

# COVID-19 Tax and Business Update

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# Presenters

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# Today's Webinar Will Cover

- Business Loan Assistance
- Federal Updates
- State Updates

# BUSINESS LOAN ASSISTANCE

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# SBA Assistance

SBA has several different financial assistance programs for small businesses

- SBA Disaster Assistance Loans for businesses impacted by COVID-19
  - Economic Injury Disaster Loan (EIDL) Program –may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact
  - Emergency EIDL Grants up to \$10,000
- Standard 7(a) Loan Program with amendments under the CARES Act
- Express Loan Program – increased amount from \$350,000 to \$1,000,000

SBA EIDL

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# SBA EIDL

- Entities eligible
  - Sole-proprietor (with or without employees); independent contractor; business, cooperative, ESOP tribal small business concern with not more than 500 employees, and entities that meet the small business definition of the SBA
- Maximum Loan Determined by SBA: \$2,000,000
- Interest Rates: 3.75% for businesses and 2.75% for nonprofit entities
- Term: up to 30 years
- SBA is waiving
  - “credit elsewhere” clause
  - Personal guarantees for loans under \$200,000
  - Applicant needs to be in business for 1 yr. (but must have started prior to 1/31/20)
- SBA can approve based solely on credit score and not require tax returns
- May be used to pay fixed debts, payroll, accounts payable and other bills that can’t be paid because of the disaster’s impact

# EIDL Emergency Advance

- Complete application on line
- Receive an advance of up to \$10,000
- Can be rolled into PPP loan
- Caseworker will contact borrower for next steps



# SBA 7(A) LOAN UNDER PAYCHECK PROTECTION PROGRAM

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# PPP Overview

- Up to \$349B in forgivable loans to small businesses to pay their employees during the COVID-19 crisis
- Loans must be obtained before June 30, 2020
  - Lenders need time to process the loan and there is a funding cap, but Treasury Secretary Mnuchin announced on 4/1/2020 that additional funds would be made available as necessary
- Applications made to private lenders that are approved by the SBA for 7(a) loans
  - Will need to provide payroll documentation
  - Other required documentation unclear at this time
- Application period opens April 3, 2020 for small businesses and sole proprietorships
  - April 10, 2020 for independent contractors and self-employed individuals
- Loan terms will be identical for all applicants

# PPP

- **Certifications of borrower made under penalties of perjury**
  - **Current economic uncertainty makes the loan necessary to support your ongoing operations**
  - Funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments
  - You have not and will not receive another loan under this program
  - To the extent feasible, you will purchase only American-made equipment and products
  - And others . . .

# PPP (cont'd)

## ■ Eligible borrowers

- All businesses, including 501 (c)(3) nonprofits and veterans organizations and Tribal business concerns
- 500 or fewer employees (including FTEs and PTEs), but
  - Businesses in certain industries can have more than 500 employees if they meet the SBA employee-based [size standards](#) for the industry
    - *E.g.*, 33311 Machine Manufacturing – Farm Equipment – under 1,250 employees is considered a small business
- Includes sole-proprietors, independent contractors and eligible self-employed individuals
- Affiliation rules apply – businesses under common control need to aggregate all entities to determine the number of employees
  - Waived for small business (i) in the [NAICS](#) code 72 (hotel and food services) and (ii) that are franchises in the SBA's [Franchise Directory](#), and (iii) that receive financial assistance from small business investment companies licensed by the SBA

# PPP (cont'd)

- Ineligible borrowers

- Businesses engaged in any activity illegal under federal, state or local law
- You are a household employer (you employ nannies, housekeepers)
- An owner of 20% or more of the equity who is incarcerated, on probation or parole
- Delinquent on any loan from SBA in past 7 years

# PPP (cont'd)

- Payroll Costs

- Employee (covers compensation up to \$100,000 annually)
  - Wages, salary, commissions, or tips (up to cap of \$100K/year/person)
  - Vacation, parental, family, medical, or sick leave
  - Dismissal or separation payments
  - Payments for group health care benefits, including insurance premiums
  - Retirement benefits
  - Employer state or local taxes on compensation
  - **DOES NOT INCLUDE INDEPENDENT CONTRACTORS**
- Sole proprietor or independent contractor (up to \$100,000 annually)
  - Wage; commission; income; net earnings from self-employment
- Excludes (i) employer's share of Federal employment taxes and federal income tax withholding, (ii) compensation to an employee whose principal place of residence is outside the United States, and (iii) qualified sick leave and family leave under the Families First Coronavirus Response Act

# PPP (cont'd)

- **Maximum Loan amount (capped at \$10,000,000)**
  - 2.5 times the average **monthly** payroll costs incurred during the last 12 months before the date on which the loan is made **PLUS**
  - Outstanding amount of loans under 7(b)(2) that were made during January 31, 2020 and April 3, 2020 less the amount of any “advance” under the EIDL Covid-19 loan (because it does not have to be repaid)

# PPP (cont'd)

## ■ Loan Terms

- One loan per person
- In general, the maximum loan amount is the lesser of:
  - \$10,000,000, or
  - 250% of the average monthly payroll costs incurred during the 1 year period before the date on which the loan is made
- Not clear whether banks will use monthly average during 2019, or 12-month rolling average
- Lender will calculate the amount of the loan – review calculations
- No need to prove credit is unavailable elsewhere (*i.e.*, waiver of Credit Elsewhere requirement)
- Interest rate to 1% (based on Interim Final Rule released 4/2/20)
- Term 2 years from date borrower applies for loan forgiveness
- No collateral required – loan is 100% guaranteed by the SBA
- No personal guarantee required
- No prepayment penalties or fees
- Deferral for 6 months following the date of the loan; interest will accrue from date of loan
- Borrower can obtain EIDL after 1/31/20 and until 4/3/20 is obtained if used for a purpose other than payroll costs



