

TAX AND WEALTH ADVISOR ALERT: IRS SAYS EXPENSES PAID WITH FORGIVEN PPP LOANS NOT DEDUCTIBLE

Yesterday, the IRS released guidance in Notice 2020-32 stating that expenses related to forgivable loans through the Paycheck Protection Program (PPP) will not be tax-deductible.

Under the PPP, a program created by the CARES Act to provide coronavirus relief, small businesses can receive forgivable loans of up to \$10 million as long as the loan goes to essential expenses, such as maintaining payroll, rent, utilities, and mortgage interest.

While it was clear from the CARES Act that PPP loan forgiveness is not taxable income, the CARES Act said nothing about deducting the expenses paid with such loan proceeds. However, the IRS stated in its guidance yesterday that expenses that result in forgiveness of a PPP loan are not tax-deductible—thereby preventing a double tax benefit. This means that small businesses cannot claim tax deductions for expenses that are normally *fully* deductible, such as wages, rent, utilities, etc., if they are paid with PPP funds that are forgiven.

The IRS cited Section 256 of the tax code in its guidance, which states that deductions cannot be taken if they are tied to a certain class of tax-exempt income. If desired, Congress could override the IRS's stance by passing a law that explicitly allows the deductions. Additionally, it is possible a taxpayer may decide to challenge this position in court.

Nevertheless, given the current IRS guidance, small businesses that manage to get their PPP loans forgiven may find themselves losing valuable tax breaks and should plan accordingly.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and will continue to monitor federal and state law tax changes. For questions or further information relating to taxation under the CARES Act, please contact attorney [Britany E. Morrison](#).

UPDATE: On May 5th, 2020, Senator John Cornyn (R-Tex.) recently introduced the bipartisan Small Business Expense Protection Act (S. 3612), which moves to essentially nullify Notice 2020-32. Senate Bill 3612 provides that business expenses otherwise deductible under Code Section 162 would still be deductible even if they were funded by forgiven PPP loan proceeds. Currently, the bill has picked up 23 sponsors. Neither Senator Ron Johnson nor Senator Tammy Baldwin have yet to express support. Nevertheless, this bill is strongly supported by the American Institute of Certified Public Accountants (AICPA). It was read twice in the Senate and referred to the Senate Committee on Finance but has been sitting there since. On May 12th, 2020, the House introduced an identical bill (HB6821) and referred it to the House

Committee on Ways and Means. It has been sitting with the House Committee on Ways and Means since referral. The attorneys at O’Neil, Cannon, Hollman, DeJong and Laing will continue to monitor the status of both bills and provide information on any federal and state law changes.

TAX AND WEALTH ADVISOR ALERT: WISCONSIN WILL NOT TAX FORGIVEN PAYCHECK PROTECTION PROGRAM LOANS

Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the federal government is providing much needed relief to small businesses in the form of loans that can be forgiven under the Paycheck Protection Program (PPP). A PPP loan can be forgiven if the loan is used for specific costs such as payroll costs, interest payments on loans secured by a mortgage, rent, and utilities, as discussed in more detail [here](#). The federal government will not tax the amount of the loan that is forgiven, and the forgiven amount will not count as taxable income to small businesses; however, this might not be the case in some states. Luckily, Wisconsin small businesses will not have the unexpected tax burden of owing state tax on forgiven PPP loans thanks to A.B. 1038, signed by Governor Tony Evers on April 15, 2020.

Under federal law (see [Internal Revenue Code Section 108](#)), if a debt is forgiven, taxpayers must include the forgiven amount in their taxable income and pay taxes on that income unless a certain exception applies. Most states conform with this federal tax code provision and incorporate this code section into their own state tax codes. The CARES Act, however, changes federal tax law and specifically excludes the amount of loan forgiveness under the PPP from this code section, and therefore, the amount of loan forgiveness does not count as taxable income. Since most states follow the federal tax treatment of loan forgiveness, one would expect all states to incorporate this exception as well. However, state conformity to the federal tax code is not automatic in some states, including Wisconsin.

