

TAXES, PANDEMICS, ELECTIONS . . . OH MY!

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I. TAX ADMINISTRATION

A. The IRS postponed to July 15, 2020 the due date for filing obligations and tax payment obligations as well as time-sensitive actions of “affected taxpayers” due on or after March 30, 2020 and before July 15, 2020. Notice 2020-35, *amplifying* Notice 2020-23, Notice 2020-20 *and* Notice 2020-18; *modifying* Rev. Proc. 2020-10, Rev. Proc. 2019-39, Rev. Proc. 2019-19, Announcement 2018-05, Rev. Proc. 2017-55, *and* Rev. Proc. 2017-18.

1. Affected taxpayers’ filing and payment obligations include:
 - a. Individual income tax payments and return filings on Forms 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR, and 1040-SS;
 - b. Corporate income tax payments and return filings on Forms 1120, 1120-C, 1120-F, 1120-FSC, 1120-H, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT, 1120-RIC, 1120-S, and 1120-SF;
 - c. Partnership return filings on Forms 1065 and 1066;
 - d. Estate and trust income tax payments and return filings on Forms 1041, 1041-N and 1041-QFT;
 - e. Estate and generation-skipping transfer tax payments and return filings on Forms 706, 706-NA, 706A, 706-QDT, 706-GS(T), 706-GS(D), and 706-GS(D-1);
 - f. Form 706, filed pursuant to Rev. Proc. 2017-34;

- g. Form 8971 and any supplemental Form 8971, including all §6035(a) requirements;
 - h. 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 or Form 706-NA;
 - i. Estate tax payments of principal or interest due as a result of an election made under §6166, §6161, or §6163 and §6166 annual recertification requirements;
 - j. Exempt organization business income tax and other payments and return filings on Form 990-T;
 - k. Excise tax payments on investment income and return filings on Form 990-PF and excise tax payments and return filings on Form 4720; and
 - l. Quarterly estimated income tax payments calculated on or submitted with Forms 990-W, 1040-ES, 1040-ES (NR), 1040-ES (PR), 1041-ES, and 1120-W.
2. The IRS further expanded the definition of “affected taxpayer” to include taxpayers with time-sensitive actions relating to certain employment taxes, employee benefit plans, exempt organizations, IRAs, Coverdell education savings accounts, HSAs, and Archer and Medicare Advantage MSAs.
- B. The postponement is automatic; no Form 4868 or Form 7004 is required. Affected taxpayers may file extensions by July 15, 2020 for additional time to file returns, but the extension date may not go beyond the original statutory or regulatory extension date.

- C. The period from April 1, 2020 to July 15, 2020 will be disregarded in the calculation of interest, penalty, or addition to tax for failure to file the returns or pay the taxes so postponed.

- D. A corporation that overpays its estimated tax can obtain a quick refund of the excess estimated tax before it files its tax return. A corporation can obtain a quick refund only if the amount of the refund equals or exceeds 10% of the amount estimated by the corporation on its application as its income tax liability for the tax year and is at least \$500. IRC §6411; CARES Act, §2303; Notice 2020-26; Rev. Proc. 2020-24.
 - 1. The CARES Act permits a corporation to file a tentative carryback adjustment application in conjunction with an IRC §53(e)(5) election to take the entire refund of excess minimum tax credits in the 2018 tax year if the application is filed prior to December 31, 2020.

 - 2. The time to file a tentative carryback adjustment application for a tax year that began during calendar year 2018 and ended before March 27, 2019 had already expired by the time the CARES Act was enacted on March 27, 2020. The IRS thus granted, in Notice 2020-26, a six-month extension of time to file a tentative carryback adjustment application for taxpayers with NOLs arising in a tax year that began during calendar year 2018 and ended on or before June 30, 2019. The extension does not extend the time to carry back any other item.

 - 3. The IRS also provided, in Rev. Proc. 2020-24, relief for taxpayers with tax years that began before January 1, 2018 and ended after December 31, 2017. A taxpayer with an NOL arising in such a year will be treated as having timely filed a tentative carryback adjustment application and any available elections for such taxable years with an NOL (i.e., waiver or reduction of any

carryback period, revocation of waiver of any carryback period) if filed by July 27, 2020.

