TAX AND WEALTH ADVISOR ALERT: REMINDER–MAY 17 IS THE DEADLINE FOR MORE THAN JUST INDIVIDUAL RETURNS

The IRS extended the deadline for individual taxpayers to file and pay taxes to May 17, 2021 in Notice 2021-21. However, Monday, May 17 is the deadline for more than just individual returns. Here is a list of some other May 17 deadline items that IRS has noted:

- Individual return extension requests. Taxpayers can extend the deadline beyond May 17, 2021 by filing Form 4868, *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return.* Filing an extension moves the filing deadline from May 17, 2021 to October 15, 2021. You can also get an extension by paying all or part of your estimated income tax due with Direct Pay, the Electronic Federal Tax Payment System (EFTPS), or a credit or debit card.
- Contributions to IRAs and health savings accounts. Taxpayers only have until May 17, 2021 to make 2020 contributions to individual retirement arrangements (IRAs), Roth IRAs, health savings accounts, Archer medical savings accounts, and Coverdell education savings accounts –even if they file for an extension.
- Self-employed persons retirement plan contributions. Self-employed persons have the opportunity to fund SEP and SIMPLE IRAs as well as solo 401(k) plans through the deadline for a timely filed extension.
- Withdrawals of any 2020 contributions to an IRA. Withdrawals of any 2020 contributions to an IRA, including excess 2020 contributions (if you didn't request a filing extension) are due May 17, 2021. Notably, this rule does not apply to the following retirement plans: 401(k), 403(b), SARSEP and SIMPLE IRA plans. That deadline was April 15, 2021.
- Retirement plan distributions. Notice 2021-21 also automatically postponed to May 17, 2021 the time for reporting and payment of the 10% additional tax on amounts includible in gross income from 2020 distributions from IRAs or workplace-based retirement plans.
- Payroll taxes for household employees. Form 1040, Schedule H (Household Employment Taxes) is due even if you are not required to file Form 1040 itself.
- 2017 unclaimed refunds. The law provides a three-year window to claim a refund. To get any unclaimed refund from 2017, a taxpayer must properly address and mail the tax return, postmarked by May 17, 2021. If a taxpayer does not file a return within three years, the money becomes property of the U.S. Treasury.
- Returns for calendar year tax-exempt organizations. Also due May 17, 2021 are forms in the 990 series, including Form 990-T, *Exempt Organization Business Income Tax Return*.
- Foreign trusts and estates. Foreign trusts and estates with federal income tax filing or payment obligations that file Form 1040-NR also have until May 17, 2021 to file or make payment.
- State individual income tax returns for most states. States issue separate guidance regarding any potential due date changes and do not always conform with federal updates. However, many states have announced that they will extend their tax

deadlines to May 17, 2021 as well. For instance, Wisconsin announced the postponement of the 2020 personal income tax filing and payment due date to May 17, 2021. Interest and late-filing fees will apply beginning May 18, 2021. Nevertheless, if you need more time to file, Wisconsin offers an extension. Wisconsin does not have its own separate extension application, however, if taxpayers have an approved federal tax extension (Form 4868), they will automatically receive a Wisconsin tax extension. Filing a federal extension moves the Wisconsin filing deadline from May 17, 2021 to October 15, 2021.

O'Neil Cannon will continue to monitor federal and state law tax changes. For questions or further information relating to the tax filing deadlines, please contact Attorney Britany E. Morrison.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- Is Your Commercial Property Tax Assessment Too High?
- FEMA Launches COVID-19 Funeral Assistance Program
- $7.5 Million Debt Limitation for Small Business Debtors Extended
- IRS Says Restaurant Entertainment Expenses Fully Deductible
- American Rescue Plan Extends Tax Credits for COVID-Related Leave
- Corporate Practice of Medicine and Fee Splitting–Considerations for Telehealth Ventures

Firm News:

- Firm Elects Kelly M. Spott and Trevor Lippman as Shareholders
- Attorneys Christa Wittenberg and Dean Laing Published in the *Wisconsin Lawyer*
- Attorney Gumina's Article on Employer Covid-19 Vaccination Policies was Featured by *ABC of Wisconsin*
- Attorneys Marguerite Hammes and Grant Killoran Published in the *Wisconsin Lawyer*

Click the image below to read more.

