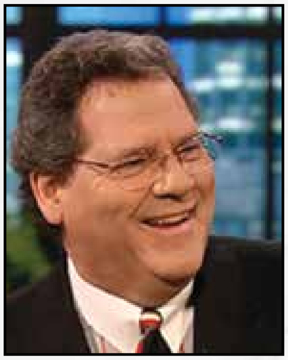

PILLA TALKS TAXES

DAN PILLA'S MONTHLY TAX AND FINANCIAL BULLETIN

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IRS To Get A Budget Bump

Taxpayer Education and Services Still Lag Behind

On December 27, President Trump signed the Consolidated Appropriations Act, 2021, H.R. 133. This was the long-awaited and hotly debated bill to provide additional COVID relief and fund the government through the end of fiscal year 2021. The bill is a massive spending package that includes about $2.3 trillion for government operations and another $900 billion in additional benefits for individuals and small businesses impacted by COVID-19.

Among the many winners in the pork-laden law is the IRS. The IRS will get $11.92 billion for its operations this fiscal year. This is up by $409 million from 2020. This is almost a full billion dollars over the IRS's budget from 2015.

EDUCATION VS. ENFORCEMENT

It seems the steady increase in spending on the agency is not producing any meaningful results in terms of taxpayer assistance. I continue to maintain that the IRS must spend more money on helping/teaching people to comply with the massive four-million word tax code than it does on after-the-fact enforcement.

And while it's admittedly naïve to believe that no enforcement is necessary, the fact is that 98% of every dollar paid to the IRS is paid without the need of agency intervention of any kind. That means no reminder notices, no enforcement threats, and no enforcement action such as liens, levies and seizures are required to collect.

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ADS

Despite this, a huge imbalance exists between the funding levels for education and enforcement. Under the Appropriations Act, the IRS will get $2.556 billion for "taxpayer services," which includes pre-filing assistance and education, filing and account services, and taxpayer advocacy services.

Compare that with the appropriation for enforcement. The amount allocated for enforcement is $5.213 billion, just about twice as much. Enforcement activities include audit and collection activities, litigation, and criminal investigations—both of tax crimes and other financial crimes.

OTHER ELEMENTS OF THE BUDGET

Other elements of the budget include the following items:

- $3.928 billion is allotted for operations support. This includes facilities, administration, information technology and general operations.
- $222.7 million for business systems modernization. This includes the acquisition of new computer equipment, third-party contract costs and internal costs for the maintenance of existing systems. A new element of the appropriation for computer equipment is a provision in the law that makes the IRS accountable for what it's doing with the money. Imagine that. The law requires quarterly reports to the House Committee on Appropriations detailing "major information technology investments" made as part of the business systems modernization (BSM) project.

I've talked about the IRS's BSM project for years. At the 2020 Defense Conference, I spent a great deal of time talking about the IRS's three-phase, six-year, $3 billion project to upgrade hundreds of so-called legacy systems. These are computer systems using hardware or software platforms that are no longer supported by vendors, or for which the IRS no longer has access to people trained in the systems sufficient to keep them operational, but which are critical to day-to-day operations.

EDUCATION OF IRS EMPLOYEES

The 2019 Taxpayer First Act calls for "enhancing the taxpayer experience," improving employee training, and potentially reorganizing the agency. The IRS must train its employees to respect taxpayers' rights. Under the Appropriations Act, the IRS is mandated to "maintain an employee training program" that includes "taxpayers' rights, dealing courteously with taxpayers, cross-cultural relations, ethics, and the impartial application of the law."

The effort to press the IRS for comprehensive training of its employees has been much like trying to push a rope. The impetus is strong from various sources, including especially the Office of the Taxpayer Advocate, but the results leave much to be desired. The reality is that many IRS employees do their best to carry out the law in a fair and reasonable manner. However, the law itself, the supporting regulations, the Internal Revenue Manual, and the IRS's training materials are way too vast in scope and size to do anything but vitiate meaningful understanding of the issues. We are so far beyond the capacity for comprehensive understandability as to defy all reason and common sense.