# PPP (cont'd)

- Uses of loan proceeds
  - Payroll costs (per SBA fact sheet)
  - Rent under a lease in force before 2/15/2020
  - Utilities for which service began before 2/15/2020
  - Interest on mortgage obligations incurred before 2/15/2020
  - Interest on any other debt obligation incurred before 2/15/2020 (per statute, but not SBA fact sheet)

# PPP (cont'd)

- **Loan Forgiveness**
  - Includes all eligible expenses paid during the 8-week period after the loan is made
  - Eligible expenses:
    - Payroll costs (up to \$100K/year/employee – presumably same rules as loan use rules apply)
    - Interest on mortgages incurred before 2/15/2020
    - Rent under a lease in force before 2/15/2020
    - Utilities for which service began before 2/15/2020 (*e.g.*, electric, gas, water, transportation, telephone, and internet)
  - Cannot exceed the principal amount of the loan
  - Anticipated that no more than 25% of amount forgiven can be for non-payroll costs (per SBA fact sheet)
  - Amount is tax-free to the borrower
  - Amount of forgiveness is reduced if there are certain headcount or wage reductions
  - Borrower will need to document the number of FTEs and pay rates, as well as the use of funds for all purposes
  - Lender has 60 days to make a decision after it receives a completed application for forgiveness

# PPP (cont'd)

- Reduction based on headcount reduction

- Multiply total eligible expenses paid during 8-week period after loan is made (covered period) by the following fraction:
  - Average number of FTEs per month during 8-week period after the loan is made, divided by
  - At the election of borrower:
    - Average number of FTEs per month during 2/15/19 to 6/30/19, or
    - Average number of FTEs per month during 1/1/20 to 2/29/20

- Reduction based on wage reduction

- Reduction amount per employee is equal to:
  - the amount by which total salary and wages paid during the covered period is less than 25% of total wages paid during most recent full quarter before the covered period
- Although unclear, calculation of the reduction applies only to employees making less than \$100K/year

- Can restore headcount and wages by 6/30/2020 to account for any reductions made between 2/15/2020 and 4/26/2020)

# STATE AND LOCAL ASSISTANCE

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# New York

## ■ NYC Employee Retention Grant Program

- Small businesses with fewer than 5 employees can receive a grant up to \$27,000 to cover 40% of payroll costs for 2 months
  - Includes all 5 boroughs
  - Demonstrate COVID-19 caused 25% decrease in revenue
  - Business operational for at least 6 months
  - No outstanding tax liens or legal judgments

## ■ NYC Small Business Continuity Loan Fund

- Businesses with less than 100 employees are eligible for zero interest loan up to \$75,000
  - Demonstrate 25% reduction in revenue
  - Demonstrate ability to repay the loan
  - No outstanding tax liens or legal judgments

<https://www1.nyc.gov/site/sbs/businesses/covid19-business-outreach.page>

# Philadelphia

## Philadelphia COVID-19 Small Business Relief Fund

- **Microenterprise Grant - \$5,000**
  - Businesses under \$500,000
  - Signed tax return
  - Description of impact of COVID-19 on your business and plan for recovery
- **Small Biz Grant – up to \$25,000**
  - Businesses with annual revenue \$500,000 to \$3M
  - Signed tax return
  - 2019 financial statements,
  - verification of cash flow needs
  - Proof of insurance
  - Description of impact of COVID-19 on your business and plan for recovery
- **Small Biz Zero Interest Loan - \$25,000 to \$100,000 Loan**
  - Businesses with annual revenue \$3M to \$5M
  - Signed tax return
  - 2019 financial statements
  - verification of cash flow needs
  - Proof of insurance
  - Description of impact of COVID-19 on your business and plan for recovery
- <https://www.phila.gov/programs/philadelphia-covid-19-small-business-relief-fund/>

# Florida

## Florida Small Business Emergency Bridge Loan COVID-19

- Applications accepted through May 8, 2020, contingent on availability of funds
- Businesses with 2 to 100 employees
- 1 year term
- Interest free for first 12 months, then 12% until repaid
- <https://floridadisaster.biz/>

# Los Angeles

## Los Angeles City Small Business Emergency Microloan Program

- Business located within the City of Los Angeles
- Show historical profits and ability to repay loan
- Prove job retention
- Use of funds – job retention, reasonable and eligible working capital expenses
- Loan limits \$5,000 to \$20,000
- Interest rate 0% for one year or 3% – 5% for up to 5 years
- No loan fees
- [https://cloud.bmisw.com/CityOfLA/Account/Login?ReturnUrl=%2FCityOfLA%2FWorkflow%2FEnter%2FMicroloan\\_Begin](https://cloud.bmisw.com/CityOfLA/Account/Login?ReturnUrl=%2FCityOfLA%2FWorkflow%2FEnter%2FMicroloan_Begin)



# San Francisco

## San Francisco COVID-19 Small Business Resiliency Fund

- Grants up to \$10,000 for employee salaries and rent
- Businesses with 1 – 5 employees
- Demonstrate a loss of revenue of more than 25%
- Have less than \$2,500,000 in gross receipts
- <https://oewd.org/covid-19-small-business-resiliency-fund>

# New Jersey Economic Development Authority

NJEDA is empowered to make grants during states of emergency, including the current one

Fill out online questionnaire which leads to either their program or the SBA program

**NJEDA Small Business Emergency Assistance Grant Program up to \$5,000 (\$5m-initial wave)**

- For NJ based SMEs that have between 1 – 10 FTEs
- \$1,000 per FTE up to a total of \$5,000 Grant
- Certain NAICS codes (e.g., Retail; Accommodation & Food Service; Arts, Entertainment & Recreation, Repair & Maintenance; Personal & Laundry)
- Application window opens Friday April 3rd at 9 a.m. EST and closes April 10th at 9 a.m. EST

**NJEDA Small Business Assistance Loan Program up to \$100,000 (\$10m-initial wave)**

- 10 yr loan 0% interest 1-5 yrs; 1-3% rate years 6-10
- Deferred payments for 12 months
- In business for 1 year and under \$5M in annual revenue
- Impacted negatively by COVID-19
  - Reduction of business hours, complete close of business, at least 20% decline in revenue
  - Debt coverage ratio of 1.00 on 12-31-19
- \$5m or less annual revenue