WISCONSIN LANDLORD SUBJECTED TO TENANCY IN JAIL

In a published opinion, the Wisconsin Court of Appeals confirmed that landlords who fail to provide timely statements explaining the basis for withholding funds from a residential tenant's security deposit may be subject to criminal prosecution and potential jail time.

In *State of Wisconsin v. Lasecki,* 2020 WI App 36, the Wisconsin Court of Appeals affirmed a circuit court judgment convicting Lasecki, a landlord, of two misdemeanor counts of engaging in unfair trade practices for failing to either return his tenants' security deposits in full or provide statements to the tenants explaining why he was authorized to withhold funds.

Generally, the Wisconsin Statutes allow a landlord to withhold from a tenant's security deposit amounts reasonably necessary to pay for certain authorized categories of costs or damages. A landlord that withholds such amounts from a security deposit is required to deliver to the tenant any remaining balance in the security deposit within 21 days.

Although the Wisconsin Statutes make no mention of any further requirement on the part of a landlord who elects to withhold amounts from a security deposit, the Wisconsin Administrative Code applicable to residential tenancies requires landlords that withhold any portion of a security deposit to deliver to the tenant a written statement accounting for all amounts withheld.

Lasecki's troubles began when his tenants filed a complaint with the Wisconsin Department of Agriculture, Trade and Consumer Protection (ATCP) alleging that Lasecki withheld their security deposits but failed to provide them with a statement accounting for the withholding. After Lasecki failed to cooperate with ATCP's investigation into the tenants' complaint, the local district attorney's office became involved, eventually charging Lasecki for his failure to

comply with the provisions of the Wisconsin Statutes and Administrative Code pertaining to the return of tenant security deposits.

A jury eventually found Lasecki guilty of the criminal charges brought by the district attorney. The circuit court thereafter awarded the tenants double their respective security deposits (as allowed by statute) and ordered Lasecki to a stayed sentence of 60 days in the county jail—14 days of which Lasecki served.

Lasecki appealed the jury verdict and order of the circuit court claiming that the circuit court lacked jurisdiction because the crimes of which Lasecki was convicted were "not known to law" and that no ordinary person would have sufficient notice that such conduct was criminal.

The Wisconsin Court of Appeals rejected Lasecki's arguments and instead affirmed his conviction, finding that the following framework within the Wisconsin Statutes and Administrative Code does provide notice that would enable an individual like Lasecki to know that his conduct was criminal in nature:

- Section 704.28 of the Wisconsin Statutes allows a landlord to withhold from a tenant's security deposit amounts reasonably necessary to pay for certain categories of authorized costs. This same section instructs landlords to deliver the full amount of any security deposit paid by tenant, less any authorized withholdings, within 21 days.
- While section 704.28 of the Wisconsin Statutes makes no mention of any requirement that a landlord provide a withholding statement to tenants, section ATCP 134.06(4)(a) of the Wisconsin Administrative Code provides that "[i]f any portion of a security deposit is withheld by a landlord, the landlord shall . . . deliver or mail to the tenant a written statement accounting for all amounts withheld."
- Section ATCP 134.01 of the Wisconsin Administration Code, entitled "Scope and Application," provides that chapter ATCP 134 "is adopted under authority of [Wis. Stat. §] 100.20.
- Accordingly, pursuant to section 100.26(3) of the Wisconsin Statutes, any person who intentionally refuses, neglects or fails to obey a regulation or order made or issued under section 100.20, shall, for each offense, be fined not more than $5,000 and imprisoned in the county jail for not more than one year.

After providing the above roadmap of how a landlord arrives at criminal liability for failing to provide a residential tenant with a security deposit withholding statement, the court of appeals' decision opines that an ordinary and reasonably prudent landlord would commonly consult with Chapter 704 of the Wisconsin Statutes (the landlord/tenant law chapter) and would also appreciate the need to understand landlord/tenant regulations set forth by the Wisconsin Administrative Code. The statutory and regulatory framework contained therein is, as the court put it, not beyond the comprehension of an ordinary landlord. As such, Lasecki had sufficient notice that his conduct could constitute a crime under Wisconsin law and the circuit court's verdict and order was affirmed.

