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IRS Notice 2020-32: Should Taxpayers Deduct Expenses Resulting in Loan Forgiveness under the Paycheck Protection Program Despite the Contrary Guidance of the Internal Revenue Service?

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By Brandon N. Mourges and Brian J. Crepeau

Takeaway: Although the Internal Revenue Service indicates that expenses resulting in loan forgiveness under the Paycheck Protection Program are not deductible, its interpretation is questionable. Even if Congress does not legislatively address this issue, businesses may consider deducting these expenses based on the intent of the statute, legal authorities and analyses supporting deductibility, and other business considerations.

On April 30, 2020, the Internal Revenue Service ("the Service") released Notice 2020-32 ("the Notice") regarding the deductibility of certain expenses relating to the Paycheck Protection Program ("PPP"). In particular, the Notice provides the Service's position on the deductibility, for federal income tax purposes, of certain otherwise deductible expenses incurred in a taxpayer's trade or business when the taxpayer receives loan forgiveness pursuant to the Paycheck Protection Program. The Notice indicates that no deduction is allowed if the expense results in forgiveness of a covered loan under the PPP and the income associated with the forgiveness is excluded from gross income pursuant to the CARES Act.

While taxpayers should carefully review this guidance, its application should be questioned in light of its (1) likely conflict with legislative intent and existing law, (2) little weight of authority, and (3) the inequitable results that this interpretation will inevitably produce. Businesses should consult with their advisors to understand potential planning opportunities and the risks associated with taking a position contrary to this Notice.

Overview of the Paycheck Protection Program. As a legislative response to financial crises and rising unemployment caused by the COVID-19 pandemic and related shutdowns, the CARES Act created several stimulus benefits. For individuals, the issuance of economic stimulus payments and the authorization of additional weekly amounts for unemployment insurance payments were intended to directly assist those expected to be put out of work. For small businesses, amongst other things, the CARES Act created the Paycheck Protection Program and the Employee Retention Credit. Both of these programs incentivize employers to retain existing employees – and reduce the impact on unemployment insurance programs – by providing funding to employers which would then be paid to employees. The PPP provides funds through low-interest loans may be forgiven if sufficient payroll expenses are incurred. On the other hand, the Employee Retention Credit provides refundable tax credits based on wages paid by an employer.

With respect to the PPP in particular, the loans issued (and guaranteed by the Small Business Administration (SBA)) are forgiven to the extent that a business substantiates the payment of eligible expenses, such as payroll costs, rent, mortgage, interest, and utilities, during a covered period. Making this program even more beneficial to businesses, the CARES Act specifically provides that "any amount which

(but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income." Stated differently, loans forgiven under the PPP are not subject to income tax (e.g., as cancellation of indebtedness income). By including this provision, the PPP can effectively be viewed as a tax-free grant with conditions.

Although the Department of the Treasury and the SBA continue to provide guidance to administer the PPP, a number of significant questions remain. On April 30, 2020, the Internal Revenue Service issued Notice 2020-32 in an attempt to address one of these questions: the deductibility of expenses paid with loan proceeds forgiven under the PPP. In the Notice, the Service concludes that no deduction is allowed under the Internal Revenue Code for expenses that are otherwise deductible if the expenses result in forgiveness of the loan under the PPP and that forgiveness is excluded from income pursuant to section 1106(i) of the CARES Act.

The Service's Analysis. In its seven-page analysis, the Service first discusses the background of the PPP, eligibility requirements for loan forgiveness, and the exclusion of the forgiveness from income. Thereafter, the Service summarizes the relevant law supporting its position.

Focusing first on I.R.C. § 162, the Service acknowledges that the expenses incurred pursuant to the PPP would generally qualify as ordinary and necessary business expenses. However, the Service then quickly notes that, in its opinion, I.R.C. § 265 and related regulations do not permit deductions for these expenses. Section 265(a)(1)[1] provides that "no deduction shall be allowed for":

> Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this subtitle, or any amount otherwise allowable under section 212 (relating to expenses for production of income) which is allocable to interest (whether or not any amount of such interest is received or accrued) wholly exempt from the taxes imposed by this subtitle.

