

Federal and Selected State Tax Updates in Response to Coronavirus (COVID-19)

April 3, 2020

The following is a brief summary of recent tax related regulatory and legislative developments related to the COVID-19 pandemic, as of April 3, 2020. Federal and state guidance and guidelines are being modified constantly, and so any of the information below may be subject to change.

Tax Filing and Compliance Modifications

The federal government and various state governments have modified filing and payment deadlines with respect to 2019 tax returns.

- **Federal Deadlines:**

- Federal income tax returns that would otherwise have been due on April 15, 2020 will now be due on July 15, 2020. The extension of time also applies to tax payments that otherwise would have been due between April 15 and July 15, and now are not due until July 15. Interest will not start to accrue on unpaid tax liabilities until July 16, 2020.
- The aforementioned extension of time also applies to gift tax returns and payment of gift and GST tax. So far, there has been no relief with respect to estate tax returns or nonprofit informational returns.

- **State Tax Deadlines:**

- *Massachusetts* –
 - The April 15, 2020 filing deadline is automatically extended until July 15. The extension applies to personal income tax, estate and trust income tax, and income tax due with a partnership composite return with an April 15, 2020 due date. Relief also applies to an April, 2020 tax installment owed by a personal income taxpayer with respect to deemed repatriated income. Taxpayers that previously filed 2019 tax returns but have not yet made the associated payments have until July 15, 2020 to make those payments.
 - First and second installments of estimated tax, originally due April 15, 2020 and June 15, 2020, respectively, are now due July 15, 2020.
 - Late-file and late-pay penalties for corporate excise (including financial institution and insurance premiums excise) returns and payments due on April 15, 2020 will be waived if those returns and payments are filed and made by July 15, 2020. Interest will continue accrue on any amounts not paid by April 15, 2020, however.

- For further guidance, see <https://www.mass.gov/technical-information-release/tir-20-4-tax-filing-and-payment-relief-for-personal-income-and>.
- Hospitality and Restaurant Sector Tax Relief:
 - Returns and payments due during the period March 20, 2020 through May 31, 2020 are suspended for certain taxpayers and vendors who are required to collect and remit Sales and Use Taxes, Meals Tax and Room Occupancy Excise Tax. To qualify for suspension, tax returns and payments must be made by June 20, 2020.
 - The aforementioned relief does not apply to Marijuana Retailers, marketplace facilitators and vendors of motor vehicles.
 - In addition, legislation has been filed that if passed would allow restaurants to sell beer and wine sealed in their original packaging if the sales are in connection with a take-out food order.
- Pending Bill entitled “Act to Further Address Challenges Faced by Municipalities and School Districts Resulting from COVID-19”:
 - Municipal tax deadlines would be extended, allowing municipalities to waive late-payment penalties for 4th quarter tax bills, which are otherwise due May 1, 2020. In addition, municipalities could change their tax bill due dates from April 1 to June 1.
 - Municipalities would be allowed to extend the deadline for property tax exemptions and deferrals. The current statutory deadline is April 1; the legislation if passed would allow municipalities to extend that date to June 1.
- Community Investment Tax Credit:
 - Regulations have been issued to reflect statutory changes to the credit’s total cumulative caps and effective dates.
- Massachusetts will generally comply with any federal relief provided.
- *New York* –
 - The filing and payment deadlines for personal and corporate tax returns originally due on April 15, 2020 has been extended until July 15. Penalties and interest will not be incurred until July 16, 2020.
 - Quarterly or annual sales tax vendors who were unable to file or pay their March 20, 2020 sales tax returns due to COVID-19 may be eligible to apply to have penalties and interest waived.
 - New York will generally comply with any federal relief provided.