States conform to the federal tax code in one of two ways—either fixed date or static conformity or moving date conformity. In a moving date conformity state, or what is sometimes referred to as a “rolling” conformity state, changes in federal tax law automatically apply to the state tax code as they occur. If the state does not want to conform to a new federal tax law, the state must pass specific legislation doing so. Illinois, Michigan,

Iowa, and Missouri are just a few examples of moving date conformity states. In these states and other moving date conformity states, there will be no issue with the state taxation of loan forgiveness under the PPP—the state will automatically conform to the CARES Act exception and they will not tax the forgiveness of federal loans under the PPP unless the state otherwise adopts a law to do so.

With fixed date or static conformity states, like Wisconsin, Minnesota, Indiana, Massachusetts, and California, a state conforms to the federal tax code as it existed on a certain date. The state does not automatically incorporate changes to federal tax law that occur after that date. For instance, if a state's conformity date is January 1, 2017, the state's tax code conforms to the federal tax code (usually by including large references to the Internal Revenue Code) as of January 1, 2017, and any federal code changes after January 1, 2017 are not included in the state tax code unless and until the state changes its conformity date or makes express provisions conforming to certain federal tax law changes. This means that unless a static state conforms to the most recent version of the Internal Revenue Code, which includes the CARES Act exception, or makes an express provision for the exclusion, small businesses in those states will owe state taxes on forgiven PPP loans.

Typically, each year, lawmakers in static states vote to update their conformity date, but often times this simply doesn't occur. Many static states are usually a year behind—for example, a state will be using the current 2020 legislative session to conform to the Internal Revenue Code as it existed at the end of the 2019 tax year. Unfortunately, there are a few states that are infamous for not updating their conformity dates and Wisconsin is one of them. Wisconsin uses a 2017 conformity date which is not great, but still ahead of California whose conformity date is 2015 and Massachusetts where the individual (but not corporate) conformity date is 2005! While it is not unusual for a state to be behind on its conformity date, this year it is important for PPP loan forgiveness and many other provisions related to the CARES Act.

Although the Wisconsin legislature adopted omnibus legislation on April 15, 2020 to address the coronavirus pandemic, the bill does not update Wisconsin's conformity date. Rather, the bill includes express language that brings the state's tax code into conformity with several federal tax law changes under the CARES Act. The good news for Wisconsin small businesses seeking PPP loans is that the bill expressly conforms to the CARES Act exception that permits loan forgiveness on a tax-free basis under the PPP from February 15, 2020 through June 30, 2020.

Other static state legislators must update their conformity date or provide express provisions before calendar year 2020 tax returns are due (March 15, 2021) so businesses will not owe state taxes on forgiven PPP loans. If these states do not conform by then, small businesses might face the burden of state taxes on this much-needed relief. Business owners in static conformity states seeking PPP loans should be aware of the potential tax burden associated

with PPP loan forgiveness and plan accordingly.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and will continue to monitor federal and state law tax changes. For questions or further information relating to taxation under the CARES Act, please contact attorney [Britany E. Morrison](#).

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TAX AND WEALTH ADVISOR ALERT: WISCONSIN FOLLOWS FEDERAL EXTENDED TAX DUE DATES

Wisconsin has updated its [proposed guidance document](#) discussing how various tax deadlines are affected by IRS Notices 2020-18 and 2020-23, which were issued as a result of the COVID-19 pandemic. As we previously [wrote](#), the IRS notices provide extensions for a variety of tax form filings and payment obligations that are due between April 1, 2020 and July 15, 2020, including estimated tax payments due June 15.

The proposed guidance document from Wisconsin states that federal extensions provided in the IRS notices may be used for Wisconsin income and franchise tax and for pass-through withholding tax purposes. For returns due on or after April 1, 2020 and before July 15, 2020, regardless of whether it is the original or extended due date, the due date is extended to July

15, 2020. See the helpful chart in the document for tax return due dates for 2019 Wisconsin tax returns.

In addition, any estimated income, franchise, or pass-through withholding tax payment that is due on or after April 1, 2020 and before July 15, 2020, is extended to July 15, 2020.

The document also notes that payments from the federal CARES Act (i.e. the federal economic impact payment or stimulus payment) are not taxable for federal or Wisconsin income tax purposes.

Lastly, like the IRS, Wisconsin will be postponing interest and penalties as a result of the extended due dates. Unpaid income and franchise taxes and pass-through withholding taxes due on or after April 1, 2020 and before July 15, 2020 will not accrue interest or penalties until July 16, 2020.

