City Bar Justice Center COVID-19 Small Business Initiative
Information Sheet
Tax Aspects of COVID-19 Small Business Assistance Programs
May 7, 2020

Below is a brief overview highlighting a few of the tax relief measures adopted by Congress and the Internal Revenue Service ("IRS") in response to the COVID-19 pandemic as of May 7, 2020. This information is not comprehensive and should not be relied on as legal advice. Taxpayers should be aware that Congress and the IRS are changing the tax law rapidly in response to the COVID-19 pandemic and they should check the current status of the items listed below, for example, by consulting IRS.gov or other resources, including a professional tax adviser.

Tax Treatment of SBA Loans

- Receipt of Paycheck Protection Program (PPP) loan proceeds are not taxable.
- PPP loans can be forgiven, which would typically create taxable income for the debtor. However, under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the forgiveness of a PPP loan is generally excluded from taxable income.
- Pursuant to Notice 2020-32, to the extent a forgiven PPP loan is excluded from taxable income, such excluded amounts used to fund ordinary business expenses (*e.g.*, salaries, sick leave, mortgage interest, rent, and utility payments) are not tax deductible.
- In effect, Notice 2020-32 prevents debtors from obtaining the double tax benefit of using exempt income to fund tax deductions. However, Congressional leaders have already expressed a strong interest in reversing this IRS position in future legislation (*i.e.*, to permit such deductions).
- Note that if you do not use the loan proceeds for approved purposes, it is still a loan and interest paid on the loan could be deductible if the business could normally deduct interest.

Employment Tax Deferral

- Congress has provided various relief measures through the employment tax line.
- To clarify, there are several types of employment taxes. Generally, the employment tax referred to here is the employer's 6.2% portion of the social security tax on employee wages.
- The CARES Act allows certain employers to defer these payroll taxes, which arise during the period beginning on March 27, 2020 (the date the CARES Act was enacted) and ending on December 31, 2020.
- Half of these deferred amounts must be paid by December 31, 2021 and the other half by December 31, 2022.
- Note that employers that receive a loan from the Small Business Administration that is forgiven pursuant to the CARES Act are not eligible for this deferment.
- Employers are not required to make any special election to qualify for such deferments. The IRS will provide additional information in the future instructing employers on how to reflect the deferred deposits and payments on IRS Form 941.

Employee Retention Credit

- The employee retention credit provides "eligible employers" a refundable credit against employment taxes.
- In general, this credit is equal to 50 percent of "qualified wages," limited to $10,000 per employee, paid or incurred by the employer from March 13, 2020 until December 31, 2020.
- To be an eligible employer, an employer must have been carrying on a trade or business during the 2020 calendar year and (i) have operations that were fully or partially suspended during such calendar quarter

due to orders from an appropriate governmental authority limiting commerce, travel or group meetings because of COVID-19, or (ii) have gross receipts for such calendar quarter below certain levels specified in the statute (very generally less than 50% of gross receipts for the same calendar quarter in the prior year).

- For eligible employers with 100 or fewer full-time employees, all wages paid by the employer, up to the applicable limits, are qualified wages.
- An employer can claim the credit either (i) by reducing, without penalty, the amount of the credit from payroll taxes the employer would otherwise be required to deposit with the IRS or (ii) by filing a Form 7200.
- Note that employers that receive a loan from the Small Business Administration that is forgiven pursuant to the CARES Act are not eligible for this credit.

Employment Sick Leave Provisions

- The Families First Coronavirus Response Act (Families First Act), the second COVID-19 response package enacted by Congress, provides employers a refundable credit for qualified sick leave.
- In general, the Families First Act requires employers with fewer than 500 employees to provide paid temporary sick leave to employees who are unable to work for various COVID-19 related reasons. For example, if an employee has been exposed to someone with the virus.
- Similar to the employee retention credit, the Families First Act provides employers with a refundable tax credit against payroll taxes for each calendar quarter equal to 100 percent of the qualified sick leave wages paid in each quarter between April 1, 2020 and December 31, 2020.
- As with the retention credit, an employer can claim this credit either (i) by reducing, without penalty, the amount of the credit from payroll taxes the employer would otherwise be required to deposit with the IRS or (ii) by filing a Form 7200.

Other Provisions

- ***Treatment of recovery rebates.***
    - The CARES Act provides direct financial assistance to most individuals.
    - The rebate is an advance refund of credits against 2020 taxes, and equals $1,200 for individuals, or $2,400 for joint filers, with an additional $500 amount for each child.
    - For individuals, the amount of the rebate is phased out by $5 for every $100 above the $75,000 threshold. As a result, the rebate amount is completely phased-out for individuals with income exceeding $99,000.
    - In general, the IRS will use 2018 tax returns, unless a 2019 return has already been filed, to determine eligibility.
    - Individuals that did not file a tax return in 2018 and that had no 2019 income can provide the IRS with their direct deposit information on the IRS' "Non-Filers: Enter Payment Info" webpage. [1]
- ***IRS filing and payment deadlines extended.***
    - Any person (which includes an individual, trust, estate, partnership, or corporation) that has a federal income tax return or payment due on or after April 1, 2020 and before July 15, 2020 has an automatic filing and payment extension to July 15, 2020.
- ***Withdrawals from retirement funds.***
    - In general, early distributions from qualified retirement funds are typically subject to an additional 10% tax. The CARES Act lifts this additional tax for "coronavirus-related" distributions, up to $100,000.

[1] The IRS "Non-Filers: Enter Payment Info" webpage is available at https://www.irs.gov/coronavirus/non-filers-enter-payment-info-here.

