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COVID-19 TAX ISSUES: Treasury and Congress Takes Action

MARCUM
ACCOUNTANTS ▲ ADVISORS

Presented by:
National Tax Office
Services Group

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Disaster Relief Loan Programs for Small Businesses

▪ ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM

- Suffered substantial economic injury in a declared disaster area (US).
- For-profit or Not-for-profit
- Substantial economic injury means the business is unable to meet its obligations and to pay its ordinary and necessary operating expenses.
- EIDLs provide the necessary **working capital** to help small businesses survive until normal operations resume after a disaster.

• \$300B EMERGENCY CORONAVIRUS RELIEF

- Included in the \$2T stimulus relief package
- Part of *Keeping Workers Paid and Employed Act* (CARES)
- Funds used to pay workers, lease and utility payments

SBA Economic Injury Disaster Loan (EIDL)

Eligibility

- Small businesses affected by the disaster

Criteria

- Credit History: Acceptable to SBA
- Repayment: Ability to repay
- Eligibility: Suffered working capital damage

Borrowing Limit

- Up to \$2 Million

Interest Rate

- 3.75% - For Profit / 2.75% - Not For Profit

Use

- Fixed debts, payroll, accounts payable, and other bills (not for existing debt reduction, replacement of lost sales, or expansion)

Collateral

- Required where available

SBA Economic Injury Disaster Loan (EIDL)

Applying

- Online or through mail

Documents

- Loan Application
- Signed and dated **IRS Form 4506-T** allowing the IRS to provide SBA your tax return information

Payment Terms

- Based on borrowers ability to pay

Timing (Estimated)

- Decision: 2 – 3 weeks
- Disbursement: 5 days

Link

<https://disasterloan.sba.gov/ela/Account/Login>

\$300B Emergency Coronavirus Relief

Notes: This Bill is different from the SBA EIDL
Business are not eligible for both programs

Covered Loan Period

- March 1 – December 31, 2020

Eligible Businesses

- Up to 500 Employees,
- In business on February 15, 2020

Borrowing Limit

- Increases 7(a) loans up to \$10M thru Dec. 31

Delegated Authority

- Increases decision making of 7(a) lenders without going thru SBA channels

\$300B Emergency Coronavirus Relief

Repayment Eligibility

- Simply in business February 15, 2020 and employees with payroll

Fees

- Waives borrower and lender fees for 7(a) loans

Loan Guarantees

- Increases government guarantees of loans to 100% through December 31, 2020 (*)

SBA Express Loans

- Increases maximum loan to \$1M from \$350,000 through December 31, 2020 (*)

Non-Profits

- Reimbursement for ½ of unemployment costs incurred thru Dec. 31, 2020

(*) – Returns to normal following December 31, 2020

Other Non-Tax Business Considerations

- Business Interruption Insurance
 - Most BII policies exclude interruptions for viruses
 - Check your policy for specific exclusions
- Contact your lender about other lending options
 - Payment deferment options (principal and interest for three months)
 - Interest only payments
 - Fee suspension programs
 - Other options

Tax Related Moves

- Treasury Grants Income Tax Return and Filing Relief
- The House Bill Passes the Families First Coronavirus Recovery Act (FFCRA) creating new Sick Pay Leave and Emergency Family and Medical Leave funded with a refundable payroll tax credit. This bill is passed by the Senate and signed by the President.
- Senate passes a massive stimulus bill, the Coronavirus, Aid, Relief and Economic Security (CARES) Act including many tax provisions that are intended to put cash flow into the hands of individuals and businesses. It was passed by House of Representatives and signed by the President

Treasury and IRS Action

- IRS issues Notice 2020-15 as an initial response to the COVID-19 pandemic to address the issue of testing costs. Until further guidance is issued, a high deductible health plan (HDHP) will not fail to be considered a HDHP if it decides to provide for COVID-19 testing and treatment without a deductible.
 - This Notice permits the insured to continue to contribute to a Health Savings Account on a tax-friendly basis.
 - This Notice did not mandate that health insurers provide such testing at no cost, but permitting the plans to cover such costs. It advised insureds to check with their insurers.
 - The CARES Act and FFCRA require private insurers to cover testing for COVID-19 and related visit costs.

IRS provides extension to 7/15 for the filing and payment of taxes due 4/15

- Secretary Mnuchin states Treasury will delay date for payment of taxes due on 4/15/2020 to 7/15/2020 up to \$10 million for corporations and \$1 million for individuals.
 - IRS issues Notice 2020-17 providing details on this extension
- IRS issues Notice 2020-18 which (a) extends the filing date for income tax returns due 4/15, including the first estimated tax payment to 7/15/2020; (b) provides for an extension of time to pay tax due (including the first estimate) without any limits.

