TAX AND WEALTH ADVISOR ALERT: BREAKING NEWS–IRS SAYS EXPENSES PAID WITH FORGIVEN PPP LOANS ARE DEDUCTIBLE

Businesses can now deduct expenses paid for with the proceeds of a forgiven Paycheck Protection Program (PPP) loan. The IRS, in Revenue Ruling 2021-2 issued today, reversed its original position that prohibited businesses with PPP loans from "double-dipping" by paying expenses with a forgivable loan, then writing off those expenses. Congress, in the latest COVID-19 relief bill, as we explained further here, explicitly stated that such expenses were deductible, forcing the IRS to reverse course.

This ruling is sure to provide a significant tax benefit and relief for many small business owners who had availed themselves of the PPP program and found themselves saddled with unexpected tax liabilities as a result of the IRS's original position.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and will continue to monitor federal and state law tax changes. For questions or further information relating to taxation under the CARES Act and the new relief bill, please contact Attorney Britany E. Morrison.

SEASON OF GIVING

The spirit of the holiday season is upon us once again and the attorneys and staff at O'Neil, Cannon, Hollman, DeJong and Laing wanted to do something special for our community. For our annual holiday donation drive, we collected items and monetary donations to be given to the **Milwaukee Rescue Mission**. Milwaukee Rescue Mission is a nonprofit organization that operates homeless shelters in Milwaukee providing food, shelter, clothing, and a range of community services to many needy people in our area.



From all of us at O'Neil, Cannon, Hollman, DeJong and Laing:

"Best wishes for a wonderful holiday and a very Happy New Year!"

TAX AND WEALTH ADVISOR ALERT: NEW COVID RELIEF BILL SAYS EXPENSES PAID WITH FORGIVEN PPP LOANS ARE DEDUCTIBLE

Late Monday, Congress passed a $900 billion COVID-19 relief bill that includes a provision that allows business owners to claim tax deductions for expenses covered by Paycheck Protection Program (PPP) loan proceeds. The bill goes to President Donald Trump today, who is expected to sign it into law.

Among other tax provisions, the bill specifies that business expenses paid with forgiven PPP loans are tax-deductible. This supersedes IRS guidance (as we previously discussed here) that such expenses could not be deducted and brings the policy in line with what the American Institute of Certified Public Accountants (AICPA) and hundreds of other business associations have argued was Congress's intent when it created the original PPP as part of the $2 trillion CARES Act.

This congressional action is sure to provide a significant tax benefit for many small business owners who had availed themselves of the PPP program and found themselves saddled with unexpected tax liabilities.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and will continue to monitor federal and state law tax changes. For questions or further information relating to taxation under the CARES Act and the new relief bill, please contact Attorney Britany E. Morrison.

EUROPEAN DATA PRIVACY WATCHDOGS TAKE NEW STEPS

In the past week, European data protection authorities have found substantial European Union General Data Protection Regulation ("GDPR") violations and issued corresponding fines against high-profile companies. These decisions are informative for companies doing business in Europe as they indicate clear future enforcement priorities by European regulators.

On December 10, 2020, the French Data Protection Authority ("CNIL") issued fines against Google (€100M; $120M) and Amazon (€35M; ~$43M) for improper use of cookies on their websites. Specifically, the CNIL found that the tech giants automatically dropped tracking cookies when users visited their French (.fr) websites. Under the GDPR, these tracking cookies cannot be used without prior consent by the user. Since at least October 2019, European law has been clear that websites must obtain prior consent before utilizing any non-essential cookies.

These fines follow a similar CNIL fine against Google for $57M for failing to adhere to the GDPR's transparency obligations.

Meanwhile, on December 15, 2020, Ireland's Data Protection Commission ("DPC") slapped Twitter with a fine of €450,000 (~$547,000) for failing to properly declare and document a data breach. The DPC is Europe's leading privacy enforcement agency for many large tech companies, including Facebook, WhatsApp, Google, Apple, and LinkedIn, among others. The DPC fine marked the first cross-border GDPR fine issued by the Irish watchdog. Though many have expressed concerns that the DPC has been slow in reacting to privacy violations by non-EU companies, this cross-border decision is somewhat of a landmark decision for the DPC. In addition to the Twitter case, the DPC has a backlog of over 20 cases against large tech firms, many of which are U.S.-based entities.

In 2020, both the CNIL and the DPC have recently issued guidance on cookie usage and the notice, consent, and transparency requirements of the GDPR. The Amazon and Google fines, together with the CNIL and DPC guiding opinions, provide insight into their enforcement priorities. The guiding opinions make it clear that the CNIL and the DPC are specifically

targeting companies that are improperly utilizing non-essential cookies; furthermore, the extent of the fines indicate that the regulatory agencies view these matters as particularly egregious violations.