EMPLOYMENT TAX CONSIDERATIONS

In recent years many employers have been victimized with payroll tax penalties in cases where their payroll tax service did not pay employment taxes despite the fact that the employer provided the money to do so. Because of this, a provision of the Act requires that the IRS "shall give special consideration to an offer in compromise from a taxpayer who has been the victim of fraud by a third party payroll tax preparer."

FIRST AMENDMENT RIGHTS

Two elements of the Act especially piqued my attention. The provisions are outgrowths of revelations that came to light years ago regarding the Obama Administration weaponizing the IRS against various conservative political action groups that opposed the former president's policies.

One section of the Act provides that the IRS may not use any funds "to target citizens of the United States for exercising any right guaranteed under the First Amendment to the Constitution of the United States." Another provides that the IRS may not "target groups for regulatory scrutiny based on their ideological beliefs."

Will this language stop government insiders from turning the IRS lose on their enemies? Not likely. The use of the IRS in this fashion has been going on for decades. It will stop only when the IRS and the income tax are abolished in their entirety.

BONUSES FOR IRS EMPLOYEES

The IRS has always denied that it pays bonuses or commissions to employees based upon the carrying out of their duties. Hundreds of people have asked me over the years whether auditors get awards, recognition or promotions based on how much additional taxes and penalties they assess against their audit victims. My answer has been the same for more than forty years. I've never seen any evidence of such a program.

Moreover, during the hearings in 1988 that led to the first Taxpayers' Bill of Rights, such allegations were made quite publicly. The IRS denied them vociferously. No hard evidence was ever produced to show the existence of any such program. Nevertheless, Congress added a provision to the 1988 Act preventing the IRS from operating such programs.

Now, we see it again in the Appropriations Act. One provision prohibits the IRS from making "a payment to any employee under a bonus, award, or recognition program." I wonder why, if there are no such programs in operation, we need at least two laws prohibiting such programs. It seems odd, don't you think?

CONCLUSION

The Appropriations Act is massive. It is 5,593 pages in length. While I am working my way through it as best I can, it will be months before we realize everything that's in it. To my mind, it is absolutely reprehensible that a bill of this magnitude is presented to members of Congress, who are then given just a few hours to study the material before they are expected to vote on it. But that's exactly what happened with H.R. 133.

The Paycheck Protection Program

Nothing is the Same That Was the Same, Nor Shall it be the Same

Here we go again. The Paycheck Protection Program (PPP) was radically changed by the Consolidated Appropriations Act, 2021. This is now the third legislative action (including the CARES Act, which created the program) regarding the PPP. Including IRS guidance issued on the program, we've been treated to a total of seven different statutes and IRS guidance statements. It seems the game of musical chairs is never going to end.

So, in light of the Consolidated Appropriations Act (the Act), what is new about the PPP? The changes are set out in Division N of the Act, Title II, Subtitle B, which itself is titled the "COVID-related Tax Relief Act of 2020." Let's address the various changes.

1. Deductibility of Expenses. In the December 2020 issue of *PTT*, I discussed at length two IRS guidance statements that addressed the deductibility of business expenses paid with PPP loan proceeds. The IRS was crystal clear in Revenue Ruling 2020-27 and Revenue Procedure 2020-51, that business expenses paid with PPP loan proceeds were not tax deductible unless the loan was not forgiven.

Well, you can forget all that. However correct the IRS might have been in its analysis and reasoning behind its decision, Congress most definitely changed the law. Section 276 of the COVID-related Tax Relief Act provides for several specific tax treatments regarding PPP loans. I discuss them here.

a. No amount of a PPP loan shall be considered income as a result of loan forgiveness. This was clear from the CARES Act, but is reinforced here. If your PPP loan is forgiven, the amount of forgiveness is not considered income.

b. Payment of ordinary and necessary business expenses with PPP loan proceeds must be allowed as a tax deduction. Thus, as long as you can prove, (1) that the expenses were ordinary, necessary and reasonable to the success of your business (see ***Dan Pilla's Small Business Tax Guide*** for discussion of this standard), and (2) the expenses claimed were in fact paid, you cannot be denied the deduction merely because the expenses were paid with PPP proceeds.