In a similar vein, Treas. Reg. § 1.265-1(a)(1) clarifies that "no amount shall be allowed as a deduction…for any expense or amount which is otherwise allowable as a deduction and which is allocable to a class or classes of exempt income other than a class or class of exempt interest income." A "class of exempt income" means any class of income which is either "wholly excluded from gross income under any provision of Subtitle A, or wholly exempt from the taxes imposed by Subtitle A under the provisions of any other law." Treas. Reg. § 1.265-1(b)(1). Regulations further clarify that expenses allocable to exempt income, and hence not deductible, include those which "are directly allocable" to any class of exempt income and a reasonable proportion of those which are "indirectly allocable" to any class of exempt income. Treas. Reg. § 1.265-1(c). Applying these standards, the Service opines that I.R.C. § 265 applies to expenses resulting in loan forgiveness under the PPP in order to "prevent a double tax benefit" – i.e., to prevent PPP recipients from excluding the loan forgiveness as income and, at the same time, excluding the corresponding expenses.

To reinforce its position, the Service provides judicial precedent and other guidance addressing the applicability of I.R.C. § 265 in other contexts. The Service cites to the following as support:

- *Christian v. United States*, 201 F. Supp. 155 (E.D. La. 1962) (schoolteacher denied deductions for expenses incurred for literary research trip because expenses were allocable to tax-exempt gift and fellowship grant)

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[1] I.R.C. § 265(a)(2) provides an analogous provision relating to the deductibility of interest.

- *Banks v. Commissioner*, 17 T.C. 1386 (1952) (educational expenses paid by Veteran's Administrator were exempt from income tax were not deductible)

- *Heffelfinger v. Commissioner*, 5 T.C. 985 (1945) (Canadian income taxes on income exempt from U.S. tax not deductible in computing U.S. taxable income)

- Rev. Rul. 74-140, 1974-1 C.B. 1950 (portion of state income tax paid that is allocable to cost-of-living allowance, which is exempt under section 912 of the Internal Revenue Code, is nondeductible under section 265)

- *Manocchio v. Commissioner*, 78 T.C. 898 (1982) (flight-training expenses that were reimbursed by the Veteran's Administration are nondeductible under section 265(a)(1))

- Rev. Rul. 83-3, 1983-1 C.B. 72 (providing generally that where tax-exempt income is earmarked for a specific purpose, and expenses are incurred to carry out that purpose, section 265(a) applies as those expenses are allocable)

While the Service relies on I.R.C. § 265 and related cases to support its position, the Service also opines that otherwise eligible deductions are disallowed where a taxpayer receives reimbursement of those expenses from a third party. *See, e.g., Burnett v. Commissioner*, 356 F.2d 755, 759-60 (5th Cir. 1966) (where attorney advanced payments to clients that were virtually certain to be repaid, the payments were not deductible as business expenses); *Wolfers v. Commissioner*, 69 T.C. 975 (1978) (moving expenses incurred that were fully reimbursed were held not deductible); *Charles Baloian Co. v. Commissioner*, 68 T.C. 620 (1977) (moving expenses paid, which were subject to reimbursement without substantial contingency, deemed nondeductible); Rev. Rul. 80-348, 1980-2 C.B. 31; Rev. Rul. 80-173, 1980-2 C.B. 60 (expenses reimbursed for travel to attend convention were both not includible in income and not allowable as a deduction).

In conclusion, based principally upon the application of I.R.C. § 265, the Service concludes that deductions are not allowed for expenses otherwise deductible if they result in loan forgiveness excluded from income under section 1106(i) of the CARES Act.

Conflict with Legislative Intent? Even though Notice 2020-32 decisively rules that these types of deductions should be disallowed, congressional intent, other relevant legal interpretations, and the wording of the statute itself undermine the Service's position.

In the past week, Congressional leaders and professional associations have indicated that a broad reading of I.R.C § 265 runs counter to legislative intent. Senator Chuck Grassley, Chair of the Senate Finance Committee, indicated that "[t]he intent [of the PPP] was to maximize small businesses' ability to maintain liquidity, retain their employees and recover from this health crisis as quickly as possible. This notice [Notice 2020-32] is contrary to that intent." Aside from running counter to congressional intent, the Service's interpretation would simply cycle a portion of the funds back to the government in the form of tax revenue and reduce the impact of the PPP. Richard Neal, Chair of the House Ways and Means Committee similarly indicated that Congress intends to fix this issue in upcoming legislation. These bipartisan statements indicate that Congress did not intend for these deductions to be negated by another

little-known statutory provision. The AICPA strongly echoed these statements regarding congressional intent, stating[2]:

> In effect, the IRS guidance means that the taxability provision [Section 1106(i)] has no meaning. Why waste the ink to say that for purposes of the Code, the loan forgiveness is not includible in income, if the government will just take away deductions in the same amount?