The author of this article knows of no other instance in which a Wisconsin residential landlord has been criminally charged for failing to provide a security deposit withholding statement to a tenant. While most violations of this administrative code requirement are dealt with in civil proceedings, the court of appeals confirmed that such violations may also lead to criminal charges. Here, charges may ultimately have been brought against Lasecki in response to his failure to cooperate with the state's investigation into the consumer complaint filed by his tenants; however, the court's decision should impress upon all residential landlords in Wisconsin the importance of providing tenants with a statement of all amounts withheld from their security deposit.

HEALTH CARE LAW ADVISOR ALERT: DID THE UNITED STATES SUPREME COURT JUST SUGGEST A CHANGE TO THE ESTABLISHED PUBLIC HEALTH CONSTITUTIONAL FRAMEWORK?

American law long has recognized the authority of government officials to address public health emergencies. Almost 200 years ago, the U.S. Supreme Court ruled that, under the 10th Amendment to the U.S. Constitution, the power to address public health emergencies generally is held by the states rather than the federal government. *See Gibbons v. Ogden*, 22 U.S. 1, 205 (1824) (recognizing the "power of a State, to provide for the health of its citizens"). And more than a century ago, the U.S. Supreme Court decided the seminal case on the power of the states to respond to a public health crisis in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905). There, the Court affirmed the constitutionality of a state statute authorizing local health boards to require that residents be vaccinated against smallpox or pay a five-dollar fine.

As the Court explained in *Jacobson*, the authority to respond to a public health crisis must be "lodged somewhere," and it is "not an unusual, nor an unreasonable or arbitrary, requirement," to vest that authority in officials "appointed, presumably, because of their fitness to determine such questions." *Id.* at 27. The Court intermittently emphasized the necessity of the state public health regulation, as well as the utilitarian aspect of rules protecting the many at the expense of the few, but ultimately seemed to rely on the basic police power of the state to regulate public health as the basis for its decision. *Id.* at 26, 28, 29, 31. Thus, while the *Jacobson* decision shows the high level of deference courts may give to the actions of states faced with a public health crisis, it does not set forth a clear

framework for today's courts or governmental officials, in part because the decision arose before the development of modern due process jurisprudence.

In its recent decision in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ___, 141 S. Ct. 63 (2020), the U.S. Supreme Court may have begun to minimize the impact of *Jacobson today*. There, the Court enjoined an executive order by New York's governor establishing certain occupancy limits to combat the spread of COVID-19. The Court noted that although "[m]embers of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area … even in a pandemic, the Constitution cannot be put away and forgotten." *Id.* at *3.

In a concurrence, Justice Neil Gorsuch distinguished *Jacobson from the case before the Court*, stating it "hardly supports cutting the Constitution loose during a pandemic." *Id.* at *5 (Gorsuch, J., concurring). He noted that people affected by the mandatory vaccination order at issue in *Jacobson* could avoid taking the smallpox vaccine by paying a small fine or identifying a basis for exemption and stated that *Jacobson*'s imposition on individual rights therefore was "avoidable and relatively modest" and "easily survived rational basis review, and might even have survived strict scrutiny, given the opt-outs available to certain objectors." *Id.* at *6. He concluded by calling *Jacobson* a "modest decision." *Id.*

On the other hand, Chief Justice John Roberts quoted a line from *Jacobson* in his dissent, stating that "[o]ur Constitution principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.'" *Id.* at *9 (Roberts, C.J., dissenting) (quoting *Jacobson*, 197 U.S. at 38). He concluded that "it is not clear which part of this … quotation today's concurrence finds so discomforting." *Id.*

Jacobson and the cases that followed it analyzing past public health emergencies continue to provide guidance today about how to administer public health measures to combat contagious diseases, including current COVID-19 programs. This established law has guided government officials, public health experts, physicians, the public, attorneys and the courts for over a century. But the SARS-CoV-2 virus that causes COVID-19 (and the vaccines and treatments for it) are new. The novel nature of COVID-19, as well as the significant advances in medicine and science since the *Jacobson* decision was issued over a century ago, may lead to new and differing public health jurisprudence governing public health measures to combat the spread of disease. While the recent discussion of the limits of public health authority found in the *Roman Catholic Diocese* does not change established public health precedent, the comments made in the decision suggest the Court may be open to some sort of change in the law in the future.

