

UPDATE: COVID-19-Related Tax Credits and Tax Filing and Payment Relief

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Congress, the IRS, and state tax agencies so far have responded to the COVID-19 emergency with a variety of significant legislative and administrative tax relief measures. This briefing will summarize the most important federal tax developments, as well as tax developments in certain key states, that had occurred as of Monday, March 23, 2020. We will update this briefing as further tax developments occur.

FEDERAL TAX CREDITS FOR REQUIRED SICK LEAVE AND FAMILY LEAVE PAY

As reported in a briefing from our employment law group [here](#), on March 18, 2020, the U.S. Senate passed the Families First Coronavirus Response Act (H.R. 6201, as revised by the U.S. House of Representatives on March 16, 2020) and the President signed it into law the same day. The Act will be effective on a date to be selected by the Secretary of the Treasury on or before April 2, 2020, and will be in effect until December 31, 2020.

The Act mandates, subject to certain exceptions, that employers with fewer than 500 employees provide qualifying employees with up to 10 days of paid sick leave and up to 10 weeks of paid family leave, under statutorily defined circumstances and in statutorily defined amounts.

The Act further provides employers with payroll tax credits that will fully subsidize them for their payments of the sick leave and family leave required to be paid under the Act, as well as for their related health insurance costs.

Sick Leave Credits: The Act provides employers with credits against FICA tax liability equal to 100% of the employer's "qualified sick leave wages," which are the sick leave wages required to be paid under the Act (i.e., as provided for in the Emergency Paid Sick Leave Act set forth in Division D of the Act). As limited in amount by, and subject to the other limitations in, Division D, these credits consist of:

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- Credits for the sick leave wages required to be paid under the Act which are subject to the statutory ceiling of \$511 per day for up to 10 days paid to any employee who is unable to work (or telework) for the day or any portion of the day due to a need for leave because (1) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or (3) the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- Credits for the sick leave wages required to be paid under the Act which are subject to the statutory ceiling of \$200 per day for up to 10 days (minus any days paid at the higher rate set forth above) paid to any employee who is unable to work (or telework) for the day or any portion of the day due to a need for leave because (1) the employee is caring for an individual who is subject to a quarantine or isolation order or has been advised to self-quarantine as described above; (2) the employee is caring for his or her son or daughter if the son's or daughter's school or place of care has closed, or the child care provider of his or her son or daughter is unavailable, due to COVID-19 precautions; or (3) the employee is experiencing any other substantially similar condition as may be specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Family Leave Credits: The Act provides employers with credits against FICA tax equal to 100% of the employer's "qualified family leave wages," which are the family leave wages required to be paid under the Act (i.e., as provided for in the Emergency Family and Medical Leave Expansion Act set forth in Division E of the Act). As limited in amount by, and subject to the other limitations in, Division E, these credits consist of:

- Credits for the family leave wages required to be paid under the Act, all of which are subject to the statutory ceiling of \$200 per day for up to 10 weeks paid to any employee who is unable to work (or telework) for the day or any portion of the day due to a need for leave to care for his or her son or daughter under 18 years of age if the son or daughter's elementary or secondary school or place of care has been closed, or the child care provider of the son or daughter is unavailable, due to an emergency with respect to COVID-19 declared by a Federal, State, or local authority.

Additional Credits for Certain Employer Health Plan Expenses: The Act provides that the credits described above shall be increased by the amount of the employer's qualified health plan expenses that are properly allocable to the sick leave and family leave wages for which the credits are allowed, but only to the extent that these expenses are excluded from employees' gross income.

Refundable Nature of Credits: The credits provided for in the Act are available for the calendar quarter for which the required payments of sick leave and family leave are made, and are refundable to the employer to the extent they exceed the employer's tax liability for such quarter.

Additional Payroll Tax Relief: The Act provides that the required sick leave and family leave wages are themselves not considered to be "wages" for purposes of the employer's share of the Social Security portion of the FICA tax (i.e., the 6.2% employer's tax). The wages are, however, considered to be "wages" for purposes of the employer's share of the Medicare portion of the FICA tax (i.e., the 1.45% employer's tax), as well as

for purposes of the employee's share of these taxes. The Act provides employers with a credit for all Medicare taxes paid with respect to required sick leave and family leave wages, subject to the Act's general provisions denying double benefits for the credits provided.