- E. From March 27, 2020 until July 15, 2020, the IRS will allow IRS employees: (1) to accept scanned or photographed images of signatures and digital signatures on documents related to the determination or collection of tax liability; and (2) accept documents via email and to transmit documents to taxpayers using SecureZip or other established secured messaging systems. NHQ-01-0320-0001; IRM 1.11.2.2.4.

II. INDIVIDUALS

- A. Eligible individuals are allowed a credit of \$1,200 (\$2,400 for joint filers), plus \$500 for each qualifying child, for the first taxable year beginning in 2020. An eligible individual is any individual who has a Social Security number and who is not a nonresident alien, an individual who can be claimed as a dependent on another taxpayer's return, or an estate or trust. The allowable credit is reduced by 5% of the eligible individual's adjusted gross income in excess of \$75,000 (all filers other than joint and head of household), \$112,500 (head of household), or \$150,000 (joint filers). The credit phases out entirely at \$99,000 (\$198,000 for joint filers). IRC §6428; CARES Act §2201(a). Eligible individuals who are not otherwise required to file federal income tax returns for taxable year 2019 may receive economic impact payments under the procedures set forth in Rev. Proc. 2020-28.
- B. Gross income does not include any amount received by an individual as a qualified disaster relief payment, which includes any amount to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster. A qualified disaster relief payment must be made to, or for the benefit of, an individual, but only to the extent any expense compensated by the

payment is not otherwise compensated for by insurance or some other reimbursement. IRC §139.

- C. For the 2020 tax year, the deduction percentage limitation for charitable contributions of cash has been removed for individual taxpayers. The CARES Act also increases the limitation on the corporate charitable contribution deduction from 10% of taxable income to 25% of taxable income. In addition, the limitation on contributions of food inventory is increased from 15% to 25%. For tax years beginning in 2020, eligible taxpayers are entitled to an above-the-line deduction of up to \$300 for qualified charitable contributions. An eligible taxpayer is an individual that did not elect to itemize deductions. A qualified charitable contribution is a cash contribution to a qualified tax-exempt organization. IRC §62; CARES Act §2204, §2205.
- D. An employee may elect to forgo vacation, sick, or personal leave in exchange for cash payments that his or her employer makes to IRC §170(c) charitable organizations. The IRS issued guidance indicating that such payments will not be treated as wages (or compensation, as applicable) to the employee or otherwise be included in the employee's gross income if the payments are paid before January 1, 2021, to charitable organizations for the relief of victims of the Covid-19 pandemic in the affected geographic areas (i.e., each of the 50 states, the District of Columbia, and five U.S. territories). Notice 2020-46.

III. BUSINESS ENTITIES

- A. The CARES Act has made many changes to the rules regarding net operating losses. IRC §172; CARES Act §2303; Rev. Proc. 2020-24; Notice 2020-26; Rev. Rul. 2020-8.
 - 1. The CARES Act amends IRC §172(b) to allow for the carryback of losses arising in taxable years beginning after December 31,

2017 and before January 1, 2021 to each of the five taxable years preceding the taxable year of such loss (however, real estate investment trusts (REITs) are not permitted such carrybacks). The CARES Act does not alter the indefinite carryforward of NOLs arising in those years.

2. The CARES Act amends IRC §172(b) to allow for the carryback of losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021 to each of the five taxable years preceding the taxable year of such loss (however, real estate investment trusts (REITs) are not permitted such carrybacks). The CARES Act does not alter the indefinite carryforward of NOLs arising in those years.
3. The CARES Act provides for several elections related to NOL carrybacks (election to waive NOL carryback, election to exclude IRC §965 years, and election under a special rule for tax years that began before January 1, 2018 and ended after December 31, 2017). The IRS prescribed the rules for filing those elections in Rev. Proc. 2020-24.
4. The CARES Act provides Treasury regulatory authority to make rules including guidance that acquisition of equity interests as part of loan and guarantee facilities and programs authorized by CARES Act §4003 will not result in an ownership change for IRC §382 purposes. IRC §382; CARES Act §4003(h)(2).