Grant Killoran is a shareholder in O'Neil, Cannon, Hollman, DeJong and Laing's Milwaukee office with a practice focusing on complex business and health care disputes and is the immediate past Chair of its Litigation Practice Group. He can be reached at 414.291.4733 or

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TAX AND WEALTH ADVISOR ALERT: BREAKING–IRS SAYS RESTAURANT ENTERTAINMENT EXPENSES FULLY DEDUCTIBLE

Businesses can now claim a 100% deduction on restaurant meals through the end of 2022, the IRS announced. The IRS released guidance today, April 8, which temporarily allows businesses a full deduction for food and beverages purchased from restaurants, starting after December 31, 2020 and before January 1, 2023. Importantly, the full deduction only applies to food purchased from take-out and dine-in restaurants. The deduction does not apply to pre-packaged food or groceries. Additionally, food from third-party facilities operated by an employer isn't eligible for the deduction.

O'Neil, Cannon, Hollman, DeJong and Laing will continue to monitor federal and state law tax changes. For questions or further information relating to the tax filing deadline, please contact Attorney Britany E. Morrison.

EMPLOYMENT LAWSCENE ALERT: AMERICAN RESCUE PLAN EXTENDS TAX CREDITS FOR COVID-RELATED LEAVE

On March 11, 2021, President Biden signed the American Rescue Plan into law. Among a wide variety of other aims, the $1.9 trillion bill extended tax incentives for certain employers that chose to provide their employees with qualifying paid leave related to the COVID-19 pandemic.

In March 2020, the Families First Coronavirus Response Act ("FFCRA") was signed into law. The FFCRA contained two leave components: the Emergency Paid Sick Leave Act ("EPSLA") and the Emergency and Family and Medical Leave Act ("EFMLA"). Under the EPSLA, employers with fewer than 500 employees were required to provide employees with up two weeks of leave sick leave for six COVID-related reasons; and under the EFMLA, employers with fewer than 500 employees were required to provide employees with up to 12 weeks of

leave if their children's school or child care facilities were closed due to COVID. Those employers could then offset the expense of such paid leave through tax credits. Mandated leave under the FFCRA ended on December 31, 2020, but in December 2020, the tax credits were extended through March 31, 2021 for employers with fewer than 500 employees that opted to continue to provide qualifying EPSLA and EFMLA leave.

The American Rescue Plan similarly gives employers with fewer than 500 employees the option, but not the obligation, to continue to provide EFMLA and EPSLA to employees through September 30, 2021 and provide employers with a 100% tax credit to offset the cost of such leave. The American Rescue Plan has also expanded the list of qualifying reasons for EPSLA leave to include time off to receive the COVID-19 vaccination and time off to recover from side effects of receiving the vaccination. Employers should be mindful to update their existing FFCRA leave forms to reflect these additional uses for leave. Finally, on April 1, 2021, for employers who opt to provide continued leave pursuant to EPSLA and EFMLA, employees are entitled to a renewed two-week bank of EPSLA leave, and if an employee's bank of FMLA has not otherwise renewed pursuant to the employer's FMLA policy, the 12-week EFMLA leave bank would also be replenished.

Therefore, while the American Rescue Plan does not add any new obligations for employers, it does continue to provide incentives in the event that employers with fewer than 500 employees choose to provide COVID-related paid time off. As always, O'Neil Cannon is here for you. We encourage you to reach out to our labor and employment law team with any questions, concerns, or legal issues you may have, including those regarding COVID and related issues.

$7.5 MILLION DEBT LIMITATION FOR SMALL BUSINESS DEBTORS EXTENDED

On Saturday, President Biden signed into law the COVID-19 Bankruptcy Relief Extension Act of 2021. This act extends the $7.5 million debt limitation under the Small Business Reorganization Act of 2019 (SBRA) for another year, until March 27, 2022.

Last year, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide emergency assistance for individuals and businesses affected by the COVID-19 pandemic. The CARES Act temporarily increased the debt limitation under the SBRA from $2,725,625 to $7.5 million. The SBRA, which took effect on February 19, 2020, created Subchapter V of the Bankruptcy Code to provide a more streamlined and cost-effective reorganization option for small businesses. The $7.5 million debt limitation increase

under the CARES Act was set to expire on March 27, 2021.