- See <https://www.tax.ny.gov/press/alerts/nys-tax-response-to-covid-19.htm> for the latest updates from the New York State Tax Department.
- *District of Columbia* –
 - Income Tax
 - Filing and payment deadlines have been extended for 2019 income tax returns, partnership tax returns, and franchise tax returns until July 15, 2020.
 - Estimated tax payment deadlines are not extended, however; the deadlines for individual and business taxpayers to file their Tax Year 2020 estimated tax payments (Forms D-40ES, D-41ES, D-20ES, and D-30ES) remain unchanged. The first quarter payments are due April 15, 2020, and the second quarter payments are due June 15, 2020.
 - Property Tax
 - Real property tax deadline generally remains unchanged, but extensions are granted for tax appeal as well as income and expense report. Property owners in D.C. who believe their proposed tax year 2021 assessment does not reflect the market value of their property can appeal by April 30, 2020 (originally due April 1, 2020). Real property income and expense report is due April 30, 2020 (originally due April 15, 2020).
 - Real property tax due date has been extended for hotels and motels. A “hotel” or “motel” classified as Class 2 Property under D.C. Code §47-813 for tax year 2020 may pay its first half tax year 2020 real property tax installment through June 30, 2020 (originally due March 31 for the period of October 1 – March 31). In exchange, sales and use tax relief is unavailable, as described below.
 - Sales & Use Tax
 - Interest and penalties are waived for February and March late sales and use tax payments, but the tax must be paid in full by July 20, 2020. Sales and use tax return deadlines are not extended, however. Interest and late payment penalties of sales and use taxes are waived for all businesses that file sales and use tax returns on a monthly or a quarterly basis for periods ending on February 29, 2020 and March 31, 2020 provided that payment of all taxes due for these periods are paid in full by July 20, 2020 (except for hotels and motels permitted to defer real property taxes; see discussion above). All businesses must

continue to timely file their monthly and quarterly sales and use tax returns through OTR's online portal, MyTax.DC.gov, to receive this benefit.

- D.C. will generally comply with any federal relief provided.
- See <https://otr.cfo.dc.gov/page/coronavirus> for the latest updates from DC's Office of Tax and Revenue.
- *Maryland* –
 - Maryland will generally comply with any federal relief provided.
- *Virginia* –
 - Individual and corporate income tax payments due during the time period of April 1, 2020, to June 1, 2020, are extended until June 1, 2020. Penalties will not accrue if payments are made by June 1, 2020, but interest will accrue after the original filing due date.
 - All income tax filing deadlines remain the same, including the May 1, 2020 individual income tax filing due date, but Virginia's automatic, 6-month extension to file (7 months for certain corporations) continues to apply.
 - See <https://www.tax.virginia.gov/news/coronavirus-updates> for latest updates from Virginia Tax.

Tax Provisions in the Coronavirus Aid Relief and Economic Security Act ("CARES" or the "Act")

On Friday March 27, the President signed into law the Coronavirus Aid Relief and Economic Security Act. The Act contains a number of provisions designed to provide relief to individuals and businesses. Among those provisions, key tax related ones include the following:

- *Tax rebate payments*
 - Taxpayers whose Adjusted Gross Income does not exceed \$75,000 (\$112,500 for Head of Household filers) are eligible to receive a recovery check of \$1,200. The amount is phased out as AGI exceeds \$75,000 and is entirely phased out for taxpayers with AGI of more than \$99,000 (\$136,500 for Head of Household filers). Joint filers are eligible to receive \$2,400 if their AGI does not exceed \$150,000. If the taxpayer has not yet filed her 2019 return, amounts will be based on the 2018 tax return.
 - The applicable amount will be treated as an additional payment credited to the taxpayer's 2019 tax liability, or if the 2019 tax returns have not yet been filed, to the taxpayer's 2018 tax liability.
- *Retirement Accounts*
 - Early withdrawal – A taxpayer who has been diagnosed with, or otherwise adversely affected by, the coronavirus may withdraw up to \$100,000 from a qualified retirement plan account or IRA without incurring the ten percent (10%) penalty typically applied to early withdrawals. The penalty exclusion is applicable for withdrawals made on or

after January 1, 2020 and before December 31, 2020.