Although it is entirely possible that legislation will address this issue in the coming months, statements such as these lend strong support to taking a position contrary to the Notice, based upon statutory ambiguity and legislative intent counseling in favor of the deduction.

Further, the context in which I.R.C. § 265 has previously been applied do not strongly reinfoce the Service's position. As identified in the Notice, some of the cases applying this statute deal with individuals claiming expenses for items that were funded through gifts and grants. Others involve the disallowance of taxes paid for income that was specifically exempt from federal income tax law. Neither of these circumstances closely relate to the terms of loan forgiveness under the Paycheck Protection Program. These holdings are, therefore, of limited import and do not lend strong support for the Service's position.

Notably, there are no reported cases dealing with the application of I.R.C. § 265 to cancellation of indebtedness otherwise excluded from income.[3] In addition, the Service has previously taken an opposite position with respect to the classification of section 108 income as a class of tax-exempt income.[4] In other words, when dealing with cancellation of indebtedness income that is excluded by section 108, the Service opines that that it is not a class of tax-exempt income. Accordingly, for I.R.C. § 265 to apply to the loan forgiveness under the Paycheck Protection Program, it is necessary for the Service to argue that it is of a character different than typical loan forgiveness. This may prove difficult.

Aside from the questionable value of the precedent cited in the Notice, the express language of section 1106(i) of the CARES Act and I.R.C. § 265 does not support the Service's proposed application. The CARES Act specifically provides that that "any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income." Section 265 only applies to deductions allocable to income "wholly exempt from the taxes imposed by this subtitle." As clarified by the regulations to section 265, exempt income is any class of income "wholly excluded from gross income ***under any provision of Subtitle A***, or wholly exempt from the taxes imposed by Subtitle A under the provisions of any other law." Treas. Reg.

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[2] Sally Schreiber, *AICPA challenging nondeductibility of PPP-related expenses*. May 1, 2020. *Available at:* https://www.journalofaccountancy.com/news/2020/may/expenses-reimbursed-by-ppp-not-tax-deductible-paycheck-protection-program.html.

[3] *See* Reply Brief of Appellants at 16, *Milkovich et al. v. United States*, No. 19-35582 (9th Cir. Dec. 30, 2019), 2019 WL 7500415 (noting that neither the appellants nor the United States could cite to any cases dealing with the application of I.R.C. § 265 in the context of I.R.C. § 108).

[4] *Pugh v. Commissioner*, 213 F.3d 1324, 1329 (11th Cir. 2000) (citing cases where the Service argued that income excluded due to section 108 was not tax-exempt but was instead tax-deferred notwithstanding statutory provisions; also indicating that Service takes the position that section 108 income is not tax-exempt in Treas. Reg. § 1.1366-1(a)(2)(viii)).

§ 1.265-1(b)(1) (***emphasis added***)[5]. Subtitle A, as used in this context, refers to the portions of the Internal Revenue Code dealing with income taxes.

Since it is the CARES Act itself that excludes loan forgiveness – not any provision of the Internal Revenue Code – the first clause of Treas. Reg. § 1.265-1(b)(1) should not apply. Moreover, since loan forgiveness is excluded – and not exempted – by the Internal Revenue Code or "any other law," the second clause of that regulation should not apply either. And the express statutory language of section 265 – which applies to deductions relating to income "wholly exempt from the taxes imposed by this subtitle" – should not apply either since the potential income is excluded and not exempted.

Had Congress intended for the section 265 to apply in this context,[6] it could have exempted (and not excluded) the income from tax in order to prevent deductions for related expenses.[7] Accordingly, based upon recent statements from congressional leadership and the wording of the statute itself, at the very least, a strong case can be made against the Service's interpretation.

Limited Weight of Authority. Even if the Service's interpretation is ultimately held to be correct (and is not legislatively addressed in the interim), it has little, if any, interpretive value, likely will be not be afforded any deference in litigation, and should not encourage taxpayers from forming their own statutory analysis.

