SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3234

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 21, 2021

The Senate Budget and Appropriations Committee favorably reports Senate Bill No. 3234, with committee amendments.

The bill ensures that forgiven Paycheck Protection Program (PPP) loans will not be subject to the State's gross income tax. This bill also allows the deduction of expenses paid for by a paycheck protection program loan even if the loan is forgiven.

The PPP was established by the "Coronavirus Aid, Relief, and Economic Security Act" or "CARES Act," a federal law enacted in response to the economic impact of the COVID-19 pandemic, and reauthorized by a separate federal law, the "Consolidated Appropriations Act, 2021". The PPP offers loans to small businesses as an incentive to keep employees on their payroll during the pandemic. Some or all of the loan may be forgiven if certain conditions are met. Federal law generally considers forgiven loans to be taxable income. However, the "Consolidated Appropriations Act, 2021," clarified that the amount of a PPP loan which is forgiven may be excluded from income for federal tax purposes and that expenses covered by PPP loans may be deducted from income for federal tax purposes. A forgiven PPP loan would not be taxed by the State because New Jersey generally follows the federal treatment of income when determining income of C Corporations and S Corporations. The bill also includes a provision allowing the deduction of expenses paid for a by a PPP loan, even if loan is forgiven, to ensure that C Corporations and taxpayers with S corporation income receive the same tax benefits already provided under federal law.

In the case of pass-through entities, other than S corporations, a forgiven federal loan maybe subject to the State's gross income tax. These pass-through entities do not generally pay income tax because the income of the business is passed along to businesses owners who then pay tax on the income under the State's gross income tax. However, PPP loans awarded to pass-through entities that are forgiven may be subject to New Jersey gross income tax when the business's income is passed-through to the business owners. To prevent such forgiven loans from being taxable, this bill excludes them from the gross income tax. To match the federal treatment, the bill also allows the deduction of expenses paid for by a forgiven PPP loan.

COMMITTEE AMENDMENTS:

The committee amendments:

- clarify that the provisions of the bill apply to PPP loans awarded pursuant to the "CARES Act" and the "Consolidated Appropriations Act, 2021"; and
- make a technical correction.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the bill will result an indeterminate loss of State revenues in Fiscal Years 2021 and 2022. There is no information available regarding the purposes for which Paycheck Protection Program (PPP) loans were used and the total amount of loans forgiven.

According to the Small Business Administration (SBA), New Jersey businesses and non-profit organizations received $17.3 billion through the PPP as of January 2021. After adjusting the Statewide total to exclude amounts awarded to corporations and non-profit organizations, the OLS estimates that $6.4 billion in loans awarded through the first round of PPP funding may be excluded from gross income. Applying current New Jersey tax rates to the $6.4 billion that may be excluded yields a maximum State revenue of $688.0 million from the first round of PPP loans.

The OLS notes that the federal government recently appropriated an additional $284.4 billion for PPP loans. If this bill becomes law, eligible second round PPP loan funds may be excluded and deducted from calendar year 2021 gross income. Calendar year 2021 tax returns will be filed in April 2022, or in Fiscal Year 2022.