- Income tax on the income attributable to early withdrawals will be payable ratably over three years; however, amounts that are recontributed to a qualified account within the three-year period will be treated as a nontaxable rollover without regard to the annual limitation.
- Loans – The limit on loans from qualified retirement plans is increased to \$100,000 from \$50,000. Additionally, the date by which the loan is required to be repaid is extended by one year.
- Required withdrawals – The requirement to withdraw funds from certain retirement accounts is waived for calendar year 2020 with respect to IRAs and certain defined contribution plans.
- *Charitable Contributions*
 - Additional Deduction – Taxpayers who do not itemize deductions will be allowed to claim a \$300 “above the line” deduction for “qualified charitable contributions” (i.e. cash gifts to public charities).
 - Modification of Limitations –
 - Individuals are able to deduct qualified charitable contributions to the extent of AGI, but cannot exceed AGI for prior year charitable donation carryovers.
 - The limitation for corporations for gifts of cash and food inventory has been increased to 25% of taxable income from 10% of taxable income and carryover.
 - Exception: Noncash gifts and gifts to private foundations, donor-advised funds and supporting organizations do not qualify for these benefits.
- *Employer Payroll Taxes*
 - Certain eligible employers are allowed a credit against employment taxes equal to 50% of the qualified wages (which are limited to \$10,000 per employee) with respect to each employee.
 - The due date for paying certain employer payroll taxes is deferred until December 31, 2022.
- *Modification for Net Operating Losses (NOLs)*
 - NOLs may be used to fully offset taxable income for years prior to 2021. After 2020, NOLs generated in years beginning after December 31, 2017 are limited to 80% of taxable income.
 - NOLs generated in years 2018, 2019 and 2020 may be carried back 5 years.
 - Note: NOL carryback generally does not apply to REITs.
- *Loss Limitation Provisions*
 - The limitation on excess business losses under Code Section 461(l) is only applicable for years beginning after December 31, 2020.

- Technical Corrections – The Act includes certain technical corrections to 2017 Tax Cuts and Jobs Act (the “TCJA”), including:
 - Excess Loss Carryovers – Previously, the TCJA provided that excess losses are carried over and treated as a net operating loss carryover to the following year. The Act clarifies that excess losses are included in the calculation of NOL carryovers for subsequent years.
 - Capital Gains and Losses – The Act also clarifies that capital gains and losses should not be included in the limitation and capital gains are limited to the net capital gain attributable to business activity.
- Note that it is unclear whether the NOL and loss limitation changes apply to tax-exempt organizations with respect to unrelated trade or business income.
- *Prior year AMT Credit for Corporations*
 - The Act allows corporate taxpayers to claim a refund with respect to the carried over AMT credits with their 2019 tax returns. Previously, this credit was required to be claimed over a period of several years. The Act accelerates the timing in which a refund can be claimed.
- *Business Interest Limitations*
 - The TCJA limited the amount of interest that can be deducted by taxpayers to 30% of EBITDA. The Act increases this percentage from 30% to 50% for 2019 and 2020.
 - In calculating the applicable limitation for tax years beginning in 2020, taxpayers may elect to use their taxable income from their 2019 tax year.
 - Note that this provision does not apply to tax years of partnerships beginning in 2019. Instead, excess business interest will be carried over to the partners’ 2020 tax return and 50% of such excess business interest will be able to be deducted without limitation.
- *Qualified Improvement Property*
 - The Act makes a technical correction to the asset classification of Qualified Improvement Property provided for in TCJA. For purposes of depreciating such improvements, the Act provides that Qualified Improvement Property has a 20-year class life and a 15-year recovery period under MACRS, which is eligible for bonus depreciation.
 - Note that taxpayers who made a real property trade or business election out of Code Section 163(j) may not be able to take advantage of bonus depreciation for qualified improvement property.

Other Federal Relief –

- Contributions to Retirement Plans and Health Savings Accounts: Taxpayers may make contributions to a retirement plan or an HSA on account of 2019 until July 15, 2020.