Moreover, the DPC's long-awaited first cross-border decision may be seen as a warning that non-EU companies may no longer find safe harbor in Ireland's lethargic enforcement efforts. Should these decisions act as a harbinger of future enforcement efforts, non-EU-based companies will need to quickly ensure compliance with GDPR regulations concerning non-essential cookies. As these decisions indicate, improper cookie usage could be costly for any company doing business in Europe.

If you or your company have questions or concerns about your cookie usage or compliance with international data privacy laws, please contact us.

TAX AND WEALTH ADVISOR ALERT: ESTATE PLANNING CONSIDERATIONS FOR SECOND MARRIAGES

It is becoming increasingly common for people to get divorced and then remarried. In these situations, one or both spouses entering into a new marriage usually has children from a prior relationship. Anyone who has children from a prior relationship and remarries should review their estate plan and make any necessary updates to ensure their assets are distributed according to their wishes.

Under Wisconsin law, the assets of a deceased spouse who dies intestate will automatically pass to the surviving spouse. When there is a second marriage and children from a prior relationship, however, the assets of a deceased spouse will be divided between the surviving spouse and the deceased spouse's children. In these situations, complications frequently arise when the main asset of the deceased spouse's estate cannot easily be divided, such as a house. And even if assets can be easily divided, the surviving spouse and children may disagree about who should receive what.

Complications may also arise when people fail to update the beneficiary designations, transfer-on-death designations, or payable-on-death designations on their non-probate assets (click here to read about the difference between probate and non-probate assets). For example, if a person designates his or her new spouse as the beneficiary of a bank account, then the new spouse will inherit the entire account upon that person's death. Unless the surviving spouse names the deceased spouse's children as the primary beneficiaries of the

account, the surviving spouse's children would likely stand to inherit the bank account rather than the deceased spouse's children.

Finally, disputes may arise in the event of incapacity. In those situations, a person's adult children and new spouse may disagree over who should be able to make financial or medical decisions and what those decisions should be.

There are many other issues that may arise and factors to consider, but the main takeaway is that it is very important to review and update your estate plan as a result of a major life event like a divorce and subsequent marriage. Failing to do so could frustrate your estate planning intentions and lead your loved ones to engage in litigation.

The attorneys at O'Neil Cannon have experience with creating estate plans for "blended" families and with updating old estate plans to correspond with new circumstances. If you would like to discuss your estate planning options further, please contact attorney Kelly M. Spott.

IN MEMORIAM: THOMAS A. MERKLE 1944–2020



It is with great sorrow we announce the passing of our colleague Attorney Tom Merkle, who served as a lawyer for more than forty-five years at O'Neil Cannon Tom was one of the founders of the firm and was instrumental to its growth and success.

He served as an Officer and a Director of the firm for many years. Tom was a friend, advisor, and confidant to his clients. He was a friend, mentor, and tremendous partner to all the lawyers and staff at the firm.

Tom was not only a talented attorney, he was highly respected by his peers. In 2007 he was appointed by the Wisconsin Supreme Court to serve on the Office of Lawyer Regulation's District Two Committee, and was selected as one of the Best Lawyers in America® for many years.

Tom will be fondly remembered and missed by all of us at OCHDL. Our thoughts and prayers go out to his family and friends.

21 FIRM ATTORNEYS RECOGNIZED BY SUPER LAWYERS

Each year, *Super Lawyers* surveys the State of Wisconsin's 15,000 attorneys and judges, seeking the State's top attorneys. In November 2020, *Super Lawyers* published its lists for 2020, which include the Top 10 Attorneys in Wisconsin, Top 50 Attorneys in Wisconsin, Top 25 Attorneys in Milwaukee, Super Lawyers (consisting of the top 5% of attorneys in Wisconsin), and Rising Stars (consisting of attorneys who are 40 years old or younger or who have been in practice for 10 years or less).

Twenty-one of our attorneys were recognized by *Super Lawyers*, which has referred to the firm as "the Milwaukee mid-sized powerhouse." Those attorneys are the following:

- Dean P. Laing:
  - Top 10 Attorneys in Wisconsin
  - Top 50 Attorneys in Wisconsin
  - Top 25 Attorneys in Milwaukee
  - Super Lawyer
- Seth E. Dizard:
  - Top 50 Attorneys in Wisconsin
  - Top 25 Attorneys in Milwaukee
  - Super Lawyer
- Douglas P. Dehler:
  - Super Lawyer
- James G. DeJong:
  - Super Lawyer
- Peter J. Faust:
  - Super Lawyer
- John G. Gehringer:
  - Super Lawyer
- Joseph E. Gumina:
  - Super Lawyer
- Gregory W. Lyons:
  - Super Lawyer
- Patrick G. McBride:
  - Super Lawyer

- Joseph D. Newbold:
    - Super Lawyer
- Chad J. Richter:
    - Super Lawyer
- John R. Schreiber:
    - Super Lawyer
- Jason R. Scoby:
    - Super Lawyer
- Steven J. Slawinski:
    - Super Lawyer
- JB Koenings:
    - Rising Stars
- Trevor C. Lippman:
    - Rising Stars
- Erica N. Reib:
    - Rising Stars
- Christa D. Wittenberg:
    - Rising Stars