# New Jersey Economic Development Authority

- CDFI First Loss Reserve Fund (\$10m-initial wave)
  - Federally-certified, NJ-based CDFI
  - Have operational and financial capacity to use the guarantee effectively
  - Have significant experience working with underserved business segments and in communities underserved by other banks
  - CDFI Loans that are guaranteed will not exceed \$75k and have an interest rate of 3.75% or less for less than five years
- Emergency Assistance Guarantee (\$10m-initial wave)
  - \$100k maximum guarantee, 50% guarantee of working capital loans, take first loss position, no fees
  - \$5m or less in revenue and in existence at least 1 year
  - Must show negative impact of emergency
- NJ Entrepreneur Support Program (\$5m-initial wave)
  - Provide 80% loan guarantees for working capital loans to start-up entrepreneurs
  - Must be NJ based start-up company, registered in NJ and C-suite in NJ
  - \$5m or less in revenue and under 25 people
  - Investors have already provided funding in the form of convertible note, safe or equity interest
  - Investor does not need to be NJ-based
  - Minimum 50% of employees in NJ

Please note other qualifications may apply. See <https://cv.business.nj.gov/> for additional requirements and to apply.

# TO DO's

- Talk with current banker
  - Do they provide SBA loans
  - What information will they need beyond the standard application
- Gather financial data to be ready to provide to bank
- For example:
  - Payroll records for 2019 and 2020 (monthly)
  - Financial statements – 3 years if you have them
  - Personal financial statements for all owners over 20%
  - Tax returns for last three years
  - Schedule of all debt (mortgages, notes, accounts payable)
  - Proof of payments made for rent, utilities and interest after the loan is received

APRIL 15, 2020 EXTENSION

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# Tax Filing and Payment Extension

## **March 17<sup>th</sup> – Treasury Secretary Mnuchin announced 90-day extension to April 15<sup>th</sup> deadline and stated:**

- “Just file your taxes [before the new deadline and] you will automatically not get charged interest and penalties”
- Implied a filing and payment extension

## **March 18<sup>th</sup> – IRS issued Notice 2020-17**

- Payment extension only; no filing extension
- 4/15/2020 payment date extended to 7/15/2020
- Extension includes 2019 income taxes and 2020 estimated income taxes due 4/15/2020
- Limited in the aggregate to \$1M for individuals and \$10M for corporations

## **March 20<sup>th</sup> – Secretary Mnuchin tweeted that the extension to July 15, 2020 would be a filing and payment extension**

- “At [President Trump’s] direction, we are moving Tax Day from April 15 to July 15. All taxpayers and businesses will have this additional time to file and make payments without interest or penalties”

# Tax Filing and Payment Extension

**March 20<sup>th</sup> – IRS issued Notice 2020-18, superseding Notice 2020-17**

**March 24<sup>th</sup> – IRS issued 24 Q&As relating to the Notice**

**March 27<sup>th</sup> – IRS expands extension to cover gift and GST tax filings on Form 709**

- Extension applies without any dollar limits
- No need to file an extension on Forms 4868 or 7004
- What does the Notice cover?
  
- Type of taxpayers
  - Applies to “persons” – individuals, trust, estates, C corps, S corps, and partnerships
  - Taxpayers do not need to be sick, quarantined, or otherwise impacted by COVID-19 to qualify for relief under the Notice (Q&A #2)
  - Tax-exempt organizations filing a Form 990-T due 4/15/2020 are covered under the Notice (Q&A #3)
  - Does not apply to tax-exempt organizations like hospitals and universities that file Form 990 information returns (Q&A #10)

# Tax Filing and Payment Extension

## ■ Timing and type of payments

- Applies to federal income tax payments (including self-employment) due 4/15/2020, including (i) 2019 income taxes and (ii) 2020 estimated income taxes
- Also applies to federal gift and GST payments due, or the requirement to file Form 709, on 4/15/2020
- If a taxpayer files an extension by 7/15/2020, then the extension to file is valid only for an additional 3 months to 10/15/2020 – not the usual 6 months. The taxpayer still has to pay by 7/15/2020 (Q&A #12)
- Applies to tax returns originally due in 2019 but were extended to 4/15/2020 (Q&A #4)
  - For example, a taxpayer with a FY ending in 2019 and that filed a valid extension to 4/15/2020 is covered under the Notice
- The Notice does not postpone second quarter estimated tax payments due 6/15/2020 (Q&A #16)
- If a taxpayer already filed his/her return and owes tax, interest and penalties will not accrue if payment in full is made by 7/15/2020 (Q&A #13)
- If a taxpayer already filed his/her return and scheduled a payment of taxes for 4/15/2020, then the payment will occur on the scheduled date unless it is canceled and rescheduled. The burden is on the taxpayer to change the date of the payment (Q&A #14)



# Tax Filing and Payment Extension

## ■ Type of tax

- Applies to income tax and gift/GST tax only
- Applies to §965 repatriation installment payments due 4/15/2020 and to base erosion and anti-abuse tax (BEAT) payments due 4/15/2020 (Q&As #8 & 9)
- Does not apply to payroll, excise, or estate taxes (Q&As #6 & 7)

## ■ Miscellaneous

- Tax-favored contributions to IRA accounts may be made until 7/15/2020 (Q&A #17)
- Contributions to an HSA or Archer MSA can be made at any time up to 7/15/2020 (Q&A #21)
- Other IRA/workplace-based retirement account rules in Q&As #18 – 20