c. You cannot be denied an increase in basis in any property attributable to PPP loan forgiveness. Generally, code § 108(b)(2)(E) requires that one's basis in property be reduced in certain circumstances (not discussed here) when the change in basis is tied to loan forgiveness. In that case, the sale of the property can potential lead to increased capital gain, upon which tax must be paid, because one's basis (cost of acquisition plus improvements) is lower than it otherwise might be.

d. The law is likewise clear that the forgiveness of a PPP loan does not constitute income for either a partnership or S corporation. Moreover, the calculation of basis and the distributive share of a partner's or shareholder's deductions are equal to one another. See: COVID-related Tax Relief Act of 2020, § 276(a).

e. With respect to the deductibility of expenses, the rules expressed above are effective from the date of enactment of the CARES Act, which was March 2020. Therefore, any PPP loans issued during 2020 under the CARES are covered by these rules. Likewise, these rules apply to any PPP loan issued after 2020, as further loans are issued under the PPP and Second Draw Loan program (discussed in the next article).

On January 6, 2021, the IRS issued Revenue Ruling 2021-2 to address this law change. The Revenue Ruling expressly "obsoletes" the three prior rulings and notices issued by the IRS on this topic. As stated, the IRS was crystal clear that expenses paid with PPP proceeds cannot be deducted if the loan was forgivable or forgiven. Rev. Rul. 2021-2 reverses that position in light of § 276 of Act, as explained above.

2. Expansion of Expenses Payable with PPP Proceeds. At the outset of the program, the scope of expenses payable with PPP proceeds was limited to just four areas. They were: (a) payroll, with a minimum of 60% required to be used as such, (b) interest (but not principle) on business loans in existence before February 15, 2020, (c) rent on business equipment and facilities under obligations existing before February 15, 2020, and (d) utilities on business property owned or leased under obligations existing before February 15, 2020.

The Act expands the approved use of PPP funds into four more categories. They are: (a) operations expenses, (b) property damage costs, (c) supplier costs, and (d) worker protection costs. Each of these areas is more clearly explained in Act § 304(b) as follows.

a. Operations expenses include payment for any business software or cloud computing services, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses.

b. Property damage costs are defined as any cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation.

c. Supplier costs means any payment to a supplier for goods that—(1) are essential to the operation of the business at the time the expenditure is made; and (2) are made pursuant to a contract, order, or purchase order that was in effect at any time before the covered period for the PPP loan. Recall that the covered period is generally 24 weeks from the time the loan is made. If the supplier payment was for perishable goods, the contract, order, or purchase order must be in effect either *before* or at any time *during* the covered period.

d. Covered worker protection costs include any operating cost or a capital expense incurred to facilitate the adaptation of business activities to comply with requirements established or guidance issued by any federal, state or local government agency, including directives issued by the CDC. This applies to expenses incurred during the period beginning on March 1, 2020 and ending on the date the national emergency expires. The expenses addressed here must relate to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19 guidance or regulations. Such expenses may include (but are not limited to) the purchase, maintenance, or renovation of any of the following items:

   - A drive-through window facility;
   - An indoor, outdoor, or combined air or air pressure ventilation or filtration system;
   - A physical barrier such as a sneeze guard;
   - An expansion of additional indoor, outdoor, or combined business space;
   - An onsite or offsite health screening capability;
   - Other assets needed to comply with gov-

ernment or CDC directives;
- Face shields or respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use; and
- Any other kind of personal protective equipment as required by government agencies.

A notable exclusion under this provision is any expenditure made in connection with residential real estate. Thus, the use of PPP money on your home, even in connection with an operating home office, does not qualify.

e. Under the heading of "payroll costs," Congress added certain group insurance payments, to include group life, disability, vision, or dental insurance. See: Act § 308.

The effective date of these amendments is very important. Under Act §§ 304(c) and 308, the amendments apply to any PPP loan made "before, on, or after the date" of this Act, which is December 27, 2020. Thus, any PPP loan issued to date is covered by these amendments "as if included in the CARES Act."

3. Change in the Covered Period. Under the CARES Act, the covered period is the time during which PPP loan proceeds must be used. Initially, the covered period was eight weeks from the time the loan was issued, or June 30, 2020, whichever came first. The PPP Flexibility Act, effective June 4, extended the covered period to the earlier of 24 weeks from the time the loan was issued, or December 31, 2020 The borrower had the option to use either the initial eight-week or 24-week period as the spending deadline. In either case, December 31, 2020 was the drop-dead date.

