

## What Tax Actions Should Companies Be Taking Now?

APRIL 13, 2020

Along with all of the other COVID-19 legal developments, there are a few tax provisions that may have been overshadowed, but that can provide benefits to companies right now. Accordingly, below is a list of tax actions that almost every company should be taking (if they have not done so already):

### 1. Don't Pay Income Taxes until July 15, 2020

- a. There is no need to make federal income tax payments otherwise due between April 1, 2020 and July 1, 2020 until July 15, 2020. This applies to both **2019 income taxes for taxpayers whose tax returns were not already filed that would otherwise have been due before July 15 and to 2020 first and second quarter estimated taxes.**
- b. There is no need to file for extension or make any other filing to get this benefit. Extensions filed by calendar-year corporations on or prior to their March 15 tax return due date are unaffected.
- c. Many states have followed the federal deadlines, but this should be reviewed on a state-by-state basis.

### 2. Don't Pay Employer Portion of Social Security Taxes for Remainder of 2020

- a. Except as noted below, employers may defer the employer portion of social security taxes (ordinarily payable at a rate of 6.2%) for the deposits due from March 27, 2020 to December 31, 2020. That is, you can **stop paying this now.**
- b. 50% of the deferred payroll taxes will be due December 31, 2021 and 50% will be due December 31, 2022. The amounts due on those dates will be reduced by any available remaining payroll tax credit claimed (discussed below).
- c. There is no application or other filing to get this benefit.
- d. The only taxpayers that are not eligible are ones that receive payroll protection plan loans and have all or part forgiven. Once the taxpayer receives a decision from its lender that its loan is forgiven, the taxpayer is no longer eligible to defer deposit and payment of the taxpayer's share of social security tax due after that date. However, the amount deferred through the date of forgiveness will not be due until December 31, 2021 and December 31, 2022 as per the above.

### 3. Figure Out Eligibility for Payroll Tax Credits (Retention Credits)

- a. Eligible employers can obtain a refundable tax credit applied towards the employer portion of social security taxes. The credit is for 50% of the first \$10K of qualifying wages, so a maximum of \$5K per employee.
  - i. An eligible employer is one with (i) a full or partial shutdown due to governmental order or (ii) a 50% decline in gross receipts compared with the same quarter in 2019.
    - 1. If an eligible employer meets the gross receipts test in one quarter, it can continue qualifying for the credit until a quarter in which gross receipts are greater than 80% of the corresponding quarter in 2019.
    - 2. The IRS is interpreting a partial shutdown broadly to cover partial suspension of operations due to orders from a governmental authority limiting commerce, travel, or group meetings such that the business can still continue to operate but not at normal capacity.
  - ii. Qualified wages depend on number of full-time equivalent employees in 2019:
    - 1. If more than 100, only wages paid to employees not providing services count.
      - a. As an example, if an hourly employee is working 2 days a week and getting paid for 5 days, then 3 days of wages should be qualified wages.
      - b. It is unclear whether credit is available for a salaried employee who provides reduced or limited services (e.g., answering emails for an hour a day).
    - 2. If 100 or fewer employees, all wages count.
  - iii. An aggregation rules applies to treat all entities under common ownership as one employer, including for purposes of determining who is an eligible employer and for the 100 employee threshold.
- b. Eligible employers **can get the benefit now** (before claiming it on a quarterly payroll tax return on Form 941) one of two ways:
  - i. Can reduce deposits, including withheld Federal income taxes and FICA taxes not already being deferred (i.e., Medicare and employee social security payroll taxes); or
  - ii. Can file a Form 7200 (*Advance Payment of Employer Credits Due to COVID-19*).
- c. Credit is not available to eligible employers once they receive a payroll protection plan loan. This includes if any affiliate covered by the aggregation rule applies for a payroll protection loan.
- d. Credits available for employers with less than 500 employees for the new required paid sick-pay and FMLA are taken first.

### 4. Review 2018 Income Tax Returns for Refund Opportunities

- a. Companies should review 2018 income tax returns to see if any income tax refunds are available.
- b. If companies spent money on improving interiors of existing buildings, this can now be expensed instead of amortized over 39 years. This may reduce 2018 tax liability and result in refunds of tax paid in 2018.
- c. Taxpayers that had net operating losses (NOLs) in 2018 can now carry those back 5 years (i.e., to 2013 through 2017) to obtain refunds of tax paid.
- d. Ordinarily, it would take the IRS a few weeks to process refunds, so they would be available fairly quickly, but we have not yet been able to determine how this is being affected by Covid-19.

### 5. Consider Expediting 2019 Income Tax Filings if Refunds Are Expected

Lastly, any taxpayer who believes it overpaid estimated taxes in 2019 or would have an NOL that can be carried back to prior years to obtain a tax refund should see what can be done to expedite 2019 income tax filings and obtain the resulting tax refunds.

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