IRS provides extension to 7/15 for the filing and payment of taxes due 4/15

- IRS Issues Guidance in Q&A Format addressing several issues:
 - The extension applies only to income tax return (e.g, not to payroll tax, excise tax, or estate tax returns)
 - Does not apply to returns due after April 15, 2020 (returns due on May 15, 2020 are not covered)
 - The second estimated tax payment (generally due June 15, 2020) is not extended to July 15.
 - Confirms that the taxpayer can receive an additional extension on July 15th by filing a request for extension of time to file Form 4868 or 7004.
 - Section 965 installment payments (normally due April 15, 2020) has been deferred to July 15.
 - The dates of contribution to IRAs, to Health Savings Accounts and Archer Medical Savings Accounts are deferred to July 15.
 - The payment of a 10% premature distribution penalty is also deferred until July 15.
 - If an income tax return is filed with a scheduled withdrawal on 4/15 to pay taxes, IRS will not delay. You must cancel and reschedule the payment.

IRS provides extension to 7/15 for Gift Tax Returns & IRS People First Initiative

- Post-Passage of the CARES Act:
 - IRS extends date for filing and paying gift tax return to 7/15 without penalty or interest.
 - No filing of Form 8892 is required
 - Donor can file Form 8892 on July 15 to get additional extension to October 15
 - IRS People First Initiative
 - Installment Agreements: Payments due between 4/1 and 7/15 are suspended and can be paid on 7/15. IRS will not invalidate installment agreement
 - Offers in Compromise: Payments can be deferred until 7/15/2020 and OIC additional information not due until that date. Delinquent 2018 return will not default an OIC if filed by 7/15,
 - Automated liens and levies are suspended
 - New delinquent accounts will not be sent to private collection periods
 - Field, Office and Correspondence Audit: New audits will generally not be started (unless there is a statute of limitations issue); IRS will continue working on existing cases or consider taxpayer wishes (where there is available staffing or concern over lost documentation). Taxpayers should respond to requests for additional information

IRS provides extension to 7/15 for Gift Tax Returns & IRS People First Initiative

- Post-Passage of the CARES Act:
 - IRS People First Initiative:
 - Earned Income Tax Credit and Wage Verification Reviews: Responses have been delayed until 7/15/2020. IRS will not deny credits for failure to provide information until that date.
 - Independent Appeals Office: Still working cases though not with in-person conferences. Conferences can be held over the telephone or by videoconference.

State Conformity to IRS Extension

- Most states have conformed to the 7/15 extension for individuals and corporations
- Some states have extended their due dates to different days
 - Idaho – June 15
 - Mississippi – May 15
 - Virginia – June 1
- Some state will still charge interest
 - Minnesota
 - North Carolina
 - Virginia
- Still waiting on some states due to various reasons
- The due date extension for other types of state taxes vary greatly

House Bill H.R. 6201 Families First Coronavirus Response Act (FFCRA) – Sick Pay

- Emergency Paid Sick Leave Act – employers with fewer than 500 employees and government employers to provide covered employees with two weeks of paid leave where the employee who:
 1. Is subject to a Federal, State or local quarantine or isolation order related to COVID 19;
 2. Has been advised by a health care provider to self-quarantine;
 3. Is experiencing COVID-19 symptoms and seeks medical diagnosis
 4. Is caring for an individual subject to an order described in (1) and (2)
 5. Is caring for a child whose school is closed (or child care provider is unavailable) for reasons related to COVID-19; or
 6. Is experiencing any other substantially similar condition specified by Secretary of HHS, along with Secretaries of Labor and Treasury
- Full-time employees are entitled to 2 weeks (80 hours) and part-time employees are entitled to the typical number of hours that they work in a typical two-week period.
- The emergency sick pay is funded through a refundable credit against payroll taxes.

House Bill H.R. 6201 FCCRA

Emergency Family and Medical Leave

- Employers with fewer than 500 employees and government employers must provide Emergency Family and Medical Leave Pay of up to 12 paid weeks of job-protected leave,
 - The sole reason for which Emergency FML Pay is allowed is for leave to care for a son or daughter under 18 if their school or place of care has been closed or the child care provider is unavailable due to a public health emergency.
 - Paid leave is calculated for the employee at an amount not less than 2/3 of the employee's regular rate of pay (under the Fair Labor Standards Act of 1938) times the number of hours the employee would normally be scheduled to work. This subject to a cap of \$200 per day and \$10,000 in total for the employee
- The Emergency FML Pay is also funded through a refundable credit provided to the employer against payroll taxes.
- The Employer must provide a notice of right to emergency family and medical leave.

House Bill H.R. 6201 FCCRA

Documentation and Getting the Credit

- Documentation: Employer must get some documentation in support of the reason for leave: including employee name, qualifying reason for requesting leave, statement that employee is unable to work (including telework), dates for which leave is requested
 - If the leave is the result of a medical provider advice, the name of the medical provider.
 - Employer may need to support the right to the credit on audit.
- Taking the credit: IRS and DOL provides
 - Employer can reduce the amount of federal payroll taxes and employee income tax withholding in anticipation of the credit due for the quarter,
 - If the reduction does not cover the amount paid, a refund for the balance is to be filed.
- Self-employed taxpayers are eligible for an equivalent payment as a credit against income taxes.