The Appropriations Act changed the covered period yet again. The law now gives the borrower the option to "select" his covered period from two options. In either case, the covered period begins with the date "of the origination" of the loan. The covered period ends either eight weeks from the loan's origination date, or 24 weeks, at the borrower's option. There is no longer the deadline of December 31, 2020 in which to spend PPP money. See: Act § 306.

4. Simplified Forgiveness Application. Section 307 of the Act provides for a simplified forgiveness application for any borrower seeking forgiveness of a PPP loan of not more than $150,000. The law requires that the application be "not more than 1 page in length." Further, the applicant is required to certify in the application, (a) the number of employees the business was able to retain because of the loan, (b) the amount of the loan spent on payroll costs, and (c) the total amount of the loan. See: Act § 307(a)(3).

5. Required Recordkeeping. Section 307 goes on to provide a recordkeeping requirement. In addition to the certification mentioned above, the application for forgiveness must also state that, (a) the borrower's certification is accurate (that is, you must certify that you certify that your declaration—which itself is a certification—was accurate), (b) that you complied with the legal requirements of PPP terms (in particular, how the money was spent), and (c) that you have the records required to prove your compliance.

In particular, you must keep the following specific records for the stated periods:

a. Employment records showing the number of employees and amounts paid must be kept for four years, and

b. All other records regarding the use of PPP funds must be kept for three years,

c. From the date of submitting the application for forgiveness. See: Act § 307(a)(3).

Note that this is *in addition to* the recordkeeping requirements under the Internal Revenue Code. Internal Revenue Code § 6001 places a general—and very broad—recordkeeping requirement on essentially every person. Moreover, there is no time limitation expressed in the law for keeping such records. I have always maintained that a person should keep records of income and expenses for six years from the date of filing the return; and that a signed copy of the tax return and proof of mailing should be keep indefinitely. See my book, **How to Win Your Tax Audit** for details.

But of course, the PPP is administered by the SBA, not the IRS. Thus, the recordkeeping requirement under Act § 307 is pointed at complying with SBA requirements. Regardless of what the IRS does or does not do, the SBA has its own authority.

6. Audit Authority. And while we are on the topic of authority, Act § 307 gives the SBA the authority to:

a. Review any PPP loan,

b. Access any records relevant to such loan, and

c. Modify any loan amount or loan forgiveness amount in the case of fraud, ineligibility "or other material noncompliance with applicable loan or loan forgiveness requirements." Ibid.

7. Clarification of Eligibility. Act § 310 makes it clear that no PPP loan is allowed to any business that was "not in operation on February 15, 2020." If challenged, you will have the burden to prove your business was operational before that date. What constitutes an operating business has been a much-litigated issue under the tax code. I discuss it at length in ***Dan Pilla's Small Business Tax Guide.***

8. Deadline for Application. Under § 323 of the Act, the deadline for applying for newly funded PPP loans is March 31, 2020.

9. Farmers and Ranchers get PPP Loans. Section 313 of the Act clarifies that "farmers and ranchers" may qualify for PPP loans. The definition of such is any person who operates as a sole proprietor or as an independent contractor, or is a self-employed individual, who reports farm income or expenses on a Schedule F, and who was in business as of February 15, 2020.

These individuals qualify for PPP loans under the same terms and conditions as any other person. That is, a self-employed person with no employees calculates the loan amount based on net farm income during 2019. A person with employees calculates the loan amount based on wages paid to employees, plus the net farm income. However, the calculation is capped at $100,000 per person, and no more than $2,000,000 can be obtained through a PPP loan.

10. Recovering Money Given Back. Many small businesses either didn't take their PPP loan that was approved, or returned all or a portion of PPP money they didn't use because they believed they could not use all the proceeds as initially required by the CARES Act to qualify for loan forgiveness. To rectify this in light of the expanded allowable use of PPP proceeds, § 312 of the Act allows a person to reapply for a PPP loan in an amount "equal to the difference between the amount retained and the maximum amount applicable." Act § 312(b).

