



Are PPP Loan Proceeds Gross Receipts for the Purposes of BPOL?

By: Kyle H. Wingfield

03.02.2021

The Virginia Department of Taxation has issued a ruling that addresses the question ?does the receipt of a PPP loan and its possible forgiveness constitute gross receipts for purposes of the Business, Professional, and Occupational License (BPOL) tax??

Under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) passed in March 2020, loans were made to taxpayers under the Payroll Protection Program (PPP). Under certain circumstances, the loan proceeds would not have to be repaid, and the loan would be forgiven.

Generally, loan forgiveness would be considered income under Internal Revenue Code Sec. 61(a)(11). The Ruling notes that, while the CARES Act specifically created an exclusion from the definition of income for purposes of income tax, that determination under the CARES Act is not dispositive for purposes of BPOL. Va. Code Sec. 58.1-3700 et seq. and the BPOL regulations provide the only authority to determine ?gross receipts? for BPOL.

Under BPOL regulations, ?Gross receipts are defined as ? [t]he whole, total, entire receipts, of money or other considerations received by the taxpayer as a result of transactions with others besides himself and that are derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business.?

The ruling hinges on whether the PPP loan proceeds result from the exercise of the licensed privilege in the ordinary course of business. The ruling states that loan proceeds are not received by exercising the license privilege to engage in the ordinary course of business, by for example, providing services or selling goods in the ordinary course of business. In further support of the decision by the Commissioner that PPP loan proceeds are not included in BPOL gross receipts, the Commissioner cites Va. Code Sec. 58.1-3732 (A) which states that gross receipts shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business. One of the exclusions cited in Va. Code Sec. 58.1-3732 specifically cites loan proceeds.

Based on these provisions, the Commissioner has held that loan proceeds from PPP are not to be considered gross receipts for purposes of BPOL regardless of whether some part or all of such loans are forgivable or not.

Taxpayers who have received PPP loans and subsequent loan forgiveness need to segregate and/or note the removal of the loan proceeds from the income recognition calculation for accounting purposes when doing their BPOL returns. Since BPOL audits occur after the annual filings, these steps will help preserve the record and document the exclusion.

If you have any questions on this or any other state and local tax matters, please contact Stephanie Lipinski Galland (202.327.5094 or sgalland@williamsmullen.com) or Kyle H. Wingfield (804.420.6445 or kwingfield@williamsmullen.com).

Related People

- Kyle H. Wingfield ? 804.420.6445 ? kwingfield@williamsmullen.com

Related Services

- State & Local Tax
- Tax Law