# Tax Refunds and Cash Generation

- The extension helps taxpayers that owe tax, but it does not apply to refunds
- The sooner taxpayers file, the sooner they get their refund
- Refunds for the 2016 tax year also have to be filed by 4/15/2020 (Q&A #22)
- Corporate applications for quick refunds of overpayments of estimated tax (on Form 4466) also have to be filed by 4/15/2020 (Q&A #23)
  - Overpayment must be (i) at least 10% of the expected tax liability and (ii) at least \$500
  - The tax liability shown on the form is an estimate
  - Consider planning to reduce the estimate and increase current liquidity:
    - Automatic accounting method changes (accrued expenses, tangible property regs, depreciation; inventory and UNICAP, revenue recognition, *etc.*)
    - 2019/2020 capital loss carrybacks (3 years; Form 1139)
    - Section 163(j) election for 2019 ATI
    - Foreign tax elections (*e.g.*, BEAT, FTC, FDII, *etc.*)
- Consider SALT and indirect taxes (sales/use tax, property tax, excise tax)

# LEGISLATIVE ENACTMENTS

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# Phase I Legislation

- **March 6<sup>th</sup> – Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020**
- **\$8.3 billion aid package**
  - \$3.1 billion for vaccines and medical supplies
  - \$2.2 billion for CDC and state/local response efforts
  - \$1.2 billion for global health programs
  - \$1 billion in loan subsidies to small businesses, small agricultural cooperatives, and nonprofits
    - Designed to enable the SBA to provide \$7 billion in loans to these entities
  - Approx. \$800 million for R&D
- **March 13<sup>th</sup> – President declares a national emergency under the Stafford Act**
  - Makes funds available to states, among many other things
  - Allows IRS to extend the 4/15 filing and payment deadline to 7/15 (see Notice 2020-18 and our [article](#) on the IRS's Q&As)

# Phase II Legislation

- **March 18<sup>th</sup> – Families First Coronavirus Response Act**
- **Key provisions**
  - Paid sick leave and family leave, with refundable payroll tax credits to fund them (subject to a cap)
  - \$1B to states for an additional 13 weeks of unemployment insurance
  - Increased state Medicaid funding for medical services for the duration of the pandemic
  - Grants to states to process and pay unemployment claims
  - Funds for food and nutrition assistance
  - Free coronavirus testing
  - Liability protection for personal respiratory protective devices
  - Meal program waivers – USDA can waive certain nutritional content requirements for food that is provided in group settings
- **See dedicated IRS [webpage](#) for all COVID-19 related guidance from the IRS**
- **US Labor Department issued [Q&As](#), [Employer Fact Sheet](#), and [Employee Fact Sheet](#) (and later a [Workplace poster](#))**

# Paid Sick Leave and Family Leave

## ■ Paid Sick and Family Leave Provisions

- Allows employers to keep their workers on their payrolls and to ensure that workers are not forced to choose between their paychecks and the public health measures needed to combat the virus

## ■ Who is impacted by the law?

- It applies to certain public employers, and private employers with fewer than 500 employees. The law is designed to put small- and medium-size employers on the same footing as large employers who already provide similar paid leave to their employees
  - Definition of employee is broad, including FTEs, PTEs, EEs on leave, day laborers, temporary EEs who are jointly employed, but excluding independent contractors
  - Employees of joint employers under the Fair Labor Standards Act are combined for this purpose, and two or more entities are combined if they meet the “integrated employer test” under the Family and Medical Leave Act of 1993
- Labor Department can exempt from the child-care leave requirement employers with fewer than 50 employees if the law would jeopardize the viability of its business
  - IRS promised “simple and clear criteria” for this exemption
  - Labor Department will require documentation, but rules will be addressed in future regulations

# Corporate Tax Provisions

- **Employee retention credit for employers subject to closure due to COVID-19**
  - Refundable payroll tax credit for 50% of qualified wages paid from 3/13/2020 through 12/31/2020 (see [Form 7200](#) and [Instructions, IR-2020-62](#), and [FAQs](#))
  - Applies to employers whose (i) operations were fully or partially suspended due to a COVID-19 related shut-down order, or (ii) gross receipts declined by more than 50% when compared to the same quarter in the prior year
  - Applies regardless of the size of the business, or number of employees
  - Amount of qualified wages: if more than 100 FTEs – then applies only to wages of EEs not working; if 100 or fewer employees – then applies to all wages
  - The credit is capped at the first \$10K of wages per employee (including health benefits) (so max credit is \$5K per employee)
  - Credit not available if taxpayer obtains a covered loan under the PPP (*i.e.*, the forgivable loan program)
  - Employers may reduce their employment tax and income tax deposits for the amount of anticipated credits without penalty ([Notice 2020-22](#))
  - U.S. Senate Finance Committee released [FAQs](#) “for informational purposes and should not be relied on for legal advice”
- **Employer payroll tax deferral**
  - Employers can defer payment of the employer’s share (6.2%) of the SS payroll tax, and 50% of self-employment taxes
  - Covers taxes due from 3/27/2020 through 12/31/2020
  - Deferred amount must be repaid in equal installments by 12/31/2021 and 12/31/2022
  - Applies regardless of the size of the business, or number of employees, and the statute imposes no interest charge on the deferred amounts
  - Not available if the taxpayer has debt forgiven on a covered loan under the PPP
  - Tax deduction deferred
- **Net operating losses**
  - NOLs arising in tax years 2018, 2019, or 2020 can be carried back 5 years (amended returns need to be filed)
  - Permanent benefit if carried back to pre-TCJA years when the top corporate tax rate was 35%
  - Retroactively removes the 80% of TI limitation for 2018, 2019, and 2020, regardless of the year in which the NOL arose
  - In 2021, the 80% rule goes back into effect, including for 2018 through 2020
  - No change to rules for capital losses, which can be carried back 3 years and forward 5 years

# Corporate Tax Provisions (cont'd)

- **Modification of §461(l) excess business loss rules**

- EBL rules generally noncorporate taxpayers use of business losses against nonbusiness income, except for \$250K (\$500K for joint filers)
- Act repeals the EBL limitation for tax years 2018 through 2020
- Taxpayers can amend 2018 and 2019 (or file a superseding return for 2019 if already filed)