If you are interested in learning more about the new tax filing guidance, please contact attorney [Britany E. Morrison](#) at O'Neil Cannon

TAX AND WEALTH ADVISOR ALERT: IRS EXTENDS MORE TAX DEADLINES TO COVER INDIVIDUALS, TRUSTS, ESTATES, CORPORATIONS AND OTHERS

To help taxpayers, the Department of Treasury and the Internal Revenue Service (IRS) announced April 9, 2020, that [Notice 2020-23](#) extends additional key tax deadlines for individuals and businesses to July 15, 2020. This extension includes a variety of tax form filings and payment obligations that are due between April 1, 2020 and July 15, 2020, including estimated tax payments due June 15.

Background

As we previously [reported](#), on March 18, 2020, the IRS issued [Notice 2020-17](#), which postponed the due date for certain federal income tax *payments* from April 15, 2020 until July 15, 2020 due to the coronavirus (COVID-19) pandemic.

On March 20, 2020, the IRS issued [Notice 2020-18](#), which also postponed the *filing date* to July 15, 2020 for 2019 federal income tax returns and 2020 federal estimated income tax payments that would otherwise be due on April 15, 2020. Then, on March 27, 2020, the IRS

issued [Notice 2020-20](#), which extended the recent income tax filing and payment relief to those taxpayers who have gift tax or GST tax obligations otherwise due by April 15, postponing those deadlines to July 15, 2020 as well. See our original article [here](#) for further information.

Notice 2020-23

The new Notice expands upon the relief provided in Notice 2020-17, Notice 2020-18 and Notice 2020-20. As a result, the extensions generally now apply to all taxpayers that have a filing or payment deadline falling on or after April 1, 2020, and before July 15, 2020. Individuals, trusts, estates, corporations and other non-corporate tax filers qualify for the extra time. This means that anyone, including Americans who live and work abroad, can now wait until July 15 to file their 2019 federal income tax return, and pay any tax due. Relief includes extending the following filing and payment deadlines:

Individual income tax payments and return filings on

- Form 1040
- Form 1040-SR
- Form 1040-NR
- Form 1040-NR-EZ
- Form 1040-PR
- Form 1040-SS

Calendar year or fiscal year **corporate** income tax payments and return filings on

- Form 1120
- Form 1120-C
- Form 1120-F
- Form 1120-FSC
- Form 1120-H
- Form 1120-L
- Form 1120-ND
- Form 1120-PC
- Form 1120-POL
- Form 1120-REIT
- Form 1120-RIC
- Form 1120-S
- Form 1120-SF

Calendar year or fiscal year **partnership** return filings on

- Form 1065
- Form 1066

Estate and trust income tax payments and return filings on

- Form 1041
- Form 1041-N
- Form 1041-QFT

Estate and generation-skipping transfer tax payments and return filings on

- Form 706
- Form 706-NA
- Form 706-A
- Form 706-QDT
- Form 706-GS(T)
- Form 706-GS(D)
- Form 706-GS(D-1)
- Form 8971

Gift and generation-skipping transfer tax payments and return filings on

- Form 709 that are due on the date an estate is required to file
- Form 706
- Form 706-NA

Estate tax payments

- of principal or interest due as a result of an election made under IRC Code Secs. 6166, 6161, or 6163 and annual recertification requirements under Code Sec. 6166.

Exempt organization business income tax and other payments and return filings on

- Form 990-T

Excise tax payments on investment income and return filings on

- Form 990-PF
- Form 4720

Quarterly estimated income tax payments calculated on or submitted with

- Form 990-W
- Form 1040-ES
- Form 1040-ES (NR)
- Form 1040-ES (PR)
- Form 1041-ES
- Form 1120-W

This relief is automatic. Taxpayers do not have to call the IRS or file any extension forms or

send letters or other documents to receive this relief. Additionally, the Notice also suspends associated interest, additions to tax, and penalties for late filing or late payment until July 15, 2020.

If you are interested in learning more about the new tax filing guidance, please contact attorney Britany E. Morrison at O'Neil Cannon

TAX AND WEALTH ADVISOR ALERT: INDIVIDUAL TAX RELIEF AND RETIREMENT PLAN ACCESS PROVISIONS IN THE CARES ACT

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in response to the coronavirus pandemic. This article summarizes the tax relief provisions for individuals and the retirement plan access provisions that are contained in the CARES Act. A summary of tax relief provisions for business can be found [here](#).