This additional distribution can be applied for as long as your PPP loan has not yet been forgiven, even if the initial loan amount was fully disbursed to you, or the lender filed the required report with the SBA regarding the loan. This allows a business to take advantage of the most critical change in the PPP rules, which are those relating to the use of the money, as pointed out in my paragraph 2 above.

11. Exclusion of Entities Getting Grants. The Act establishes a new grant program. That is to say, money given by the government that is not a loan and under no circumstances must be paid back. The grant program is referred to as the Grants for Shuttered Venue Operations, Act § 324. I discuss it at length in the February 2021 issue of *PTT*. Any business that receives a grant under this program cannot get a PPP loan.

12. Employee Retention Credit. Likewise, any employer claiming the Employee Retention Credit per § 2301(g) of the CARES Act cannot base its application for a PPP loan on wages subject to that credit. However, the employer can make an election to not take into account certain wages for purposes of calculating the credit.

For example, suppose an employer paid $100,000 of wages for purposes of the PPP. If all of those wages are included in calculating the PPP loan amount, none of those wages can be used to calculate the Employee Retention Credit. If the employer elects to use just $50,000 in calculating the PPP amount, the other $50,000 can be used for purposes of the Employee Retention Credit. This provision is found in Division EE of the Consolidated Appropriations Act, known as the Taxpayer Certainty and Disaster Tax Relief Act of 2020, § 206(c).

CONCLUSION

The deadline for applying for a PPP loan is now March 31, 2021. You apply for the loan through any qualified SBA lender. Your business bank is most likely such a lender, and they most certainly can help with the application process. Given the “simplified” application process now provided for, there is nowhere near the level of paperwork required on the front end as was the case last spring. Now is the time to apply if you are disposed to do so.

PPP Second Draw Loans

Another Bite of the PPP Apple

Everybody thought that the COVID shutdown orders would not last past the summer of 2020. Well, that estimate turned out to be way off base. Now that the calendar has rolled over to 2021, many states are still enforcing partial or full shutdowns. Businesses—mostly bars, restaurants and entertainment venues—are shuttered and business owners are hemorrhaging money. Millions of employees who lost their jobs in these service businesses have moved on with their lives.

Even when the various governors lift their tyrannical isolation orders, the extent to which such businesses will ever return to "normal" is highly doubtful. ***Fortune*** magazine, in September 2020, estimated that as many as 100,000 businesses have already failed. Further estimates suggested that 1 in 5 businesses would not make it to 2021.

Paycheck Protection Program (PPP) loans might have helped some businesses, but the fact is that if a business cannot stay open to operate at any level, keeping people on the payroll does not help to keep the business alive. This reality is what drove the thinking behind another main component of the COVID-related Tax Relief Act of 2020—Paycheck Protection Program Second Draw Loans. They are addressed in § 311 of the Act.

WHAT IS A SECOND DRAW LOAN?

A PPP Second Draw Loan (SDL) is just what it sounds like: a second bite of the apple when it comes to PPP money. Section 311 of the Act created a new program under the auspices of the Small Business Act which is to operate almost exactly like the original PPP. The new law is codified at 15 U.S.C. 636(a)(37). There are a several important factors with the new law, which I discuss below.

1. The first proviso is that the business must have had an original PPP loan. Moreover, as of the date of applying for the SDL, the business must have "used, or will use, the full amount of" the first PPP loan. Act § 311, creating new § 636(a)(37)(O), of Title 15. (NOTE: subsequent citations herein are to § 636 of Title 15, not to the Appropriations Act, unless otherwise indicated.)

2. The limitation on the number of employees is smaller under the SDL. While the initial PPP capped the number of employees at 500, the SDL limits the program to companies with no more than 300 employees. The cap goes back to 500 if a company has more than one physical location. Ibid, at § 636(a)(37)(A)(iv) and (a)(37)(D).