Credits for Amounts Paid to Employees Covered by Railroad Retirement System: The Act provides similar credits and other relief provisions for required sick leave and family leave compensation paid to employees who are covered under the Railroad Retirement Act system rather than under the FICA tax system.

Corresponding Credits against Income Tax for Self-Employed Individuals: The Act provides for similar credits against income tax to self-employed individuals who are unable to perform services in their trade of business for a reason that would entitle the individual to receive paid sick leave and/or family leave during the taxable year if the individual were an employee of an employer (other than of himself or herself), subject to certain special statutory rules for such individuals.

90-DAY EXTENSION OF APRIL 15 FEDERAL TAX FILING AND PAYMENT DEADLINES

On March 20, 2020, the IRS announced that the April 15 deadline for **filing** 2019 income tax returns is extended to July 15 and expanded its earlier announced extension of the April 15 deadline for tax **payments**. The IRS announcement is set forth in [IRS Notice 2020-18](#).

As set forth in the IRS Notice:

- Any "person" with a Federal income tax payment or Federal income tax return due on April 15, 2020, including any individual, trust, estate, partnership, association, company, or corporation, may postpone such payment or filing obligation to July 15, 2020, without filing an extension and without incurring any penalty or interest liability for the period prior to July 15.
- The relief provided for in the Notice applies only to 2019 Federal income tax payments (including payments of tax on self-employment income), 2019 Federal income tax returns, and 2020 Federal estimated income tax payments (including payments of estimated tax on self-employment income) due on April 15, 2020.
- The relief provided for in the Notice does **not** include an extension for the payment or deposit of any other type of Federal tax or for the filing of any Federal information return.

TAX FILING AND PAYMENT RELIEF IN KEY STATES

A number of State and local taxing agencies have announced relief provisions in response to the COVID-19 emergency, including the taxing agencies in Minnesota, California, New York (including New York City), Washington, Colorado, Montana, Iowa, and Utah.

Minnesota

The Minnesota Department of Revenue has announced several important extensions of tax filing and payment obligations:

- A 90-day extension from April 15, 2020, to July 15, 2020 to file 2019 individual income tax returns and pay 2019 individual income taxes. Unlike the extension announced by the IRS, this relief provision does not extend to payments of 2020 estimated taxes so, as of now, the deadlines for payments of estimated taxes for the first and second quarters of 2020 remain April 15 and June 15, respectively. The Department's announcement notes that while no formal extensions were announced for corporate, partnership, fiduciary, and S corporation income tax returns that may be due on April 15, these entities' returns are automatically extended under Minnesota law if federal returns are extended.
- A 30-day Sales and Use Tax grace period for businesses identified in Executive Order 20-04, i.e., consisting of the places of public accommodation that were closed by this Executive Order to ingress, egress, use, and occupancy by members of the public from March 15 to 27, 2020. Identified businesses with a monthly Sales and Use Tax payment due March 20, 2020, will have until April 20 to make that payment. These customers should still file their return by March 20. Identified businesses can request additional relief from penalty and interest for reasonable cause after April 20.
- A 60-day filing extension, on request, for MinnesotaCare returns that were due on March 16, 2020, if needed due to the COVID-19 emergency. This extension applies to Provider Tax, Hospital Tax, Surgical Center Tax, Wholesale Drug Distributor Tax, and Legend Drug Use Tax. If requested by April 15, an extension will be granted until May 15. In addition, taxpayers can request relief from penalty and interest for reasonable cause for late payments that were due March 16.

California

The following relief measures have been announced thus far in California:

- On March 18, 2020, the Franchise Tax Board ("FTB"), which administers the personal income tax and the corporation tax, announced updated special tax relief due to the COVID-19 emergency. FTB is postponing until July 15 the filing and payment deadlines for all individuals and business entities for 2019 tax returns, 2019 tax return payments, 2020 1st and 2nd quarter estimated tax payments, 2020 LLC taxes and fees, and 2020 non-wage withholding payments. Taxpayers do not need to make a special request for this relief, unlike in some states or with respect to other California state taxes. FTB has announced further (1) that the same extensions apply to estate and trust income tax returns due on April 15 and exempt organization Forms 100 and 199 due on April 15 and May 15, respectively, and (2) that for fiscal year filing and payment dates that fall between March 15 and July 15, the deadlines are extended to July 15.
- Employers experiencing a hardship as a result of COVID-19 may request an up to 60-day extension of time from the California Employment Development Department to file their state payroll reports and/or deposit state payroll taxes without penalty or interest. A written request for extension must be received within 60 days from the original delinquent date of the payment or return.
- Pursuant to Governor Newsom's Executive Order issued in response to the COVID-19 State of Emergency on March 12, 2020, the California Department of Tax and Fee Administration ("CDTFA"), which administers California's state, local, and district sales and use tax as well as 30 other tax and fee programs, has announced that it has the authority through May 11, 2020, to assist individuals and businesses impacted by the COVID-19 emergency. This assistance includes granting extensions