- To be coronavirus related, the distribution must generally be made during 2020 to a person who, for example, has COVID-19 or experiences adverse financial consequences as a result of the pandemic.
- Such distributions would be subject to tax over a three-year period and the taxpayer can then recontribute those funds within the three-year period without regard to the annual contribution cap.

- ***Employer payments of student loans.***
  - The CARES Act permits employers to make payments to an employee, or directly to a lender on behalf of the employee, for student loans.
  - These payments will be excluded from the employee's income, up to the $5,250. Note that this limit also includes other "educational assistance" provided to the employee.
- ***Qualified Improvement Property.***
  - The CARES Act made a technical amendment correcting a previous error in the tax code.
  - "Qualified Improvement Property," which Congress intended as being eligible for 100% bonus depreciation, which was defined as "39 year property" in the Tax Cuts and Jobs Act of 2017 is now defined as "15-year property" in the Internal Revenue Code. This makes it eligible for 100% bonus depreciation.
  - Qualified Improvement Property is generally any improvement to an interior of a non-residential building that is placed in service after the building was placed in service.
  - The amendment is retroactive to 2018. Businesses can file amended returns for the 2018 or 2019 (if 2019 was already filed) years in order to claim a refund of excess tax paid.
- ***Excise tax exemption for alcohol used for hand sanitizer.***
  - The CARES Act provides a temporary exception from alcohol excise taxes for alcohol used or contained in the production of hand sanitizer.
  - This exception is applicable only in 2020.
- ***Qualified Disaster Relief Payments Under Internal Revenue Code Section 139.***
  - Code Section 139 permits employers to make "qualified disaster relief payments" to employees during a "federally declared disaster".
  - President Trump declared the COVID-19 pandemic a federally declared disaster on March 13, 2020 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
  - Qualified disaster relief payments are fully deductible for employers and tax-free for employees.
  - In general, qualified disaster relief payments include amounts paid to employees for reasonable and necessary personal, family, living, or funeral expenses incurred as a result of the COVID-19 pandemic—for example, medical expenses not covered by insurance, transportation expenses, or child care expenses.
  - However, such payments do not include amounts paid for nonessential items or services or amounts paid as income replacement (*e.g.*, lost wages or sick leave).
  - Note that the IRS has not published guidance regarding qualified disaster relief payments in the context of the COVID-19 pandemic.

New York State and City Provisions
• New York State personal income tax and corporation tax returns originally due on April 15, 2020, have been extended to July 15, 2020. In addition, all related tax payments due on April 15, 2020 (including 2020 estimated tax payments), may be deferred to July 15, 2020, without penalties and interest, regardless of the amount owed.[2]
• For personal income tax, the relief applies to taxes administered by the Tax Department that are reported on a New York State personal income tax return, such as: New York City resident tax, Yonkers resident income tax surcharge, Yonkers nonresident earnings tax, and metropolitan commuter transportation mobility tax (MCTMT) on net earnings from self-employment.
• In general, these filing and payment extensions apply to returns for individuals, fiduciaries (estate and trusts), and corporations taxable under Tax Law Articles 9, 9-A, and 33.
• The relief is automatic; no additional forms need to be filed. No extension is provided for the payment or deposit of any other type of state tax, or for the filing of any state information return under Notice N-20-2. Remittance of income tax withheld by employers required to be made using Form NYS-1, Return of Tax Withheld, must be made on time.
• Sales tax payments and returns were due March 20, 2020; however, penalty and interest may be waived for quarterly and annual filers who were unable to file or pay on time due to COVID-19. Returns must be filed and the amount due must be paid within 60 days of the due date for this relief to apply. Relief must be requested.[3] Note vendors who are required to file returns on a monthly basis and participants in the Promptax program for sales and use tax or prepaid sales tax on fuel are not eligible for this relief.
• For NYC business and excise tax returns due between March 16, 2020, and April 25, 2020 (Business Corporation Tax, Bank Corporate Tax, General Corporate Tax and the Unincorporated Business Tax), penalties for late filing, late payment, and underpayment will be waived if the delay in filing was caused by COVID-19-related issues. Tax payment due dates have not changed, however, which means that interest will accrue on late payments. Relief must be requested.[4]
• New York State generally administers New York City personal income tax and sales tax so the State guidance should be followed.
• New York City will allow a waiver of penalties for all New York City Real Property Transfer Tax returns due between March 15, 2020, and April 25, 2020. Taxpayers may request to have the penalties waived on a late-filed return, or in a separate request.[5] Interest, where applicable, at the appropriate underpayment rate, must be paid on all tax payments received after the original due date.
• Call centers remain open for questions and updated guidance is being published by the New York State DTF and New York City DOF on their websites.
• Through May 9, 2020, the New York State Department of Taxation and Finance is temporarily accepting digital signatures in place of handwritten signatures on certain documents related to the determination or collection of a tax liability.[6]

[2] *See* Important Notice N-20-2 (March 2020; updated April 15, 2020) available at: https://www.tax.ny.gov/pdf/notices/n20-2.pdf?_ga=2.135309553.1569076902.1586972919-813865976.1586972919.

[3] *See* Important Notice N-20-1 (March 2020) available at: https://www.tax.ny.gov/pdf/notices/n20-1.pdf.

[4] *See* NYC Finance Memorandum 20-2 (March 19, 2020) available at: https://www1.nyc.gov/assets/finance/downloads/pdf/fm/2020/fm-20-2.pdf.

[5] *See* NYC Finance Memorandum 20-4 (March 20, 2020) available at: https://www1.nyc.gov/assets/finance/downloads/pdf/fm/2020/fm-20-4.pdf.

[6] *See* Executive Order 202.15 and Important Notice N-20-3 (April 2020) available at: https://www.tax.ny.gov/pdf/notices/n20-3.pdf.