CARES Bill

Business Tax Provisions

- Employee Retention Credit for Employer Subject to Closure due to COVID-19. Eligible employers are allowed a refundable credit against employment taxes for each calendar quarter equal to 50% of qualified wages for each employee taken into account for such calendar quarter
 - Eligible employer is one who has a trade or business with respect to any quarter for which:
 - (i) operation is fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel or group meeting due to COVID-19; or
 - (ii) for which there has been a significant decline in gross receipts (i.e., less than 50% gross receipts for the same quarter in the prior year) and ending with the calendar quarter for which gross receipts are greater than 80% than the same calendar quarter in prior year
 - Limited for any employee to first \$10,000 of wages for any calendar quarter
 - Tax exempts can also take advantage of this credit
 - Loan recipients under the SBA payroll protection program are not eligible

CARES Bill

Business Tax Provisions

- Deferral of Employer Share of Payroll Taxes (or SECA for Self-Employed) for the period beginning on date of enactment to 1/1/2021.
- Net Operating Losses subject to a 5 year carryback and not limited by 80% of Taxable Income Rule. This applies to NOLs from 2018, 2019 or 2020.
- NOLs and IRC Section 965. The CARES Act allows a taxpayer to elect to exclude from its NOL carryback any taxable year to which IRC §965(a) applies (Section 965(n)).
- Limitation on Net Business Losses Suspended. For non-corporate taxpayers who under TCJA were limited to using net business losses to the extent of \$250,000 (\$500,000 for married filing joint), taxable incomes for 2018, 2019 and 2020 can be computed without this limitation.
- Immediate Refund of the Corporate AMT Credit. Instead of a 4-year period (2018-2021), the credits can be taken over 2018 and 2019. An election can be made to recover the credits entirely in 2018.

CARES Bill

Business Tax Provisions

- More Business Interest Expense allowed. Under the TCJA, net business interest is limited to 30% of Adjusted Taxable Income (unless certain exceptions apply). For 2019 and 2020 this is increased to 50%
- Bonus Depreciation is Allowed on Qualified Improvement Property (QIP) costs. The legislative error in the TCJA is fixed and QIP now is eligible for immediate write-off. This provision is retroactive.
- Temporary Exception from Excise Tax on alcohol used to produce hand sanitizer.
- Corporation Charitable Deduction Limit is increased from 10% of Taxable Income to 25 of Taxable for 2020.
- Limitation on Deduction for Contribution of Food Inventory is increased from 15% to 25%

CARES Bill

Individual Tax Provisions

- Cash Payments: Up to \$1,200 per person, \$2,400 for married couple, and \$500 for each qualifying child
 - Phase-out for Individuals with AGI over \$75,000 and married couples with AGI over \$150,000. The reduction is \$5 for each \$100 of AGI over the thresholds.
 - Ineligible persons: nonresident alien individual or person who is a dependent of another.
 - There is a true up on the 2020 tax return.
- Retirement Plan Rules:
 - Required Minimum Distributions are waived for 2020
 - Corona-Related Distributions up to \$100,000 will be (a) subject to income tax over 3 years; (b) can be repaid to the plan within the 3-year period.
 - Premature Distribution Penalty (10%) will not apply to a corona-related distribution up to \$100,000.
 - Loans up to \$100,000 or 100% of the accrued benefit (considering prior loans) will not be treated as distributions. Some deferral of payment rules allowed



CARES Bill

Individual Tax Provisions

- Charitable Contribution Rules Amended for 2020
 - Up to \$300 of charitable contributions can be taken as a deduction in reaching Adjusted Gross Income. This confers a benefit regardless of whether the taxpayer itemizes.
 - The 50% AGI limitation is eliminated for certain qualified contributions.
 - This does not apply to contributions to certain private foundations or to donor advised funds.

Marcum LLP COVID-19 Tax Resources

External Website www.marcumllp.com/coronavirus



Marcum LLP COVID-19 Tax Resources

National Tax Office Services Group

Serves as a resource for clients and Marcum professionals in resolving complex tax issues in a wide variety of areas, including the various COVID-19 relief packages, offering first-hand insight including direct access to the IRS, state & local tax authorities, AICPA, ABA and state associations.

Advisory and SBA Taskforce

Office practitioners from various disciplines with deep SBA experience and knowledge of the CARES Act relief packages available to help navigate our clients through the SBA resources and loan application process.

Webinar Presenters

Joe Perry

Tax & Business Services Leader
Melville, NY

John Bonk

Director, State & Local Tax
Miami, FL

Michael D'Addio

Partner, National Tax Office
New Haven, CT

Andrew Finkle

Partner, National Tax Office
Philadelphia, PA

Ted Ginsburg

Director, National Tax Office
Cleveland, OH

Ken Haffey

Partner, SBA Advisory Services
Cleveland, OH

Martin Martinez

Partner, National Tax Office
Houston, TX

Bob Spielman

Partner, National Tax Office
Melville, NY

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Q&A



Thank you for attending!