Economic Impact Payments (Recovery Rebates) for Individuals

To help individuals during this time of economic uncertainty, the IRS will send payments of up to \$1,200 to eligible individual taxpayers and \$2,400 for eligible married couples filing joint returns. Parents will get an additional \$500 for each qualifying child dependent under age 17 (using the qualification rules under the Child Tax Credit). Thus, the payment for a married couple with two children under 17 will be \$3,400.

U.S. citizens and residents are eligible for a full payment if their adjusted gross income (AGI) is under \$75,000 (single or married filing separately), \$122,500 (head of household), and \$150,000 (joint filer). The individual must not be the dependent of another taxpayer and must have a social security number that authorizes employment in the United States. Estates and trusts are not eligible to receive an economic impact payment.

For eligible individuals whose AGI exceeds the above thresholds, the payment amount is phased out at the rate of \$5 for each \$100 of income. Thus, the payment is completely phased out for single filers with AGI over \$99,000 and for joint filers with no children with AGI over \$198,000. For a married couple with two children, the payment will be completely phased out if their AGI exceeds \$218,000.

Most eligible individuals will not have to take any action to receive a payment. The IRS will

automatically calculate and send the payment to those who are eligible. If the individual has already filed his or her 2019 tax return, the IRS will use the AGI and dependents from that return to calculate the payment amount. If the individual has not filed for 2019 yet, information from the taxpayer's 2018 return will be used. If no 2018 return has been filed, the IRS will use information from 2019 provided in the taxpayer's Form SSA-1099, Social Security Benefit Statement, or Form RRB-1099, Social Security Equivalent Benefit Statement. Individuals who are not otherwise required to file a tax return and do not receive a Form SSA-1099 or RRB-1099, will need to file a simple return to receive an economic impact payment. The IRS will soon provide instructions on how to do this.

The IRS will deposit the payment directly into the bank account reflected on the return. For those that did not provide bank account information on their return, the IRS plans to develop a web-based portal for individuals to provide banking information to IRS, so that payments can be received as a direct deposit rather than by a check sent in the mail. Additionally, no later than 15 days after distributing an economic impact payment, the IRS must mail a notice to the individual's last known address indicating how the payment was made, the amount of the payment, and a phone number for reporting any failure to receive payment to the IRS.

Economic impact payments are nontaxable, and they will not be included in the recipient's income for tax purposes; however, these payments will be considered "advance rebate payments" of a 2020 credit based on a 2019 tax return. Therefore, there will be a "true-up" on the 2020 tax return—the amount of the credit that is allowable on an individual's 2020 tax return must be reduced (but not below zero) by the aggregate advance rebates made or allowed to the taxpayer during 2020. This means that if an individual received an advance payment that was less than the credit to which the individual is entitled to for 2020, the individual will be able to claim the credit or the balance of the credit when filing the 2020 tax return. For instance, while eligible individuals who had a child in 2020 will not receive an advanced payment for this child, they will receive a \$500 credit for that child when they file their 2020 tax return. Moreover, individual who weren't an eligible individual for 2019 and received no advance payment but became an eligible individual in 2020 (e.g., the individual was a dependent for 2019 but not 2020) will be able to claim the credit when filing their 2020 tax return. If, on the other hand, the advance payment received was greater than the credit to which the individual is entitled, the individual will not have to pay back the excess because the 2020 credit cannot be reduced below zero.

Waiver of 10% Early Withdrawal Penalty for COVID-19 Related Retirement Plan Hardship Distributions

Typically, an early, hardship-related distribution from a qualified retirement plan (such as a 401(k), profit-sharing, 403(b), 457(b) plan, or an IRA) is subject to a 10% additional tax (an "early withdrawal penalty") unless the distribution meets an exception under Code Section 72(t). However, the CARES Act waives this early withdrawal penalty for certain early

distributions by a “qualified individual.” A qualified individual is an individual:

- (1) who is diagnosed with the virus SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention (CDC);
- (2) whose spouse or dependent (as defined in Code Sec. 152) is diagnosed with such virus or disease by such a test; or
- (3) who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to such virus or disease; being unable to work due to lack of child care due to such virus or disease; closing or reducing hours of a business owned or operated by the individual due to such virus or disease; or other factors as determined by the Secretary of the Treasury.