3. There must be a drop in gross receipts in 2020 compared to 2019, measured on a quarterly basis. The drop must be at least 25%. Assuming the loan application is submitted after December 31, 2020, the lost revenue must be at least 25% in any one of the four quarters of 2020, compared with the same quarter in 2019. Ibid, at § 636(a)(37)(A)(iv)(I)(bb). If you were not in business in the first or second quarter of 2019, then the drop in revenue for any quarter of 2020 is compared with revenue in the third or fourth quarters of 2019. And if the business was not in operation in the third quarter of 2019, then the drop in revenue for any quarter of 2020 is compared with revenue in the fourth quarter of 2019. If the business was not in operation at all during 2019, it must have been in business no later than February 15, 2020. In that case, the drop in revenue for the second, third or fourth quarters of 2020 are compared with that of revenue in the first quarter of 2020.

4. Note that we are talking here about a drop in *gross receipts*, not *profit*. Thus, a company might have

considerably less profit due to substantially increased costs (such as COVID-related protective measures) but if the gross receipts are not down by at least 25%, the business does not qualify for an SDL.

5. The company must document the revenue loss. It appears that only a "certification" is required for purposes of the loan application. However, when the application for loan forgiveness is submitted, the company must provide documentation to support the claimed loss of revenue. Compare §636 (a)(37)(I)(i)(I) and (II). Over the course of several issues of ***PTT*** in 2020, I discussed the importance of assuming the IRS or the SBA will question a business's eligibility for and use of PPP loan proceeds. Each borrower must be prepared to prove both of these elements.

6. The proceeds of an SDL must be used exactly the same way as an initial PPP loan, except as modified and expanded by the Act. Given the modifications, SDL money must be used as follows:

- At least 60% used on payroll, including certain group insurance payments, to include group life, disability, vision, or dental insurance,
- Interest (but not principle) on business loans in existence before February 15, 2020,
- Rent on business equipment and facilities under obligations existing before February 15, 2020,
- Utilities on business property owned or leased under obligations existing before February 15, 2020,
- Operations expenses (defined above),
- Property damage costs (defined above),
- Supplier costs (defined above), and
- Worker protection costs (defined above) See: Act § 304(b).

7. The "covered period" is the period in which SDL proceeds must be used. The covered period for SDL loans is the same as that under the PPP, as amended by the Act. I discussed this in the preceding article.

8. The SDL loan itself is made under the same terms and conditions as controlled the original PPP loans. That is to say, the loan is completely forgivable provided that the proceeds are used as authorized by law. Not only is the loan forgivable, but the forgiveness amount is not included in income and expenses paid with SDL money are deductible as business expenses. For loans under $150,000, a simplified loan forgiveness application is available. See: § 636(a)(37)(B).

9. The maximum amount of your potential SDL loan is, like the PPP loan, controlled by your payroll costs. Note that the original PPP loan was capped at $10,000,000. The SDL is capped at $2,000,000. To figure the amount of your particular loan, you have an option to use your average monthly payroll costs for either, (a) the one-year period immediately prior to your loan application date, or (b) calendar year 2019. That quotient is then multiplied by 2.5 to arrive at the amount of SDL available. If your average monthly payroll costs are higher in 2019 (as they most likely are given the circumstances of 2020), you would be better off using 2019 payroll numbers as your starting point. See: § 636(a)(37)(C).

10. For businesses that were not in existence in the one-year period preceding February 15, 2020, the computation is a bit different. These businesses find their maximum loan amount by using total payroll costs incurred as of the date of applying for their SDL loan, divided by the number of months they were in business. That quotient is multiplied by 2.5 to arrive at the loan amount.

11. The multiplier is higher for certain service businesses with a North American Industry Classification System code beginning with 72. Code 72 designates businesses within the "Accommodation and Food Services" sector. They comprise establishments providing customers with lodging or preparing meals, snacks, and beverages for immediate consumption. For these businesses, the multiplier is 3.5. However, the maximum loan amount is still

capped at $2,000,000. See: § 636(a)(37)(C)(iv).

12. The deadline for applying for an SDL is March 31, 2020. See: Act § 323.

13. Only one loan is permitted under the SDL program. See: § 636(a)(37)(F).

14. Businesses that qualify for the Grant for Shuttered Venue Operators do not qualify for an SDL loan. See: § 636(a)(37)(A)(iv)(II). I will discuss that grant program in more detail in the next issue of PTT.