- **Refunds for AMT credits**

- Before CARES Act, AMT was repealed and AMT credits were refundable over several years, with the balance fully refundable in 2021
- Note: IRS takes the view that S corps cannot obtain a refund of carryover AMT credits from C corp years
- Now, C corps can obtain a refund of 50% in 2018 and 50% in 2019, unless the taxpayer elects to take it all in 2018
- Great for corps that forfeited AMT credits because they went out of business – can now file for a quick refund for 2018 or 2019

- **Temporary modification of §163(j) interest deduction limitation**

- Allows for greater interest deductions by increasing the 30%-of-ATI limitation to 50% (with adjustments) for 2019 and 2020 (although partnership remain subject to 30% limit for 2019)
- For partnerships, if any excess business interest is disallowed in 2019, and allocated to its partners who carried it forward, then they can now deduct 50% of the carryforward in 2020
- For 2020, businesses can elect to use their 2019 ATI in determining their limitation for the 2020 tax year

- **Technical amendment regarding qualified improvement property (QIP)**

- Retroactively allows QIP to be eligible for bonus depreciation under ADS (this fixes the so-called “retail glitch” from the TCJA)
- QIP is any improvement to the interior of a non-residential building after the building was placed in service, other than elevators, escalators, building enlargements or changes to the building’s internal structural framework
- It has a 15-year recovery period for general depreciation (and is eligible for bonus depreciation) and a 20-year period for ADS (which it not eligible for bonus depreciation)
- Now, taxpayers can take bonus depreciation under ADS (e.g., a real property business elects out of §163(j)), and can amend returns for prior years to claim increased deductions for QIP



# Individual Tax Provisions

- **Cash payments**

- \$1,200 for adult individuals (\$2,400 for married couples) and an additional \$500 per child
- Applies to US residents that are not dependents and have a valid SS #
- Phase-out begins at AGI of \$75,000 for single taxpayers and \$150,000 for married taxpayers
- Reduction is \$5 for each \$100 of AGI over the relevant threshold
- Checks expected to be mailed within 3 weeks, based on most recent tax returns

- **Penalty-free distributions in 2020**

- 10% early withdrawal penalty waived for 2020 distributions from an eligible retirement plan (*e.g.*, 401(k), IRA) for coronavirus-related purposes
- Applies if the taxpayer, or his/her spouse or dependent is diagnosed with COVID-19, or if the taxpayer experiences adverse financial consequences as a result of (i) being quarantined, (ii) being furloughed or laid off or having work hours reduced due to COVID-19, (iii) being unable to work due to lack of child care due to COVID-19, (iv) the closing or reduced hours of a business owned or operated by the taxpayer due to COVID-19, or (v) other factors as determined by the Treasury
- No tax due on the distribution if it is recontributed to an eligible retirement plan within 3 years without regard to the contribution limits at that time
- If taxable, the income tax relating to the distribution is spread over a 3-year period (beginning in the year of distribution)

- **Retirement plan loan limit increased**

- Loan limit is doubled during the 180-day period after passage of the Act on March 27, 2020 (to 9/23/2020)
- Limit increased from lesser of \$50K or ½ of vested benefit, to lesser of \$100K or full value of vested benefit
- Also grants taxpayers 1 additional year to repay existing loan due by 12/31/2020 if affected by COVID-19

- **RMD rules temporarily waived**

- 2020 RMDs are waived for IRAs and certain defined-contribution plans

# Individual Tax Provisions (cont'd)

- **Pension funding**

- Pension contributions due during 2020 are extended to 1/1/2021
- Amount deferred is increased by an interest factor
- Technical relaxation of rule for determining whether underfunded benefit restrictions apply

- **\$300 Above-the-line charitable deduction**

- Taxpayers taking the standard deduction in 2020 can deduct up to \$300 for cash contributions

- **Increased income limitation on charitable contributions**

- For individuals that itemize and make certain cash contributions in 2020, the charitable contribution limit is suspended (but does not apply to contributions to donor advised funds and private foundations)
- For corporations making certain cash contributions in 2020, the 10% limit generally is increased to 25%

- **Exclusion from income of employer payments of student loans**

- For 2020, employers may contribute up to \$5,250 toward an employee's student loan and the payment will not be taxable to the employee
- Cap applies to this new student-loan repayment benefit as well as other educational assistance

# OTHER BUSINESS & TAX ISSUES

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# Credit Facilities

- Businesses need to plan for a loss of revenue relating to the shut-down of the US and global economies
- Liquidity is key to staying in business, and borrowers need to prepare for future defaults and possibly insolvency
- Businesses need to ride out the storm until the loans and other benefits of the various laws take effect
- Issues to consider:
  - Many borrowers are drawing down on existing lines of credit while they are still in compliance with credit facility covenants (*e.g.*, financial ratios)
  - Rates are so low so the cost of such borrowing is relatively inexpensive
  - Material Adverse Effect clauses need to be reviewed carefully w/r/t the business, assets, operations and financial condition of the borrower and its subsidiaries (borrowers need to avoid an Event of Default)
    - Some look to forward-looking criteria which can be problematic; others are backward looking
    - Credit agreements usually do not have exclusions for general economic conditions, acts of God, terrorism, *etc.*
    - Review definitions of EBITDA to see what nonrecurring items may be excluded
    - Can the borrower provide audited financial statements in light of the stay-at-home orders?

