress gave recipients tax-free money, and then it said those businesses can deduct that money against other income—they can't deduct it against the forgiven loans, which Congress had already decided are not taxable. That's a double-dip, and it's contrary to [IRC Sec. 265-1](#) (1964) and [Notice 2020-32](#) (April 30, 2020): If the income isn't subject to tax, then deductions are disallowed.

Why did the leaders of the tax-writing committees do it? Because lobbyists asked them to. [The New York Times](#) led its explanation of H.R. 133's outrageous provisions with the PPP double-dip:

*But for some businesses and their high-paid accountants, [tax-free forgiven loans] was not enough. They went to Congress with another request: Not only should the forgiven loans not be taxed as income, but the expenditures used with those loans should be tax deductible.*

Who benefits? Explained [Adam Looney](#), a former Treasury official at the Brookings Institution:

*To go through the math of how large that benefit is, the top rate on ordinary income today is 37 percent. But taxpayers today can carry back any unused deductions incurred this year to 2017, when the top rate on ordinary income was 39.6 percent (and 35 percent for corporations). Business income and ownership is concentrated in the highest income groups—for the relevant group of pass-through business owners, about 70 percent of business income is earned by the top 1 percent of taxpayers. Hence, most of those deductions would be used by high income-taxpayers and save them \$0.37 to \$0.396 in taxes for each dollar they deduct.*

*In short, it's a benefit targeted to the trifecta of inequity: (1) you need to own a business sophisticated enough to get a PPP loan; (2) the more income you have, the more you benefit; (3) your benefit is largest if you're in the highest tax bracket.*

**We read the bills and follow the money**

As LRO explained, 83 percent of PPP loans to Oregon businesses were no greater than \$100,000 (the threshold under the -2 amendment), but the remaining 17 percent of loans constitute 74 percent of the value of the loans. That is, and underscoring Looney's point in Oregon, the wealthiest businesses got the biggest loans and stand to receive enormous tax benefits. Maybe the double-dip is fine for Congress, which can print money. But Oregon has no reason to participate.

Let's be clear what the [-2 amendment](#) is, because much of the testimony submitted for the committee's hearing record appears to be based on misunderstandings of the law and the proposal; these witnesses contend that the amendment "[would turn PPP loans in excess of \\$100,000 into taxable income.](#)" That's incorrect. The amendment would subject to tax the **profits** attributable to forgiven PPP loans, and only those loans greater than \$100,000. Loans are forgiven only if the recipient spent at least 70 percent on qualifying purposes. If the business spent the entire loan in the normal course, it would incur no tax liability under the -2 amendment.

Oregon's gaping liability is that because of the double-dip, a business can claim deductions against which it has no income—the forgiven loan—and can then amend prior-year returns to turn past tax liabilities into tax refunds. A nifty income stream thanks to another provision of the CARES Act that allows businesses net operating loss carrybacks; Adam Looney explains this in his Brookings article cited above. Severing that connection to the federal code was the subject of the [-1 amendment](#), on which we testified in February. That's why it's critical that the legislature confront this second mess Congress created. The -2 amendment takes the right approach: subject the forgiven loan to tax, rather than deny the associated deductions, as the latter would create accounting problems.

I'm involved with a small business that received a PPP loan. Its annual revenue is about \$4 million. It got a PPP loan of almost \$200,000. It spent about a quarter of the loan on retroactive pay and hazard pay, and it will spend most of the rest on qualifying expenses, and the loan will be forgiven. Under the CARES Act, it won't owe tax on the forgiven loan. It got free money, stayed open, kept people on the payroll, even gave them a raise. Even under the -2 amendment, only the amount retained or distributed to owners would be subject to tax. Eventually nearly all of it will be spent in growing the business—and deducted from income. That's great for the enterprise, its employees, its customers, and the wider community.

But as a taxpayer who cares about equity, I consider it abusive that under the double-dip, my business can deduct those expenses against other income, and business owners can walk away with tax-free profits provided by the federal government. The cost to Oregon, LRO estimated, is around a half-billion dollars.

The business lobby, predictably, contends that because Oregon's revenue picture is bright, the legislature should follow Congress and give our tax money to the state's wealthiest PPP recipients. (When times are bad, the business lobby says taxes should be cut; when times are good, the business lobby says taxes should be cut.) But the committee is the steward of the tax code. If it wants to hand out a half-billion dollars, it should do so based on equity principles, not on a special-interest provision instigated by lobbyists in Washington.