

SB 3-FN - AS INTRODUCED

2021 SESSION

21-1081

10/05

SENATE BILL **3-FN**

AN ACT clarifying the tax treatment of federal Paycheck Protection Program loans.

SPONSORS: Sen. Bradley, Dist 3

COMMITTEE: Ways and Means

ANALYSIS

This bill excludes under the business profits tax the business income of a taxpayer received by reason of forgiveness of indebtedness issued or created under the federal Paycheck Protection Program (PPP).

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT clarifying the tax treatment of federal Paycheck Protection Program loans.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Business Profits Tax; Clarification of PPP Loans. Amend RSA 77-A by inserting
2 after section 3-b the following new section:

3 77-A:3-c Clarification of Tax Treatment of Paycheck Protection Program (PPP) Loans. In
4 determining gross business profits for any period, before net operating loss and special deductions,
5 notwithstanding any other provision of law, a business organization shall apply the provisions of the
6 United States Internal Revenue Code consistent with the following adjustments:

7 I. No amount shall be included in the gross business income of the eligible recipient by
8 reason of forgiveness of indebtedness issued or created under the federal Paycheck Protection
9 Program (PPP) which was first established under the federal Coronavirus Aid, Relief, and Economic
10 Security Act (P.L. 116-136, enacted March 3, 2020) or issued or created under the federal PPP
11 Second Draw Loan Program established under the federal Consolidated Appropriations Act, 2021
12 (P.L. 116-260, enacted December 27, 2020).

13 II. No deduction shall be denied, no tax attribute shall be reduced, and no basis increase
14 shall be denied, by reason of the exclusion from gross business income provided by paragraph I.

15 III. This section shall apply to taxable years ending after March 3, 2020, corresponding with
16 the date of the enactment of the federal Coronavirus Aid, Relief, and Economic Security Act.

17 2 Effective Date. This act shall take effect upon its passage.

SB 3-FN- FISCAL NOTE
 AS INTRODUCED

AN ACT clarifying the tax treatment of federal Paycheck Protection Program loans.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	\$0	\$0	\$0
Funding Source:	<input checked="" type="checkbox"/> General	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

The New Hampshire Business Profits Tax (BPT) uses federally reported income as a starting point for purposes of calculating a taxpayer’s BPT liability. RSA 77-A:1, XX provides which version of the Internal Revenue Code (IRC) a taxpayer should reference to properly determine federally reported income for BPT purposes in each tax year. For taxable periods beginning on or after January 1, 2020 taxpayers should utilize the IRC in effect on December 31, 2018. Because the BPT references the IRC in effect on December 31, 2018, the New Hampshire tax treatment of certain COVID-19 financial relief programs will vary from the federal treatment of those same programs.

Specifically, federal law allows for loan amounts received by taxpayers from the Paycheck Protection Program (PPP) that are forgiven to not be included in taxable income federally and business expenses paid for with forgiven PPP loans can be deducted. Under the current BPT statute, loan amounts received by NH taxpayers from the PPP that are forgiven will be included in taxable income for BPT purposes and business expenses paid for with forgiven PPP loans can be deducted. The NH treatment under **current** law mirrors the **normal** treatment of forgiven loans for federal tax purposes; the federal government has, however made a policy decision to modify this treatment for forgiven PPP loans. This bill amends the BPT statute so that New Hampshire's treatment of forgiven PPP loan amounts mirror the federal treatment effective upon passage for the taxable periods ending after March 3, 2020.

The Department of Revenue Administration (DRA) is unable to calculate the exact fiscal impact of this bill. Though the list of PPP loan recipients is public, the list cannot be used to reliably calculate the fiscal impact of this bill due to the following limitations:

- The list of PPP loan recipients does not include recipient federal employer identification numbers (FEINs) and therefore there is no reliable way to match the loan recipients on the list to DRA filers. The names on the list may vary significantly with how the taxpayer files with the DRA due to the use of trade names, abbreviations, etc. as well as because many of our largest filers file combined returns reporting the activity of numerous related entities who may have received PPP loans.
- Under current law, only forgiven PPP loans will be included in the BPT tax base. To be forgiven, certain PPP criteria must be met. As of the date of this fiscal note, the US Small Business Administration (SBA) has not published data related to amounts of PPP loans forgiven.
- Under current law, the taxpayer will include forgiven PPP loans in the tax base, but will deduct any business expenses paid for with forgiven PPP loans. Therefore, in order to calculate the revenue attributable to forgiven PPP loans currently, the DRA would need data on the amount of expenses each taxpayer will first deduct. The DRA does not have this data.
- Under the proposed law, forgiven PPP loans will not be included in the BPT tax base, however business expenses paid for with forgiven PPP loan amounts will remain deductible. Because these deductions for business expenses will not be offset by the forgiven PPP loan proceeds, these business deductions will offset other taxable income from the taxpayer. Therefore, in order to calculate the revenue loss attributable to allowing these business deductions, the DRA would need data on the amount of expenses each taxpayer will deduct that were paid for with forgiven PPP loan proceeds. The DRA does not have this data.

Though the DRA is not able to determine an exact fiscal impact, the DRA believes eliminating forgiven PPP loans from the BPT tax base by making them not taxable and continuing to allow the deduction of business expenses paid for with forgiven PPP loan proceeds would reduce revenue beginning in FY 2022. This revenue reduction would take the form of reduced estimate payments, reduced return and extension payments, and increased refund requests for taxpayers who will have already filed their tax returns reporting forgiven PPP loan amounts and taxpayers who made estimated tax payments in accordance with the law at that time.

The DRA is able to provide the potential impact of this bill based upon publicly available data and making a number of assumptions about the available data that include:

- On May 4, 2021, the Small Business Administration reported the total PPP loan appropriation of \$814 billion was exhausted ahead of the May 31, 2021 application deadline. This analysis is on the entire \$814 billion.

- Of the \$814 billion in PPP loans issued, it is assumed 20.0% or \$163 billion should be removed to reflect for PPP loan recipients that are non-profits or that fall below the \$50,000 BPT filing threshold. This brings the total to \$651 billion.
- Of the remaining \$651 billion in PPP loans, it is assumed 0.4% or \$2.6 billion being apportioned to New Hampshire. The 0.4% apportionment percentage represents the typical amount of taxable business income to NH compared to total national taxable business income.
- The \$2.6 billion in PPP loans apportioned to NH is multiplied by the BPT rate of 7.7 percent to determine the maximum potential impact on BPT revenue to be a decrease of \$200.2 million.
- The potential decrease of \$200.2 million is further adjusted to account for the assumption that 80 percent of PPP was spent on wages, which generates business enterprise tax (BET) revenue of \$12.6 million ($(\$2.6 \text{ billion} * 80\%) * 0.6\% \text{ BET rate}$).
- The BPT revenue decrease of \$187.6 million after adjusting for the BET revenue (\$200.2 million - \$12.6 million), is further reduced by 47 percent or \$88.2 million ($47\% * \187.6 million) to account for those taxpayers that have a carry-forward of excess BET credit. These taxpayers would not see their tax liability reduced because they already have BET credits that are in excess of their BPT liability, therefore do not pay BPT.

Based on the assumptions above, it is estimated BPT revenue may decrease by \$99.4 million (\$187.6 million - \$88.2 million).

AGENCIES CONTACTED:

Department of Revenue Administration