# M&A Activity

- There has been a decrease in new M&A deals as business activity slows and valuations drop
- Valuations are adjusting to market conditions, but there are opportunistic buyers
- Buyers are facing due diligence challenges with the various state stay-in-place orders taking effect
  - Buyers taking a harder look at sections 108, 382, 163(j), *etc.*
- As a result, deals are taking longer to close
- LOI usually are nonbinding – renegotiations likely to occur
- Renewed interest in asset deals to avoid historic liabilities
- Parties to signed deals are scrutinizing their MAC/MAE clauses and Force Majeure (*i.e.*, impossibility) clauses
  - Allows a party to terminate a deal without liability if the clause is written broadly to cover COVID-19 pandemic
  - Is the clause narrow or broad? Is the list of events non-exclusive? Is there a catch-all provision?
  - Who can invoke the clause – one party or both?
  - Look to state law and choice of law provisions

# Employee Assistance Programs

- §139 allows individuals to exclude from income certain assistance payments they receive (usually from their employer)
- Does §139 apply?
- §139 applies to a federally declared disaster as defined in §165(i)(5)(A). In the COVID-19 pandemic, the President issued an **emergency** declaration under §501 of the Stafford Act rather than a declaration of a **disaster** under §401 of the Act
- IRS equated the two in Notices 2020-17 and 2020-18
- What does §139 cover?
  - reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster, or
  - reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster

# Employee Assistance Programs

- What is NOT covered:
  - Items reimbursed through insurance or otherwise
  - Income replacement payments such as sick pay, severance, lost wages, unemployment compensation or business income replacement
  - Nonessential, luxury, or decorative items and services
  
- Examples of what is covered:
  - Medical and funeral expenses of the family as a result of COVID-19
  - Child care for workers whose normal source of child care is unavailable due to COVID-19
  - Telecommuting costs such as printer, office supplies and increased utility costs as a result of COVID-19
  
- Documentation:
  - Taxpayers are not required to account to the employer for their expenses, provided the amounts can reasonably be expected to be commensurate with the expenses incurred
  - Employers should consider a written program to administer the program fairly and to define the scope of the program – who is covered, what is covered, amounts covered, when/how paid, claims submission process, *etc.*

# Employee Assistance Programs (cont'd)

## ■ Employee leave donation programs

- Employer establishes a program where employees can donate unused leave time to other employees in need or to the employer who donates money to a charity
- Enhances employee morale and camaraderie and reduces turnover
- Tax implications to the donor and donee depend on the structure of the arrangement and the reason for the need
- Donated leave is taxable to the employee who receives the leave
- Donor may receive a charitable contribution depending on the structure of the arrangement
- IRS has approved leave sharing for medical emergencies and major disasters, and for specific events, like severe hurricanes and storms (see, e.g., Notice 2016-69, Notice 2016-55, Notice 2006-59)

## ■ Employer loans

- *Bona fide* loans are not taxable to employee upon receipt of funds
- Need to consider §7872 if the loan has a below-market interest rate – may be a compensatory element to the arrangement if the interest rate is not above a threshold
  - Exception for aggregate loans of \$10,000 or less
  - Minimum interest rate for a 5-year term loan is about 1%, for example



# Other Issues

- **Employer-provided meals**

- Employer-provided meals likely taxable to employees working from home
- Not likely a *de minimis* fringe benefit in this scenario
- Employers can always gross-up employees for the cost of meals if they choose

- **Commuting and Parking**

- Workers already committed to buying parking or transit passes that will go unused
- Employers should consider advising employees of the right to suspend such programs if they expect to be unused
- From the employer's perspective, the TCJA disallows a deduction for employees' commuting expenditures, except in cases where necessary for the safety of the employee. §274(l)(1)
- It is not clear whether this exception is broad enough to cover expenses related to COVID-19

- **Health Insurance**

- Employees sign-up for a high deductible health plan (HDHP) because premiums are lower and they can make tax-favored contributions to a HSA
- If the HDHP provides free COVID-19 testing and treatment without imposing a deductible, it could jeopardize its status as a qualified plan
- March 11<sup>th</sup> – IRS issued Notice 2020-15 – health plans may provide testing and treatment for COVID-19 without regard to plan deductibles without jeopardizing their status as a HDHP

# Severance

## Severance payments and benefits

- Many employers are considering layoffs as a result of the economic shutdown relating to COVID-19
- Some common issues employers should consider:
  - Whether to make severance payments;
  - The obligation to provide continued health benefits under COBRA;
  - Stopping contribution-based programs such as FSAs and qualified fringe benefits;
  - Supplemental unemployment benefits; and
  - Liability releases
- Consider state and federal WARN (Worker Adjustment and Retraining Notification) Acts
- Employers need to consider the tax withholding and reporting aspects of these severance benefits

An American flag is shown waving against a light blue background. The flag is positioned on the left side of the frame, with its stars and stripes clearly visible. The text "STATE RESPONSE TO COVID-19" is overlaid in the center of the image.

# STATE RESPONSE TO COVID-19

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# State Tax Coverage



Sales Tax Updates due to Coronavirus



State Economic Development Grants



Revisiting State and Local Payroll and Employment



NJ Small Businesses and COVID-19



New Jersey WARN Act



Remote Tax Audits Due to COVID-19 Disruption

# State Taxes Affected by COVID-19

- Income Tax
- Corporation/Franchise Tax
- Sales/Use Tax
- Gross Receipts Type Taxes
- Payroll Tax
- Real/Personal Property Tax
- Transfer Tax
- *And potentially numerous others*

# STATE UPDATES

Disclaimer: Note that state rules are changing constantly due to federal and state legislative changes. Please check our website for the latest information.

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# California

## Income Tax

### ■ Revised Due Date

- Personal Income Tax – July 15, 2020
- C Corporation Income Tax – July 15, 2020

### ■ Payment Guidance

- The board is now extending the filing and payment deadline to July 15, 2020 for individuals and businesses (*i.e.*, S-corporations, LLCs, and partnerships) required to file 2019 tax returns, 2019 tax return payments, 2020 1st and 2nd quarter estimate payments, 2020 LLC taxes and fees, and 2020 nonwage withholding payments
- This applies to all calendar and fiscal year filers
- **Governor Newsom provided an abatement of penalties and interest for 60 days**

## Sales/Use Tax

### ■ Revised Due Date – July 31, 2020

- **Payment Guidance** – Although payment is normally due with filing, affected taxpayers may apply online for a filing extension as well as relief from penalties and interest
- **Additional Guidance** – Business taxpayers below the \$1 million threshold for their current California sales and use tax obligation, returns for the 1st Quarter 2020 will now be due on July 31, 2020. If the taxpayer liability is above \$1 million, a taxpayer may still request an extension unable to file and pay timely. The request will be evaluated on a case-by-case basis and the taxpayer will receive an approval or denial notification.