Any “coronavirus-related” distribution of up to \$100,000 made on or after January 1, 2020, and before December 31, 2020, from a qualified retirement account taken by a qualifying individual will not be subject to the 10% early withdrawal penalty. Qualifying individuals will still be subject to income tax on the distribution, but a retroactive tax credit will be made available if the individual repays the amount as a rollover contribution to any eligible retirement plan within three years following the date of the distribution. In the alternative, if the individual elects not to repay the distribution amount, the distribution will be subject to federal income tax ratably over the three tax years following the distribution (rather than in the year of distribution) unless the participant elects not to prorate the taxation. For distributions to a qualifying individual, the CARES Act also removes the employer’s obligation to withhold 20% percent of the distribution for the payment of income tax on behalf of the individual.

Under existing rules, nonqualified individuals may still be able to take a hardship distribution of up to \$100,00, with a three-year repayment period, if their state of residence qualifies for individual assistance under a federal disaster declaration. However, in this case, all income taxes will be owed on the amount of the distribution in the first year, and the 10% early withdrawal penalty is not waived.

Note that not all qualified retirement plans permit an early distribution, by their terms. If you have questions regarding whether your plan permits an early withdrawal or hardship distribution, contact your plan administrator or legal counsel, or, in the case of an IRA, your account custodian. An employer is permitted, but not required, to now amend a qualified retirement plan to allow plan participants to access a distribution under the access rules as expanded under the CARES Act.

Expansion of Permitted Retirement Plan Loans

The CARES Act provides for expanded retirement plan loan flexibility under plans whose

terms permit (or are amended to permit plan loans). Specifically, during the 180-day period beginning on March 27, 2020, and ending on September 23, 2020, a plan participant who satisfies the requirements to be a qualified individual, as defined above, may take a plan loan in an amount not to exceed the lesser of \$100,000 or 100% of their vested plan account balance. These limits exceed the typically applicable plan loan limits.

For individuals who held outstanding or pending retirement plan loans as of March 27, 2020, where the loan was due to be repaid by December 31, 2020, the Act extends the repayment due date by one year. Additionally, for all plan loans, the period from March 27 through December 2020 will be disregarded in calculating either the five-year maximum repayment period, or the period over which interest on the loan must be amortized.

Waiver of Required Minimum Distribution Rules

In general, tax law requires a qualified retirement plan or IRA owner to take required minimum distributions (RMDs) annually once the owner reaches age 72. The CARES Act provides that the otherwise applicable requirement to take an RMD from a retirement plan or IRA in 2020 is waived. Also included in the waiver are distributions that would have been required by April 1, 2020, due to the account owner's having turned age 70 1/2 in 2019. This provides great relief to those whose required minimum distribution amount for 2020 was calculated based on the value of the market at December 31, 2019. The CARES Act does, however, also permit an individual who still wishes to take a 2020 RMD to do so.

Expansion of Charitable Contribution Deduction

The CARES Act makes two significant liberalizations to the rules (see [here](#) for a summary of the rules) governing individual charitable deductions:

First, individuals will be able to claim a \$300 above-the-line deduction for cash contributions made to public charities in 2020. This rule effectively allows a limited charitable deduction to taxpayers claiming the standard deduction (previously only allowed for those who itemized deductions).

Second, individuals are generally allowed a deduction for cash contributions to certain charitable organizations up to 60% of their contribution base (typically, AGI). Any cash contributions to charities for the tax year that exceed 60% of the individual's contribution base can be carried forward for five years.

Under the CARES Act, the 60% of contribution base limitation on charitable contribution deductions for individuals is increased to 100% of the contribution base for cash contributions made to public charities in 2020 (qualifying contributions). No connection between the contributions and COVID-19 activities is required. However, contributions to a Code Sec. 509(a)(3) supporting organization or a donor advised fund are not qualified contributions.

Additionally, the taxpayer must elect to apply this provision with respect to the contribution and in the case of partnership or S corporation, each partner or shareholder must separately make an election.

Student Loan Repayments

Generally, an employee's gross income does not include up to \$5,250 per year of employer payments, in cash or kind, made under an educational assistance program for the employee's education (but not the education of spouses or dependents). The CARES Act adds eligible student loan repayments made before January 1, 2021 to the types of educational payments that are excluded from employee gross income. Therefore, student loan repayments made by an employer, whether paid to the employee or a lender, of principle or interest on any qualified higher education loan for the education of the employee (but not of a spouse or dependent) are excluded from the employee's income up to \$5,250 per year.