To start, this type of interpretation represents among the least authoritative guidance available to taxpayers. As explained by the Service, such notices are intended "to provide substantive or procedural guidance on an expedited basis with respect to matters of general interest that would otherwise be covered by a regulation, revenue ruling, or revenue procedure."[8] These notices are used to advance the Service's position where further guidance is still being drafted.[9] Notices are published without public comment in the Internal Revenue Bulletin. And while published notices can be relied upon by taxpayers to the same extent as revenue rulings or revenue procedures to avoid accuracy-related penalties, they do not have the

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[5] For purposes of subtitle A of the Internal Revenue Code, most types of income that are not added to the computation of income are referred to as exclusions. For instance, death benefits received, gifts, interest on state and local bonds, and many other types of income are excluded from the computation of taxable income. On the other hand, income exempted from tax includes certain payments on private activity bonds. The terms necessarily have a different meaning; otherwise, the Service would have utilized the same terminology in both clauses of Treas. Reg. 1.265-1.

[6] As analyzed in Field Serv. Advisory, 1992 WL 1355885 (Jan. 7, 1992), section 265 was originally enacted as section 24(a)(5) of the 1934 Revenue Act with substantially the same language as employed today. The House Ways and Means Subcommittee indicated that it was intended to negate deductions relating to "interest on State securities, salaries received by State employees, and income from leases of State school lands" that were exempt from federal income tax. Further, although many exceptions in the Internal Revenue Code existed when this section was enacted, they are not referenced in the subcommittee notes. This supports a conclusion that I.R.C. § 265 was not intended to apply to exclusions from income and tends to indicate that the interpretation in the regulation is overbroad, at least as applied to excluded income. As noted in the guidance, when the Service attempted to apply I.R.C. § 265 to allowances for ministers, the statute was amended to retain the tax benefit for parsonages.

[7] Similarly, in *Commissioner v. McDonald*, 320 F.2d 109, 111 (5th Cir. 1963), the Court held that gains that were not recognized pursuant to section 337 were not "exemptions" simply because they relieve the gain of potential double tax. Accordingly, section 265 did not apply in that context. Here, section 1106(i) of the CARES Act prevents the expense payments from potentially being subjected to income tax at both the employer and employee level.

[8] Internal Revenue Manual 32.2.2.3.3 (08-11-2004).

[9] *Id.*

force and effect of Treasury regulations and can be affected by subsequent legislation, regulations, revenue rulings, revenue procedures, and caselaw.[10] All told, announcements such as Notice 2020-32 are among the least authoritative and are typically only useful by taxpayers as a defense against subsequent, inconsistent application by the Service.[11]

And given the relative brevity of Notice 2020-32, the nature of its support, and the nature of the type of guidance, no level of deference should be afforded to it in a legal proceeding.[12] *Chevron* deference, often viewed as the highest level of deference to an agency interpretation, typically only applies to guidance published after notice-and-comment. This level of deference has never applied to a notice of the Service and neither the Service nor the Department of Justice advocates for such deference with respect to this type of nonregulatory guidance.[13] A lesser level of deference (*Skidmore* deference) may be applied to other Service guidance but is dependent on the "thoroughness evidence in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and [other] factors which give it power to persuade…"[14] While such deference has been afforded to revenue rulings and procedures, it is not clear if such deference has ever applied to a simple notice or announcement.

Given that Notice 2020-32 consists only of a relatively short analysis published without notice-and-comment, was issued approximately one month after the relevant law was issued (and for which rulemaking was still being developed as of the publication of Notice 2020-32), does not contain reference to any clearly analogous scenario (e.g., application of I.R.C. § 265 to other cancellation of indebtedness income or federal loan forgiveness programs), and does not cite to any other legislative or regulatory pronouncements to support its conclusion, it should not be afforded any deference.

In summary, while Notice 2020-32 may provide potential litigants with a roadmap for the Service's position, it has little legal effect. In other words, the Notice likely cannot be used by the Service as legal support for the assessment of taxes or penalties based upon the deduction of expenses incurred in the PPP.[15] This value could theoretically change if the Service publishes later related notices or provides additional rulemaking through its notice-and-comment procedures. Accordingly, if an analysis of the circumstances

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[10] Internal Revenue Manual 32.2.2.10 (08-11-2004).