# District of Columbia

## Income Tax

### ■ Revised Due Date

- Personal Income Tax – July 15, 2020
- C Corporation Income Tax – July 15, 2020

### ■ Payment Guidance

- Taxpayers will have an additional 90 days to file and pay from the original deadline of April 15, 2020. The deadlines for individual and business taxpayers to file their Tax Year 2020 estimated tax payments remain unchanged.

## Sales/Use Tax

### ■ Revised Due Date – 20<sup>th</sup> of the Month (Original Due Date)

### ■ Payment Guidance

- Abatement of interest and waive penalties for failure to timely pay sales and use tax due for periods ending on February 29, 2020 and March 31, 2020, provided certain conditions are met

# Florida

## Income Tax

- **Revised Due Date**
  - Personal Income Tax – No individual income tax
  - C Corporation Income Tax – May 1, 2020 (Original Due Date)
- **Payment Guidance** – Contact [FloridaRevenue.com](https://www.floridarevenue.com) for tax filing concerns due to COVID-19

## Sales/Use Tax

- **Revised Due Date** – March 31, 2020 & April 30, 2020
- **Payment Guidance** – For taxpayers who collected tax during the February reporting period, and were unable to meet the March 20, 2020 due date, the Department will waive the imposition of penalty and accrual of interest, if the taxes are reported and remitted by March 31, 2020. For taxes collected in March and due on or before April 20, 2020, taxpayers who have been adversely affected by COVID-19 have an extended due date of April 30, 2020.
- **Reminder** – The state sales tax rate on the total rent charged for renting, leasing, letting, or granting a license to use commercial real property for rental periods beginning on or after January 1, 2020, is decreased from 5.7% to 5.5%

# Illinois

## Income Tax

- **Revised Due Date**
  - Personal Income Tax – July 15, 2020
  - C Corporation Income Tax – July 15, 2020
- **Payment Guidance**
  - The 2019 income tax filing and payment deadlines for all taxpayers who file and pay their Illinois income taxes on April 15, 2020, are automatically extended until July 15, 2020. Penalties and interest will begin to accrue on any remaining unpaid balances as of July 16, 2020. You will automatically avoid interest and penalties on the taxes paid by July 15, 2020. This does NOT impact the first and second installments of estimated payments for 2020 taxes that are due April 15 and June 15.

## Sales/Use Tax

- **Revised Due Date** – Due the 20<sup>th</sup> of the month following the reporting period.
- **Payment Guidance**
  - For all registered Illinois Retailers operating eating and drinking establishments that had a total sales tax liability in calendar year 2019 of less than \$75,000 will not be charged penalties or interest on late payments of sales tax that are due for the February, March and April 2020 reporting periods. The taxes due during this period will be paid in four monthly installments as outlined in the Bulletin beginning on May 20th, June 22nd, July 20th, and August 20th. Taxpayers need not request relief, but they must file the required returns. However, there is a short-term relief of penalties
  - For most qualified taxpayers, IDOR will automatically waive penalties and interest. If a taxpayer receives a notice from IDOR that imposes penalties and interest that the taxpayer believes should have qualified for a waiver, then the taxpayer can respond to the notice indicating that he/she should have qualified for relief. IDOR will review the response and grant relief, if appropriate

# Maryland

## Income Tax

- **Revised Due Date**
  - Personal Income Tax – July 15, 2020
  - C Corporation Income Tax – July 15, 2020
- **Payment Guidance** – No penalties or interest for late payments will be imposed if 2019 tax payments are made by July 15, 2020

## Sales/Use Tax

- **Revised Due Date** – June 1, 2020
- **Payment Guidance** – Businesses that file and pay by the extended due date will receive a waiver of penalties and interest.
- **News alert** - Comptroller Franchot issued a release announcing that tax obligations that were due March 20, 2020, which was before the Comptroller announced an extension of the payment due date, may request a refund of the tax paid in March emailing the Comptroller's office at [taxpayerrelief@marylandtaxes.gov](mailto:taxpayerrelief@marylandtaxes.gov) or calling the agency at 410-260-4020. The payments will be due by June 1, 2020

# Massachusetts

## Income Tax

- **Revised Due Date**
  - Personal Income Tax – July 15, 2020
  - C Corporation Income Tax – April 15, 2020 (Original Due Date)
- **Payment Guidance**
  - Individual income tax filing and payment deadline from April 15 to July 15 due to the ongoing COVID-19 outbreak. This income tax relief is automatic and taxpayers do not need to file any additional forms to qualify.

## Sales/Use Tax

- **Revised Due Date**
  - Sales Tax – For those vendors whose cumulative liability in the 12-month period ending February 29, 2020 for returns required to be filed and for which the amount is less than \$150,000, the sales and use tax filing and payment due during the period beginning March 20, 2020 and ending May 31, 2020, inclusive, is suspended. All such returns and payments shall be due on June 20, 2020
  - This suspension does not apply to marijuana retailers, marketplace facilitators or vendors selling motor vehicles. Such vendors shall continue to file returns and make payments timely
- **Payment Guidance**
  - Payment due with the filing of sales tax return.
  - Department of Revenue (“Department”) will waive any **late-file or late-pay penalties** for returns and payments due during the period March 20, 2020 through May 31, 2020, for the following taxpayers:
    - Vendors with meals tax return and payment obligations that do not otherwise qualify for relief announced in Emergency Regulation 830 CMR 62C.16.2(7)<sup>1</sup> promulgated by the Department on March 19, 2020; and
    - Operators and intermediaries with room occupancy excise return and payment obligations pursuant to G.L. c. 62C, § 16 that do not otherwise qualify for relief announced in Emergency Regulation 830 CMR 64G.1.1(11)<sup>2</sup> promulgated by the Department on March 19, 2020.
    - This is a waiver of penalties only; statutory interest will continue to accrue. To be eligible for a penalty waiver, vendors, operators and intermediaries must file their returns and remit payments **on or before June 20, 2020**. The penalty waiver offered is limited to the taxpayers and tax periods outlined above.
  - **Waiver for sales tax other than sales tax on meals:** Applications for waiver of penalties for sales tax other than sales tax on meals, or other circumstances not covered (above), will be handled on a case-by-case basis based on reasonable cause. (See Administrative Procedure 633: Guidelines for the Waiver and Abatement of Penalties.)