Implementation of the provisions of the CARES Act is continuing to develop, and O'Neil, Cannon, Hollman, DeJong and Laing remains open and ready to help you. For questions or further information relating to the CARES Act, please contact attorney [Britany E. Morrison](#).

TAX AND WEALTH ADVISOR ALERT: WISCONSIN ISSUES SMALL BUSINESS SALES AND USE TAX EXTENSION

The Wisconsin Department of Revenue (DOR) has announced immediate help for small businesses on sales taxes in response to COVID-19. Small businesses can immediately request a one-month extension to file sales and use tax returns due March 31, 2020 until April 30, 2020 and due April 30, 2020 until June 1, 2020. The DOR will not assess late filing fees or penalties if sales and use tax returns are filed by April 30 or June 1. By law, payments are due March 31 and April 30 and 12% interest (lowered from 18%) will accrue beginning on the due date, unless the legislature changes the law to allow the DOR to waive interest. Extension requests should be sent to DORRegistration@wisconsin.gov.

TAX AND WEALTH ADVISOR ALERT: BUSINESS TAX PROVISIONS IN CARES ACT

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This article summarizes the tax relief provisions for businesses other than the payroll tax relief provisions that are contained in the Act.

Modifications to Net Operating Losses (NOLs)

The use of NOLs for businesses will be expanded with two amendments to Internal Revenue Code (IRC) Section 172(a). One amendment repeals the taxable income limitation for NOLs and the other modifies the rules relating to NOL carrybacks.

Taxable Income Limitation

Old Law: IRC Section 172(a) provides that the amount of the NOL deduction is equal to the lesser of: (1) the aggregate of NOL carryovers to such year and NOL carrybacks to such year, or (2) 80% of taxable income computed without regard to the deduction allowable in this section. As a result, NOLs are currently subject to a taxable-income limitation and they cannot fully offset income.

New Law: The CARES Act temporarily removes the 80% taxable-income limitation to allow an NOL to fully offset income. This temporary provision applies to NOLs incurred in the 2018, 2019, or 2020 tax years.

Carrybacks

Old Law: Code Sec. 172(b)(1) provides that, except for farming losses and losses of property and casualty insurance companies, an NOL for any tax year is carried forward to each tax year following the tax year of the loss, but it cannot be carried back to any tax year preceding the tax year of the loss.

New Law: The CARES Act provides that NOLs from tax years after Dec. 31, 2018 and before Jan. 1, 2020 can be carried back to offset prior year income for 5 years.

Modification of Limitation on Losses for Taxpayers Other than Corporations

Old Law: In general, IRC Section 461 limits excess business losses on all noncorporate taxpayers—e.g., passthroughs and sole proprietors—to \$250,000 (\$500,000 married filing jointly). This limitation is effective for taxable years beginning after December 31, 2017 and before January 1, 2026.

New Law: The CARES Act temporarily removes this loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020. The CARES Act also allows the carryover of losses into subsequent taxable years.

Credit for Corporate Prior Year AMT Accelerated

Old Law: The Tax Cuts and Jobs Act of 2017 (TCJA) repealed the alternative minimum TAX (AMT) for corporations but provided that any corporation that paid AMT is eligible for an AMT credit under Section 53(b). The AMT credit can be applied against regular tax liability in later years, subject to certain reductions. Section 53(e) provides corporations with a refund for corporate AMT credits not used to reduce regular tax liability. For tax years beginning in 2018, 2019, and 2020, to the extent that AMT credit carryovers exceed regular tax liability, 50% of such excess AMT credit carryovers will be refundable.

New Law: With the CARES Act changes, corporations with AMT credits will be able to claim a refund for 100% of the credit in 2019.

Modifications of Limitations on Business Interest

Old Law: The TCJA modified IRC Section 163(j) to generally limit the amount of business interest allowed as a deduction to 30% of adjusted taxable income.

New Law: The CARES Act will allow taxpayers to deduct more interest expense by temporarily increasing the limitation on the deductibility of interest expenses from 30% to 50% for tax years 2019 and 2020. However, under a special rule for partnerships, the increase in the limitation will not apply to partners in partnerships for 2019 (it applies only in 2020).