Super Lawyers is a national rating service that rates attorneys in all 50 states. The selection process utilized by *Super Lawyers* is multi-phased and includes independent research, peer nominations, and peer evaluations. One court recently had this to say about *Super Lawyers*:

> "[T]he selection procedures employed by [*Super Lawyers*] are very sophisticated, comprehensive and complex.
>
> It is abundantly clear . . . that [*Super Lawyers* does] not permit a lawyer to buy one's way onto the list, nor is there any requirement for the purchase of any product for inclusion in the lists or any quid pro quo of any kind or nature associated with the evaluation and listing of an attorney or in the subsequent advertising of one's inclusion in the lists."

We are proud to be one of the few firms in Wisconsin that had over 50% of its attorneys receive recognition by *Super Lawyers.*

O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING S.C. RANKED IN 2021 "BEST LAW FIRMS"

O'Neil Cannon has been ranked in the *2021 U.S. News – Best Lawyers®* "Best Law Firms" list in 16 practice areas:

- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Business Organizations (including LLCs and Partnerships)
- Commercial Litigation
- Construction Law
- Corporate Law
- Family Law
- Litigation – Bankruptcy
- Litigation – Insurance
- Litigation – Labor and Employment
- Mergers and Acquisitions Law
- Personal Injury Litigation – Plaintiffs
- Product Liability Litigation – Defendants
- Real Estate Law
- Securities / Capital Markets Law
- Tax Law
- Trusts and Estates Law

Firms included in the 2021 "Best Law Firms" list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise.

TAX AND WEALTH ADVISOR ALERT: WHAT PROPERTY IS SUBJECT TO PROBATE?

During the estate planning process, it is important to consider what types of assets make up your estate. Specifically, you should understand the difference between your "probate" and "non-probate" assets. As you might imagine, your probate assets are the ones that must go through probate, a time-consuming and costly process which we previously discussed here.

Contrary to popular belief, a Last Will and Testament will not, on its own, help your estate avoid probate. Whether or not your estate is subject to probate depends on whether your estate consists of probate assets.

Probate assets are those that are owned solely by the decedent, without any beneficiary designations, transfer-on-death designations, payable-on-death designations, or joint ownership with rights of survivorship. Assets titled solely in the name of the decedent must go through probate—a court-supervised process—to be transferred or distributed to your loved ones. The probate process is necessary for these types of assets because only a court can legally transfer title after a person's death.

Non-probate assets are those with beneficiary designations, transfer-on-death designations, or payable-on-death designations. They also include assets that are titled in the name of a trust or titled as joint tenants with rights of survivorship. Unlike probate assets, non-probate assets will be transferred directly to your beneficiaries upon your death without any court supervision.

Many people seek an estate plan to avoid or minimize the probate process. Probate avoidance strategies can be personalized to your unique circumstances. If you would like more information on estate planning options to avoid probate, please contact attorney Kelly M. Spott.

TAX AND WEALTH ADVISOR ALERT: IRS CLARIFIES STANCE ON DEDUCTIBILITY OF EXPENSES COVERED BY PPP LOANS

Yesterday, the U.S. Treasury Department and Internal Revenue Service released guidance clarifying the tax treatment of expenses funded with forgiven Paycheck Protection Program loans. This guidance, Revenue Ruling 2020-27 and Revenue Procedure 2020-51, strengthened the Treasury's prior position in Notice 2020-32, as we previously wrote about here, which stated that expenses funded with forgiven PPP loan funds are not deductible.

In Revenue Ruling 2020-27, the IRS answered the question of whether a taxpayer who paid otherwise deductible expenses with PPP funds can deduct those expenses in the taxable year in which the expenses were paid or incurred if, at the end of that taxable year, the taxpayer reasonably expects to receive forgiveness of the PPP loan. The answer according to the IRS is "no," regardless of whether the taxpayer has submitted an application for forgiveness of the loan by the end of that taxable year.

The Treasury provided its rationale for this in a subsequent press release yesterday, stating "[s]ince businesses are not taxed on the proceeds of a forgiven PPP loan, the expenses are not deductible. This results in neither a tax benefit nor tax harm since the taxpayer has not

paid anything out of pocket."

Nevertheless, if desired, Congress could override the Treasury's stance by passing a law that explicitly allows the deductions. Additionally, it is possible a taxpayer may decide to challenge this position in court.

However, based upon these current rulings, it is important for all taxpayers that are seeking PPP loan forgiveness to understand whether or not, and when, they can deduct expenses incurred with the loan proceeds and the tax impact that may arise from the lack of deductibility if the loan is forgiven. For questions or further information, please contact attorney Britany E. Morrison.