- B. The CARES Act removes the limitation on excess business losses for taxpayers other than corporations for tax years beginning after December 31, 2017, and before January 1, 2021. The Act also makes technical corrections to the excess business loss provisions to clarify: (1) that net operating losses and the qualified business income deduction under IRC §199A are not included in calculating an excess

business loss; and (2) the extent to which capital gains are taken into account in determining the amount of an excess business loss. IRC §461(l); CARES Act §2304.

- C. For tax years beginning in 2019 and 2020, the deduction for business interest expense is limited to the sum of (i) business interest income, (ii) 50% of adjusted taxable income (ATI) (increased from 30% of ATI), and (iii) floorplan financing interest expense. Taxpayers may elect not to use the increased limitation. Given that many taxpayers may have significantly reduced income in 2020, taxpayers may elect to substitute 2019 ATI for 2020 ATI. Special rules apply for short tax years. In the case of a partnership, the increase to the ATI portion of the limitation applies only to tax years beginning in 2020. Any election not to use the increased limitation must be made at the partnership level. Like other taxpayers, partnerships may elect to substitute 2019 ATI for 2020 ATI. A special rule provides that partners treat 50% of any excess business interest expense allocated to the partner in a tax year beginning in 2019 as paid or accrued in the partner's first tax year beginning in 2020, with the remaining 50% subject to the default limitation based on allocated excess taxable income (or excess interest income pursuant to Prop. Reg. §1.163(j)-6(g)(2)(i)). A partner may elect out of this special rule. Rules for these elections may be found in Rev. Proc. 2020-22.
- D. For Paycheck Protection Program (PPP) loans provided to businesses under Title I of Division A of the CARES Act (Small Business Administration loans), the Act expressly provides that any forgiveness or cancellation of all or part of such loans will not be treated as income for tax purposes. The Act is, however, silent on the deductibility of otherwise allowable payments of eligible expenses by a PPP loan recipient if the loan is later forgiven as a result of the payment of those expenses. The exclusion from income creates a class of exempt income to the extent of the forgiven PPP loan. As a result, the forgiven

PPP loan amounts are allocable to tax-exempt income, and deductions for the covered expenses that gave rise to the loan forgiveness are disallowed to prevent a double tax benefit. IRC §118; CARES Act §1106(i), §4003(h); Notice 2020-32.

- E. The CARES Act accelerates the ability of corporations to recover excess minimum tax credits (MTCs) that they possessed when the corporate alternative minimum tax was repealed beginning in 2018. Under the new provision, 50% of the excess MTC are refundable in the corporation's 2018 tax year and all remaining MTCs are refundable in tax year 2019. In addition, corporations may elect to take the entire refund in the 2018 tax year. IRC §53(e); CARES Act §2305; Notice 2020-26.
- F. The CARES Act retroactively classifies qualified improvement property (QIP) placed in service after 2017 as 15-year property with an ADS recovery period of 20 years. Taxpayers may thus apply 100% bonus depreciation to eligible QIP. The CARES Act also clarifies that improvements must be made by the taxpayer to be QIP. The amendments are effective as if enacted as part of the TCJA. IRC §168(e)(3)(E), (e)(6)(A), (g)(3)(B); CARES Act §2307; Rev. Proc. 2020-25.
- G. The CARES Act provides that borrowers with federally backed mortgage loans and multifamily borrowers with federally backed multifamily mortgage loans experiencing a financial hardship during the covered period due to the Covid-19 emergency may request and obtain forbearance on their loans. The covered period for this purpose begins with the date of the Act's enactment, March 27, 2020 and ends on the earlier of the termination date of the Covid-19 emergency or December 31, 2020. CARES Act §4022, §4023; Rev. Proc. 2020-26.

H. The Covid-19 pandemic has caused delays in the development of certain facilities eligible for the production tax credit for renewable energy facilities under IRC §45 and the investment tax credit for energy property under IRC §48. In recognition of those delays, the IRS extended the continuity safe harbor rule for projects that began construction in either 2016 or 2017 and provided a 3 1/2-month safe harbor for services or property paid for by the taxpayer on or after September 16, 2019 and received by October 15, 2020. Notice 2020-41, *modifying* Notice 2019-43, Notice 2018-59, Notice 2017-4, Notice 2016-31, Notice 2015-25, Notice 2014-46, Notice 2013-60, *and* Notice 2013-29.