# New Jersey

## Income Tax

- **Revised Due Date**
  - Personal Income Tax – July 15, 2020
  - Corporate Income Tax – July 15, 2020
- **Payment Guidance**
  - Additional guidance is expected from the state.
    - Taxpayers can check for updates at <https://cv.business.nj.gov>

## Sales/Use Tax

- **Revised Due Date** – 20<sup>th</sup> of the Month (Original Due Date)
- **Payment Guidance** – NJ DOT has not issued any guidance.
  - Taxpayers can check for updates at <https://cv.business.nj.gov>

# New York

## Income Tax

- **Revised Due Date**
  - Personal Income Tax – July 15, 2020
  - Corporate Income Tax – July 15, 2020
- **Payment Guidance**
  - 2019 returns due on April 15, 2020, and related payments of tax or installments of tax, including installments of estimated taxes for the 2020 tax year, will not be subject to any failure to file, failure to pay, late payment, or underpayment penalties, or interest if filed and paid by July 15, 2020.
  - If a taxpayer is unable to pay their tax bills in full, they may qualify for an installment payment agreement (IPA). Under the agreement, they will make monthly payments toward their unpaid tax balance
  - The fastest and easiest way to request an IPA is through the taxpayer's online account. Through their account, the taxpayer can request an IPA for a balance of \$20,000 or less, and with 36 or fewer scheduled monthly payments

## Sales/Use Tax

- **Revised Due Date** – Sales tax payments and returns were due March 20, 2020; however, late filing and late payment penalty and interest may be waived for quarterly and annual filers who were unable to file or pay on time due to COVID-19, such as:
  - taxpayers who were unable to meet tax filing, payment, or other deadlines because key employees were treated or suspected to have COVID-19;
  - taxpayers whose records necessary to meet tax filing, payment, or other deadlines are not available due to the outbreak;
  - taxpayers who have difficulty in meeting tax filing, payment, or other deadlines because of closure orders or similar business disruptions directly resulting from the outbreak; and
  - taxpayers whose tax practitioners were unable to complete work to meet tax filing, payment, and other deadlines on behalf of their clients due to the outbreak.
- **Payment Guidance** – Late filing and payment penalties will be abated and interest on quarterly sales and use tax filings and remittances with a due date of March 20, 2020 Returns must be filed and the amount due must be paid within 60 days of the due date for this relief to apply.

# New York City

## Business and Excise Taxes

### ■ Revised Due Date

- No extension as of April 2, 2020

### ■ Payment Guidance

- The New York City Department of Finance Commissioner is exercising his authority to allow for a waiver of penalties for business and excise taxes due between March 16, 2020 and April 25, 2020
- The Commissioner is providing for 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
- Taxpayers may request to have the penalties waived on a late-filed extension or return, or in a separate request
- If taxpayers file an extension or return or make a tax payment in accordance with these rules, taxpayers will not be subject to any late filing, late payment, or underpayment penalties
- For purposes of the above filings, while late filing and late payment penalties are waived, interest, where applicable, at the appropriate underpayment rate, must be paid on all tax payments received after the original due date calculated from the original due date to the date of payment



# Pennsylvania

## Income Tax

- **Revised Due Date**
  - Personal Income Tax – July 15, 2020
  - C Corporation Income Tax – May 15, 2020 (Original Due Date)
- **Payment Guidance**
  - The Department of Revenue will also waive penalties and interest on 2019 personal income tax payments through the new deadline of July 15, 2020. This extension applies to both final 2019 tax returns and payments, and estimated payments for the first and second quarters of 2020
  - All taxpayers who received more than \$33 in total gross taxable income in calendar year 2019 must file a Pennsylvania personal income tax return (PA-40) by midnight on Wednesday, July 15, 2020.
- **Philadelphia**
  - The filing and payment due date has been extended until July 15, 2020 for the Business Income and Receipts Tax and the Net Profits Tax. This provision includes estimated payments.

## Sales/Use Tax

- **Revised Due Date** – 20<sup>th</sup> of the Month (Original Due Date)
- **Payment Guidance** – The Department of Revenue is waiving penalties for businesses that are required to make Accelerated Sales Tax (AST) prepayments by the deadline of Friday, March 20. For April sales tax payments, the department is waiving the AST prepayment requirements and asking businesses to simply remit the sales tax that they have collected in March

# Payroll/Employment Taxes

- Remote employment arrangements as a result of COVID-19
- Employees working from home or other arrangements
  - New York “Convenience of Employer” rule
  - Wages considered New York sourced unless the work was performed outside New York for “the necessity of the employer”
  - Voluntary/encouraged vs. mandatory work from home?
  - Other states rules may differ
- Unemployment insurance
- Monitor guidance from states
- Review employment/withholding policies

# Other Issues

- Audit Procedures
  - Communications with auditors
  - Conduct virtual meetings
  - Expedite auditor review
  - Statutory waivers
  - Negotiations
  - Payments
  - Post audit review to limit over/under payments
- Continue to respond to notices timely
- Responsible persons for taxes collected (**trust and other taxes**)
- Potential nexus due to remote employees
- Bankruptcy issues

# Potential Opportunities

- **Income tax**
  - Consider filing positions for reduced quarterly estimated tax payments
  - Statutory credit review
  - Unitary/Combined group analysis and consideration
  - Apportionment planning
  - Refund positions
- **Indirect tax**
  - Extensions of time to file sales/use, payroll, excise, and other taxes
  - Sales/use tax refund opportunities
  - Revaluation of real property and personal property
- **State programs**
  - Voluntary Disclosure Programs
  - Amnesty
  - Installment agreements
- **Potential new state and local incentive programs or credits**

# QUESTIONS?

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# Contact Your Presenters



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