The COVID-19 Bankruptcy Relief Extension Act of 2021 extends the bankruptcy relief provisions of the CARES Act, which most notably includes the $7.5 million debt limitation under the SBRA, until March 27, 2022. As a result, small businesses with debts between $2,725,625 and $7.5 million will continue to be eligible for Subchapter V for another year.

For further information regarding the COVID-19 Bankruptcy Relief Extension Act of 2021 or insolvency concerns relating to bankruptcy or receivership, please contact attorney Jessica K. Haskell.

FEMA LAUNCHES COVID-19 FUNERAL ASSISTANCE PROGRAM

Under the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 and the American Rescue Plan Act of 2021, the Federal Emergency Management Agency (FEMA) will provide financial assistance for COVID-19-related funeral expenses incurred after January 20, 2020.

FEMA estimates that qualifying families can expect reimbursements of $3,000 to $7,000 out of the program's total budget of $2 billion.

To be eligible for funeral assistance, you must meet the following conditions:

- The death must have occurred in the United States;
- The death certificate must indicate the death was attributed to COVID-19; and
- The applicant must be a U.S. citizen, non-citizen national, or qualified alien who incurred funeral expenses after January 20, 2020.

There is no requirement for the deceased person to have been a U.S. citizen, noncitizen national, or qualified alien.

FEMA will begin accepting applications for funeral assistance in April 2021. FEMA is still working out the details of this program, but encourages prospective applicants to start gathering the following documentation for the application:

- An official death certificate that attributes the death directly or indirectly to COVID-19 and shows that the death occurred in the United States;
- Funeral expense documents (receipts, funeral home contract, etc.) that include the applicant's name, the deceased person's name, the amount of funeral expenses, and

the dates the funeral expenses happened; and
- Proof of funds received from other sources specifically for use toward funeral costs. FEMA will not duplicate benefits received from burial or funeral insurance, or financial assistance received from voluntary agencies, government agencies, or other sources.

If you have lost a loved one due to COVID-19 and have questions about the administration of your loved one's affairs, please contact Kelly M. Spott.

TAX AND WEALTH ADVISOR ALERT: IRS OFFICIALLY DELAYS TAX DEADLINE TO MAY 17

The Internal Revenue Service ("IRS") announced late yesterday that the federal income tax filing due date for individuals for the 2020 tax year will be automatically extended from April 15, 2021, to May 17, 2021. The IRS will be providing formal guidance in the coming days.

The postponement applies to individual taxpayers, including individuals who pay self-employment tax. However, the postponement does not apply to estimated tax payments that are due on April 15, 2021. These payments are still due on April 15. Penalties, interest and additions to tax will begin to accrue on any remaining unpaid balances as of May 17, 2021.

In addition, earlier this year, the IRS announced relief for victims of the February winter storms in Texas, Oklahoma and Louisiana. These states have until June 15, 2021, to file various individual and business tax returns and make tax payments. This extension to May 17 does not affect the June deadline.

The IRS noted that the new deadline does not apply to state tax returns, where the deadlines are set by each jurisdiction. Some states will automatically conform to the new federal deadline, but others will need to decide what to do. Maryland, for instance, recently extended its state filing deadline to July 15. It is expected that Wisconsin will conform to the new federal deadline but no official guidance documents have been released as of yet.

O'Neil, Cannon, Hollman, DeJong and Laing will continue to monitor federal and state law tax changes. For questions or further information relating to the tax filing deadline, please contact Attorney Britany E. Morrison.

TAX AND WEALTH ADVISOR ALERT: BREAKING–IRS TO DELAY TAX DEADLINE TO MID-MAY

The Internal Revenue Service is planning to delay the April 15 tax filing deadline as it grapples with a massive backlog of 24 million returns it has yet to process since the 2019 tax year. The agency is considering setting the filing deadline for either May 15 or May 17, but a decision has not been finalized. May 15 is a Saturday and the IRS typically delays filing deadlines that fall on a weekend or holiday to the next business day, so the final deadline for filers may be the following Monday–May 17. The filing extension would give taxpayers additional time to meet their tax obligations in what many consider one of the most complicated tax seasons in decades.

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 the tax filing deadline and the new relief bill, please contact Attorney Britany E. Morrison.