for filing returns and making payments, relief from interest and penalties, and filing a claim for refund. Taxpayers may request assistance by contacting the CDTFA, as explained in more detail [here](#).

New York

As of Monday, March 23, 2020, the New York State Department of Taxation and Finance had not extended the deadline to file income tax returns or to pay income tax. The Department has announced that penalty and interest may be waived on request for quarterly and annual filers who were unable to file or pay their sales tax by March 20, 2020, due to COVID-19.

In New York City, the New York City Department of Finance (“DOF”) has announced the availability of a waiver of penalties for DOF-administered business and excise taxes due between March 16, 2020, and April 25, 2020. Taxpayers may request to have the penalties waived on a late-filed extension or return, or in a separate request. Further details can be found [here](#). A similar announcement has been made regarding New York City Real Property Transfer Tax returns due between March 15 and April 25 [here](#).

Washington

Although Washington does not have a state income tax, the Washington Department of Revenue has announced broad relief measures available to businesses impacted by the COVID-19 emergency with respect to business and occupation tax, real estate excise tax assessments, and other taxes administered by the Department including tax deferrals for biotechnology and medical device manufacturing. These measures include extensions for filing and paying tax returns (even if the request is after the due date) for returns that are due and not already paid during the state of emergency (February 29, 2020, through the end of the state of emergency, yet to be determined). The extensions will be provided for 60 days in the case of monthly returns (this applies to the February 2020 and March 2020 returns at this time) and 30 days in the case of the Q1/2020 return and the 2019 Annual return.

In addition, the Department has announced that it will delay scheduling audits of businesses that have gross income of less than \$5 million in the past year, or are a type of business specifically identified in Governor Inslee’s two-week statewide closure announced on March 16, 2020, for 60 days and then reevaluate. For audits in progress, the Department has stated that it will provide deadline extensions of up to 60 days if preferred over continuing the audit.

Further details regarding these and other relief measures can be found [here](#).

Colorado

Governor Polis has issued an Executive Order extending the April 15 state income tax **payment** deadline applicable to individuals and businesses from April 15 to July 15, 2020, but apparently not the deadline for **filing** income tax returns. The Order also extends to July 15 payment deadlines for first and second quarter estimated income tax

payments. Finally, the Order requires the Department of Revenue to coordinate with local governments that choose to extend tax payment deadlines for property, sales, and, use taxes and take whatever action they need to let them waive penalties and fees during the COVID-19 emergency.

Montana

The Montana Department of Revenue has announced extensions of the payment and filing deadlines on 2019 state individual income tax returns from April 15, 2020, to July 15, 2020, and the extension of 2020 first and second quarter estimated tax payments to July 15, 2020. In addition, the Montana Department of Revenue indicated in its announcement of the extension that it “will be lenient in waiving penalties and interest associated with late tax payments and...will work with taxpayers on an individual basis.”

Iowa

On March 19, 2020, the Iowa Department of Revenue announced two forms of relief:

- An extension of the filing and payment deadline for income, franchise, and moneys and credits taxes with a due date on or after March 19, 2020, and before July 31, 2020, to a new deadline of July 31, 2020.
- An extension of the income tax withholding deposit due date for the period ending March 15, 2020, from March 25, 2020, to April 10, 2020.

Utah

The Utah State Tax Commission has announced that, after consultation with the Governor, the President of the Senate and the Speaker of the House, it intends to follow the federal government’s tax filing and payment actions in response to the COVID-19 outbreak. It is in the process of reviewing the official instructions from the IRS to make certain that its announcement aligns properly with the federal requirements.

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If you have questions regarding any of these tax-related developments, or regarding developments in any other states or local taxing jurisdictions, please contact either of us. We will provide regular updates to this briefing as developments warrant.