[11] *See infra*. Given the current budget of the Service and published audit rates, it is unlikely that businesses will be targeted for this issue alone. Unless the Service amends tax forms to include specific questions and responses relating to participation in the PPP, there is likely no way for the Service to make this determination from the face of the tax return alone. Since this is a one-time program and there are significant other administrative needs caused by the pandemic, there is likely little incentive for the Service to develop such forms relating to receipt of funding and loan forgiveness in the PPP.

[12] Deference is essentially the amount of weight given by a court to an agency's interpretation of a law.

[13] *See*, *e.g.*, *Webber v. Commissioner*, 144 T.C. 324, 352-60 (2015); Treas. Reg. § 601.601(d)(2)(v)(d); DOJ Won't Argue for Chevron Deference for Revenue Rulings and Procedures, 131 Tax Notes 674 (May 16, 2011).

[14] *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

[15] Taking a position contrary to Notice 2020-32 may be considered taking a position contrary to a statute, rule, or regulation that might require affirmative disclosure to avoid penalty. *See* Treas. Reg. § 1.6662-3(b)(2). However, that regulation also provides that "a taxpayer who takes a position…contrary to a revenue ruling or notice has not disregarded the ruling or notice of the contrary position has a realistic possibility of being sustained on the merits." *Id.* While this standard is higher than the "reasonable basis" standard, it is lower than a "more likely than not standard." If a position contrary to Notice 2020-32 is to be taken, businesses should consult with advisors to obtain a degree of certainty and, if necessary, to adequately disclose the position on their tax return.

and applicable law support provide at least “a reasonable basis” for taking a position contrary to Notice 2020-32, businesses should proceed accordingly without fear of additional penalties or concern that the Notice itself may be used against them.

Inequitable Application. Aside from the potential conflict between the Service’s deductibility analysis and the intent of Congress, other policy considerations undermine the conclusion that these payments should not be deductible as stated in the Notice.[16]

First, the non-deductibility of the expenses (to the extent they result in non-taxable cancellation of indebtedness income) would create a difference in application between different types of businesses. For instance, where one limited liability company has elected to be treated as an S-corporation and another has elected to be treated as a partnership, the owners in the S-corporation will potentially be subject to additional tax with respect to their income. That is, since the loan forgiveness is non-taxable and owners do not take a deduction at the entity level with respect to their remuneration in the partnership context, the potential applicability of I.R.C. § 265 has no effect with respect to their forgiveness associated with their loan forgiveness allocable to their expected self-employment income. On the other hand, to the extent that the same owner in an S-corporation context received primarily wages (and not profits), the loan forgiveness would impact the deduction with respect to their own wages at the entity level. Accordingly, entities taxable as either S-corporations or C-corporations will be at a competitive disadvantage vis-à-vis entities taxed as partnerships and the self-employed. Moreover, under the same premise, partnerships with a higher percentage of owners (i.e., not receiving wages) will be at an advantage vis-à-vis partnership with a higher relative percentage of non-owners with respect to PPP-related expenses. The same issues could arise with respect to related “payroll” expenses for owners, such as health insurance and retirement plan funding.

Furthermore, as applied by the Notice, the loan forgiveness may be deemed non-deductible in certain circumstances but not in others. For instance, the Notice dictates that otherwise deductible expenses resulting in loan forgiveness under the PPP are disallowed under section 265(a)(1) because they are allocable to tax-exempt income. However, the CARES Act provides only that loan forgiveness is excluded from gross income with respect to “any amount which (***but for this subsection***) would be includible in gross income of the eligible recipient.”[17] Which begs the question: would section 265 apply if the recipient qualifies for loan forgiveness and also qualifies for the insolvency exception to cancellation of indebtedness

[16] It is not clear how the Service intends to handle expenditures that could, at least arguably, qualify as cost of goods sold rather than as a trade or business expense deductible under I.R.C. § 162. Since I.R.C. § 265 only applies to deductions, it should not apply to cost of goods sold as they are used to compute gross income for tax purposes (i.e., not a below-the-line expense). *See, e.g.,* Treas. Reg. § 1.61-3(a). For businesses engaging in manufacturing and similar industries, direct labor associated with the production of goods is considered a cost of goods sold. For qualifying businesses, payment of labor costs with amounts forgiven pursuant to the PPP may be a means to work around I.R.C. § 265 regardless of its application generally. *See, e.g., Californians Helping to Alleviate Medical Problems, Inc. v. Commissioner*, 128 T.C. 173 (2007) (holding that while I.R.C. § 280E disallowed certain deductions relating to indirect expenses, it did not disallow adjustment to gross receipts for cost of goods sold).