Technical Correction for Bonus Depreciation for Qualified Improvement Property

Old Law: The TCJA amended IRC Section 168 to allow 100% additional first-year depreciation deductions (“100% Bonus Depreciation”) for certain qualified property. However, in the final draft there was a technical error that made property called qualified improvement property (“QI Property”) ineligible for 100% Bonus Depreciation.

New Law: The CARES Act provides a correction to this technical error under the TCJA, thereby making QI Property eligible for 100% Bonus Depreciation. This will allow taxpayers that make or have made improvements to their facilities to deduct those costs immediately rather than depreciating those costs over a period of 39 years. The correction is effective as of the enactment of TCJA, (i.e. for property placed in service after Dec. 31, 2017) so taxpayers can amend returns for costs that were previously depreciated.

Modifications of Limitations on Charitable Contributions

Old Law: Under IRC Section 170(b)(2)(A), a corporation's charitable deduction cannot exceed 10% of its taxable income. Any excess is carried over for a period of 5 years.

New Law: Starting with the 2020 tax year, the CARES Act will increase the taxable income limitation from 10% to 25% allowing corporations to deduct more of their charitable contributions.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and ready to help you. For questions or further information relating to the CARES Act, please speak to your regular OCHDL contact or attorney [Britany E. Morrison](#).

TAX AND WEALTH ADVISOR ALERT: IRC SECTION 139: HOW EMPLOYERS CAN MAKE TAX-FREE PAYMENTS TO EMPLOYEES FOR COVID-19 EXPENSES

In response to the ongoing pandemic, on March 13, 2020, President Trump declared the coronavirus or COVID-19, a national disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This declaration put into play a little-known *existing* provision of the tax law -Section 139 of the Internal Revenue Code. Section 139 allows employers to assist employees during a federally declared disaster with "qualified disaster relief payments" that are tax-free to the employee and fully deductible to the employer.

Employers wishing to aid employees impacted by COVID-19 should consider taking advantage of the Section 139 disaster relief provision by familiarizing themselves with the Section 139 qualifications and adopting a Section 139 program to help their employees through these unprecedented times.

Background

Added to the Internal Revenue Code after the attacks on September 11, 2001, Section 139 allows employers to make tax-free "qualified disaster relief payments" to help employees in the wake of a qualified disaster. Section 139 is important because typically, under Section 102 of the Internal Revenue Code, any payment from an employer to an employee, even a "gift", is taxed to the employee as compensation. Section 139, however, provides that any amount received as a "qualified disaster relief payment" cannot be taxed to the employee as income. These payments are not subject to any federal withholding obligations and do not

need to be reported on a Form W-2 or 1099. Significantly, any amounts paid as a “qualified disaster relief payment” are also deductible by the employer. In addition, in most cases, the exclusion will also apply for state income tax purposes.

A “qualified disaster relief payment” under Section 139 includes payments by an employer, not compensated for by insurance or otherwise, paid to or for the benefit for its employees to:

- reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster; and
- reimburse or pay 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.

COVID-19 “Reasonable and Necessary Expenses”

Section 139 has been utilized in the past for other Stafford Act disasters, and it was clear that during a natural disaster, like Hurricane Katrina, employer expenses paid to employees related to property repair and replacement, temporary housing, and food would be covered. However, the situation with COVID-19 is unique in that Section 139 has yet to be invoked for a disease pandemic. The IRS has not issued any guidance specific to COVID-19 and thus it is not entirely clear what types of expenses during this time will be considered “qualified disaster relief payments.”

Nevertheless, legislative history and a reasonable interpretation of the statutory text provides that the following payments or reimbursements from employer to employee should qualify under Section 139 provided the expenses are reasonable and necessary, relate to the COVID-19 pandemic, and are not otherwise compensated by insurance:

- Medical expenses of the employee not covered by insurance or otherwise (i.e. copays incurred for COVID-19 treatment);
- Health-related expenses other than medical expenses (i.e. over-the-counter medications used to treat COVID-19);
- Dependent care expenses, such as child care or tutoring expenses for an employee’s dependent due to school closures; remote learning or home schooling expenses, such as home internet, computer for use by a dependent, educational materials, subscriptions to online educational resources, etc.;
- Expenses associated with working from home, including home office set-up costs, computer, internet, printer, and cell phone costs, and even increased utility costs on account of the home office;
- Transportation expenses due to work relocation including costs associated with taking a taxi or ride-sharing app service from home due to mass public transport closures;
- Critical care and funeral expenses of an employee or a member of the employee’s family, who dies from a COVID-19 infection; and

- Other living expenses due to an employee's know exposure to COVID-19 such as hand sanitizers and home disinfectant supplies.

