

Legislative Recommendation #59**Amend IRC §§ 108(a) and 6050P to Provide That Gross Income Does Not Include, and the Department of Education Is Not Required to Report, Income From the Cancellation of Student Loans Under the Coronavirus Aid, Relief and Economic Security Act****PRESENT LAW**

Creditors that forgive a debt of \$600 or more generally are required to report the forgiveness to the IRS on Form 1099-C, Cancellation of Debt.¹ Taxpayers generally must include the forgiven debt in income.² IRC § 108 provides certain exceptions from this general rule. Additional exclusions appear in statutes outside of the IRC.³

Some of the longstanding exceptions, such as for bankruptcy or insolvency, apply to taxpayers in difficult economic conditions.⁴ Congress has enacted additional exceptions during difficult economic periods.⁵ Similarly, Congress enacted Section 1106(i) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to exclude cancelled Paycheck Protection Program (PPP) loans from income.⁶ The IRS notified lenders they should not issue Forms 1099-C regarding forgiven PPP loans.⁷

Beyond cancellation of debt, Congress has allowed taxpayers to exclude from income other payments or benefits they receive during difficult times. For example, taxpayers were not required to include in income the Economic Stimulus Payments they received in 2008.⁸ The same is true of the Economic Impact Payments they received in 2020.⁹ Other payments taxpayers receive, such as “qualified disaster relief payments” and certain compensatory damages, are likewise not included in income.¹⁰

1 IRC § 6050P(a); Treas. Reg. § 1.6050P-1(a).

2 IRC § 61(a)(11).

3 For example, where the Department of Education forgives student loans under the closed school discharge procedure, the forgiven debt is not included in income. See 20 U.S.C. § 1087(c)(4) (providing for loan discharge if the borrower, or the student on whose behalf a parent borrowed, could not complete the program of study at the school because the school closed while the student was enrolled or if the student withdrew from the school no more than 120 days before the school closed).

4 IRC § 108(a)(1)(A) & (B), both enacted in 1980, allow taxpayers whose debts are discharged in a Title 11 bankruptcy case, or who were insolvent when the debt was discharged, to exclude the forgiven debt from income. See Bankruptcy Tax Act of 1980, Pub. L. 96-589, § 2, 94 Stat. 3389 (1980). In administering the insolvency exception, the IRS has also considered the compliance burden on taxpayers and on the IRS. See Rev. Proc. 2020-11, 2020-6 I.R.B. 406 (Feb. 3, 2020) (providing relief to certain taxpayers whose student debt is forgiven).

5 In 2007, in response to unrest in the housing market, Congress enacted IRC § 108(a)(1)(E) to exclude forgiven mortgage debt from income. Mortgage Forgiveness Debt Relief Act of 2007, Pub. L. 110-142, § 2, 121 Stat. 1803 (2007).

6 See CARES Act, Pub. L. No. 116-136, § 1106(i), 134 Stat. 281, 301 (2020) (providing that “[f]or purposes of the Internal Revenue Code of 1986, any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income”).

7 IRS Announcement 2020-12, Information Reporting Requirements for Paycheck Protection Program Loans Forgiven Under the CARES Act, 2020-41 I.R.B. 893 (Oct. 5, 2020).

8 IRS, 1040 Instructions 2008 at 6, <http://core.publish.no.irs.gov/instrs/pdf/i1040--2008-00-00.pdf>.

9 IRS, COVID Tax Tip 2020-55 (May 12, 2020), <https://www.irs.gov/newsroom/what-people-really-want-to-know-about-economic-impact-payments>.

10 IRC §§ 139(a), 104(a)(2).

Section 3508(c) of the CARES Act requires the Department of Education to cancel education loans of students who withdraw from an institution of higher education as a result of a qualifying emergency.¹¹ The CARES Act does not contain any provision excluding these forgiven student loans from income.

REASONS FOR CHANGE

Allowing taxpayers whose student loans are forgiven under Section 3508 of the CARES Act to exclude the forgiven debt from income is consistent with Congress's longstanding approach of providing tax relief to taxpayers who are experiencing financial difficulty. Such an exclusion would place taxpayers whose student loans are forgiven under Section 3508 of the CARES Act on the same footing as taxpayers whose loans are forgiven under Section 1106(i) of the Act.

RECOMMENDATION

- Amend IRC §§ 108 and 6050P to provide that gross income does not include, and the Department of Education is not required to report, income from forgiveness of student loans discharged under section 3508(c) of the CARES Act.

¹¹ CARES Act, Pub. L. No. 116-136, § 3508(c), 134 Stat. 281, 398 (2020).