15. Under § 1106 of the CARES Act, the amount of loan forgiveness was contingent upon retaining the same number of employees during the covered period as (generally) were employed during the corresponding period in 2019. In the event of a drop in the number of full time equivalent employees, the amount of loan forgiveness dropped by the same ratio. Moreover, the total amount of wages paid to those employees had to be more than 75% of the wages paid in 2019. An exemption is provided in the law for employers who can demonstrate that any laid off employees are not available to be rehired, or if the employer cannot find suitably trained and qualified employees to take the place of those who have moved on. Under § 311(b) of the new Act, these same exceptions apply to Second Draw Loans.

16. You will be very happy to know that Congress had the courage and foresight to put very important exclusions on who might obtain an SDL loan. Per § 636(a)(37)(A)(iv)(III)(cc), entities that may not get an SDL loan include any entity created in or organized under the laws of:

a. "the People's Republic of China,"
b. "the Special Administrative Region of Hong Kong,"

or any entity that has

c. "significant operations in the People's Republic of China or Hong Kong," or
d. has as a member of its board of directors "a person who is a resident of the Peoples Republic of China."

And, perhaps even most bravely, Congress excluded from eligibility any person required to register with the U.S. under the Foreign Agents Registration Act of 1938.

Wow! That'll sure teach those Chinese Commies! I for one am very heartened by this courageous retaliation against their interference in U.S. internal affairs. Going forward, I'm sure there will be no further complications caused by the Chinese.

CONCLUSION

Look at your income records now to determine whether your business qualifies for the SDL—unless, of course, yours is a Chinese company. In that case, forget it. We're cracking down!

How You Can Ask Dan Pilla a Question

If you have questions or problems you'd like Dan Pilla to address, please write to Dan at:

215 W. Myrtle Street
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or e-mail to:

expert@taxhelponline.com

Write the word "newsletter" in the subject line.

Biden Take Note:
Businesses Flee To Texas Because Economic Policies Matter

BY DR. MERRILL MATTHEWS

Elon Musk and Oracle are coming to Texas—and that was just in one week!

Hewlett Packard, Charles Schwab, McKesson and Uber are also moving, or have moved, their headquarters from California to Texas. And Apple and Google are expanding their presence in the Lone Star State.

Oh, and formerly California-based Toyota made the switcheroo four years ago.

What's the deal with all of these major corporations—tech, financial and even manufacturing—moving their headquarters from California to Texas? Can't find great cowboy boots on the Left Coast? Are they looking to enjoy more 100+ degree summer days?

What you're seeing is an economic policy race as companies vote with their feet—and Texas is winning.

No state is prouder of its high taxes, onerous regulations and heavy-handed government mandates—e.g., Governor Gavin Newsom's banning the sale of gasoline cars by 2035—than California.

And no state is prouder of its low taxes—including no state income tax—light regulations and maximum freedom than Texas. Former Texas Governor Rick Perry aggressively courted California companies to pack up and move to Texas. And Governor Greg Abbott has taken that effort to the next level.

But the most important factor in marketing Texas to California-based companies is maintaining the state's business-friendly climate.

Several years ago I interviewed the editor of Chief Executive magazine, which releases a yearly poll based on chief executives' responses of the best states for doing business. The editor told me then the two constants of the poll are that Texas always comes in first as the best state to do business with, and California always comes in last. And that's still true in CE's latest poll.

Even Texas's reputation as a very conservative state politically, economically and socially hasn't dissuaded many of Silicon Valley's more liberal-leaning companies from migrating. They're just heading to liberal Austin where they will feel a little more at home.

But the mass business exodus from California to Texas is important for more than state bragging rights—though bragging rights are important to Texans.

As president, Joe Biden should work to embrace economic policies that help the country, businesses and people recover from the economic damage imposed by the pandemic. Lots of his advisors, along with the media, will encourage him to look to California as a model for jumpstarting the U.S. economy—and Biden may be inclined to listen. That would be a huge mistake.

Texas has already demonstrated the way to grow an economy. Just look at all the companies—whether liberal-leaning, conservative or apolitical—that have voted with their feet against California and for Texas.

Dr. Merrill Matthews *is a resident scholar with the Institute for Policy Innovation.*