"Qualified disaster relief payments" do not include nonessential, luxury, or decorative items or services. Additionally, Section 139 does NOT cover payments that are wage replacement payments such as sick pay, family medical leave pay, or any other type of salary or leave pay). As such, wage replacement payments will still be taxable wages and will remain subject to income and payroll tax withholding and reporting.

Section 139 does not impose limits on the amount of "qualified disaster relief payments" that employers can make to employees (either individually or in the aggregate). Moreover, Section 139 does not require that employees reach a certain period of employment in order to receive tax-free payments.

Employer Considerations

Section 139 does not require an employer to have a written policy or program for "qualified disaster relief payments", however, employers who wish to make "qualified disaster relief payments" due to COVID-19 should consider having one as a best practice. In addition, adopting a Section 139 written policy or program allows employees to be informed of the availability and parameters of such a program.

Any policy or program adopted by an employer in response to Section 139 should clearly document the features of the program, including the following:

- a description of who is an eligible employee;
- a listing of expenses that that will be subject to reimbursement or payment;
- a per-employee allowance for reasonable expenses (optional);
- the method for reimbursement/payment (i.e. whether an application is necessary); and
- the start and end date of the program.

Interestingly, Section 139 does not require employers to collect receipts or other proof of expenses incurred by employees. Nevertheless, employers should consider doing so to control costs and to avoid fraudulent claims from employees, even though implementing such aspect of the program may also lead to an increased administrative burden.

Conclusion

In this current environment, employers may wish to aid their employees affected by the COVID-19 pandemic. However, it is imperative that employers recognize that payments meant to aid employees during the COVID-19 pandemic could actually create an additional financial burden on their employees. Therefore, employers contemplating assisting their employees with payments during this time need to review the qualifications for Section 139 "qualified disaster relief payments" and consider adopting a Section 139 program. This little-

known *existing* tax provision just might be the best way for employers to assist their employees during these uncertain times.

O'Neil, Cannon, Hollman, DeJong and Laing remains open during this time and is here to help. We encourage you to reach out with any questions, concerns, or legal issues you may have, including those related to COVID-19 or the drafting of a COVID-19 Section 139 expense plan.

TAX AND WEALTH ADVISOR ALERT: WISCONSIN FOLLOWS IRS, STATE TAX FILING DEADLINE EXTENDED TO JULY 15

Wisconsin law already provides that any extension granted by the IRS for filing income taxes also extends the time allowed for filing Wisconsin income taxes. Nevertheless, Governor Tony Evers and Department of Revenue Secretary Peter Barca announced on Saturday March 21, 2020 that Wisconsin law will automatically extend time and waive interest and penalties for taxpayers due to the President's declaration of a national emergency. A summary of what this means for Wisconsin taxpayers is below.

- Tax filers do not have to file any extension forms to be eligible for this new due date.
- There is no limit on the amount of payment to be postponed, and there are no income exclusions.
- This applies to individuals, trusts, estates, partnerships, associations, companies, and corporations.
- This relief is solely for income tax payments, estimated income tax payments, and returns due April 15, 2020.
- There will be no interest or penalty for the period of April 15, 2020 to July 15, 2020.
- Interest, penalties, and underpayment interest for failure to make quarterly estimated tax payments with respect to such postponed federal income tax filings and payments will begin to accrue on July 16, 2020.

We will continue to communicate updates as we receive them. If you are interested in learning more about the new tax filing guidance, please contact attorney [Britany E. Morrison](#) at O'Neil Cannon

TAX AND WEALTH ADVISOR ALERT: IRS MOVING TAX DAY TO JULY 15 FROM APRIL 15

U.S. Treasury Secretary Steven Mnuchin just announced that the IRS will be moving the tax filing date to July 15 from April 15. Mnuchin says people and businesses will have more time to file and make payments without interest or penalties. Mnuchin made the announcement on Twitter, saying the move came at the direction of President Donald Trump. Further federal guidance in addition to guidance from states is expected.

If you are interested in learning more about the new tax filing guidance, please contact attorney [Britany E. Morrison](#) at O'Neil Cannon