[17] *Emphasis added.*

income under I.R.C. § 108(a)(1)(B)[18] (or some other exception[19])? Depending on the administrative response, the Service's interpretation could have the perverse result of businesses defaulting on PPP loans rather than seeking loan forgiveness under the terms of the PPP. Congress likely did not intend for unrelated insolvency determinations to benefit certain loan recipients and not others when it created the PPP.

Finally, and perhaps most notably, the disallowance of these deductions is bound to have a disparate impact based on inconsistent treatment among taxpayers.[20] Regardless of the Service's position (and whether it is legally correct), a significant portion of the millions of businesses receiving loan forgiveness will inevitably claim deductions for these expenses. Since more formalized guidance can only be published after-the-fact and any litigation will be decided likely years in the future, it will be difficult for the Service to impose any accuracy-related penalties against taxpayers as they can likely establish reasonable cause. From this standpoint, taxpayers are not strongly incentivized to follow the Service's guidance. Moreover, given current staffing levels of the Service and statistics on audit rates, it will be impossible for the Service to review (and adjust) these items on a vast majority of business tax returns. Accordingly, notwithstanding the Notice, claiming deductions for these types of expenses likely makes sense from a financial perspective.

Conclusion. Businesses should discuss Notice 2020-32 with their advisors in order to determine its value. Since it will not be afforded deference, its value should not be overstated and may not support the assessment of penalties against taxpayers taking a contrary position. Further, even if Congress does not take action to remedy the situation, the Service is unlikely to devote sufficient resources to effectively identify businesses taking a contrary position or to conduct a significant number of income tax audits related to this issue. For those businesses that unfortunately win the audit lottery, a position contrary to Notice 2020-32 can likely prevail on the merits of the deduction – or at least avoid the assessment of penalties – by pointing to recent statements from Congress and other supporting authorities.

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[18] A taxpayer qualifies for this exception if they are "insolvent." According to I.R.C. § 108(d)(3), the term "insolvent" means "the excess of liabilities over the fair market value of assets. With respect to any discharge, whether or not the taxpayer is insolvent, and the amount by which the taxpayer is insolvent, shall be determined on the basis of the taxpayer's assets and liabilities immediately before the discharge." Insolvency is measured immediately prior to the discharge of the debt.

Presumably, many taxpayers receiving loan proceeds pursuant to the PPP will be in economic distress when they both receive and spend the funds. It is entirely plausible that, at the time of discharge, many affected businesses can also claim the insolvency exception to income. For businesses qualifying for income exclusion under this exception and section 1106(i) of the CARES Act, it is not clear if these deductions should be disallowed. Moreover, for businesses receiving funding under the PPP and not spending funds on "eligible expenses" (but spending on otherwise deductible business expenses), how does the Service intend to treat a potential discharge of this debt or insolvency (e.g., if the loan is not solely due to qualification under section 1106 of the CARES Act? In addition, if one partner is insolvent and another is not, does the Service intend to treat these partners differently?

[19] A taxpayer may also qualify for an exception if the discharge occurs in a bankruptcy. I.R.C. § 108(a)(1)(A).

[20] Aside from these potential inequities, an attempt to change course and disallow these deductions should have been signaled prior to issuing PPP loans. Businesses or owners subject to higher marginal income tax rates will be disadvantaged more than those subject to income tax at lower rates. Since many businesses had the option to seek funding through the Paycheck Protection Program or, alternatively, through Employee Retention Credit, this interpretation potentially affects the rules after many already made an important business decision. Had the Service (or Congress) indicated that these payments would be treated as nondeductible, it is likely that more businesses would have sought relief through the retention credits.

These descriptions are intended for informational purposes only and should not be taken as legal advice on any particular set of facts or circumstances. Rosenberg Martin Greenberg, LLP is experienced in all aspects of federal and state tax laws, legislative developments concerning the CARES Act, addressing prior compliance issues, white collar criminal litigation, and more. For more information, please contact Brandon Mourges at 410.951.1149 or bmourges@rosenbergmartin.com or Brian Crepeau at 410.649.4981 or bcrepeau@rosenbergmartin.com.