

December 15, 2020

The Honorable Charles P. Rettig
Commissioner
U.S. Internal Revenue Service
77 K Street, N.E.
Washington, DC 20002

Dear Commissioner Rettig:

On behalf of the American Dental Association's (ADA) more than 163,000 dentist members, we are pleased to comment on the Internal Revenue Service's (IRS) proposed rule, IRS Review of Regulatory and Other Relief to Support Economic Recovery. We offer these comments in response to your Federal Register notice of November 17, 2020 (85 FR 73253). The comments are submitted to the IRS concerning regulations and requirements that can be rescinded, modified, or waived to assist business and individual taxpayers with the ongoing economic recovery from the COVID-19 pandemic.

One of the most effective economic relief measures for our small business dentist members was the Paycheck Protection Program (PPP), passed as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The terms of the PPP are simple: if qualifying small businesses, including dental practices, use a federally-guaranteed loan to pay their employees and cover certain non-payroll expenses, the loan will be forgiven. From April 3, when the program launched, through August 8, when its authorization expired, the Small Business Administration (SBA) guaranteed \$525 billion in PPP loans to 5.2 million qualifying small businesses nationwide, preserving tens of millions of paychecks for their employees as the pandemic spread throughout the country.

Included in the CARES Act was a provision stating that any portion of a PPP loan that qualified for loan forgiveness "shall be excluded from gross income" for tax purposes." This tax-free treatment of any forgiven loan amount was a key provision in the law and featured prominently in the debate leading up to and following the legislation's enactment.

Despite this clear intent, the IRS issued Notice 2020-32, which specified that "no deduction is allowed under the Internal Revenue Code...if the payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of the [CARES Act]." The effect of this ruling is to transform tax-free loan forgiveness into taxable income, raising the specter of a surprise tax increase of up to 37 percent on small businesses when they file their taxes for 2020.

Additionally, the IRS recently issued Revenue Ruling 2020-27, stating that expenses funded through a PPP loan are not deductible for 2020 if "the taxpayer reasonably expects to receive forgiveness of the covered loan on the basis of the expenses it paid or accrued during the covered period, even if the taxpayer has not submitted an application for

forgiveness of the covered loan by the end of such taxable year.” In other words, a borrower cannot delay the nondeductibility of expenses used to generate PPP loan forgiveness to the year the forgiveness is decided if that is later than the year the expenses were paid or incurred.

This additional IRS guidance will result in a significant tax increase on small business owners who are already suffering from the effects of COVID-19 shutdowns. This tax will hit small business owners after their PPP loan has already been spent, and as many states are re-imposing mandatory closures of thousands of businesses in the face of spiking numbers of COVID-19 cases.

Many PPP loan recipients retained employees on their payrolls, even when there was little to no work to perform, in compliance with the intent of the program to keep people employed and off the unemployment rolls. The IRS changed the rules after businesses took out PPP loans, and business owners are now being asked to pay what amounts to a surtax on their workforce. Without IRS reversal, businesses will face an unexpected tax bill when they file their taxes for 2020, as they continue to struggle with government mandated shutdowns or slowdowns. Many of those businesses will close and never re-open. This senseless tax policy runs contrary to Congress’ PPP intent and could undermine the nation’s oral health by putting dental practices in jeopardy. We ask you to please reverse your rulings.

Thank you again for the opportunity to comment on IRS Review of Regulatory and Other Relief to Support Economic Recovery proposed rule. We look forward to continuing to work with the IRS, and would welcome the opportunity to speak with you in more detail and answer any questions you may have regarding these comments. Please contact Dr. Robert Mitton at mittonr@ada.org to facilitate further discussions.

Sincerely,

Daniel J. Klemmedson, D.D.S., M.D.
President

Kathleen T. O’Loughlin, D.M.D., M.P.H.
Executive Director

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