IV. EMPLOYMENT

A. §2301 of the CARES Act provides for a temporary refundable credit against applicable employment taxes for each calendar quarter during 2020 for eligible employers that are negatively impacted by the COVID-19 outbreak but retain their employees. The credit is equal to 50% of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by the COVID-19 virus. The credit is applicable to wages paid after March 12, 2020, and before January 1, 2021, and is available to all employers regardless of size, including tax-exempt organizations. The credit is not available to state and local governments (and their instrumentalities) and small businesses that take small business loans. Self-employed individuals are also not eligible for this credit for their self-employment services or earnings.

1. To qualify, an employer must fall into one of two categories:
 - a. The employer's business is fully or partially suspended during the applicable calendar quarter due to orders from an appropriate governmental authority limiting commerce,

travel, or group meetings (for commercial, social, religious or other purposes) due to the COVID-19 disease; or

- b. The employer must suffer a significant decline in its gross receipts, i.e., the employer's gross receipts for a 2020 calendar quarter must be less than 50% of the comparable quarter in 2019. Once the employer's gross receipts exceed 80% for a comparable quarter in 2019, the employer no longer qualifies after the end of that quarter.
2. Qualifying wages are based on the average number of employees in 2019. If an employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless of whether the employees worked. If an employer had more than 100 employees on average in 2019, the credit is allowed only for wages paid to employees who did not work during the calendar quarter.
 3. An eligible employer is reimbursed by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit, and reporting their total qualified wages and related health care costs and deposits for each quarter on their Form 941, beginning with the second quarter of 2020. If an employer's tax deposits are not sufficient to cover the credit, an employer may receive an advance payment from the IRS by filing Form 7200, Advance Payment of Employer Credits Due to Covid-19.
- B. In response to the public health emergency posed by the 2020 Coronavirus global pandemic, federally-mandated paid sick leave benefits are provided for certain employees of small and mid-size businesses with 500 or less employees. Families First Coronavirus

Response Act (FFCRA), Pub. L. No. 116-127, Div. E (Emergency Paid Sick Leave Act), §5101-5112 (Mar. 18, 2020), effective April 1, 2020, as amended by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, §3602, 3604, §3611 (Mar. 27, 2020).

1. The FFCRA tax credits apply to wages paid for the period beginning on April 1, 2020, and ending on December 31, 2020. Notice 2020-21. The requirements set forth under this Act expire on December 31, 2020.
2. Paid sick time must be provided by covered employers to each employee unable to work (or telework) due to:
 - a. a quarantine or isolation order issued by federal, state, or local government order as a result of COVID-19;
 - b. self-quarantine on the advice of a health care provider due to COVID-19 concerns;
 - c. experiencing symptoms of COVID-19, and awaiting a medical diagnosis;
 - d. caring for a person under government quarantine or isolation order, or who has symptoms of COVID-19;
 - e. employee's need to care for one's child(ren) due to a school closing or unavailable child care provider prompted by precautions over COVID-19; or
 - f. experiencing any substantially similar condition as specified by HHS in conjunction with Treasury and the DOL.

3. Employers may opt to exclude health care providers and emergency responders from the emergency paid sick leave requirements. The DOL may elect to provide an exemption to businesses with less than 50 employees from the paid sick leave requirements with respect to employees who are caring for a child at home due to COVID-19 related school closings or child care provider unavailability, where the employer can show that to do otherwise would jeopardize the continuing viability of the business. Similarly, the Office of Management and Budget (OMB) may act to exclude certain federal government workers from the requirements of this Act, including Executive Branch employees, for good cause. 1272 Pub. L. No. 116-127, Div. E, §5102(a), §5111.

4. Full-time employees are entitled to 80 hours of paid sick time, while part-time employees are entitled to the average number of hours they work in a two-week period. The maximum paid sick time amount is \$511 per day, per employee, and up to a maximum of \$5,110 total, for employees who are quarantined, isolated, or experiencing COVID-19 symptoms, and a maximum of \$200 per day, per employee, and a total of \$2,000 maximum for employees caring for a person impacted by COVID-19 symptoms or precautionary responses to the disease. The required compensation amount should not be less than the employee's regular rate of pay, or applicable minimum wage, whichever is greater. However, for employees who are caregivers of individuals impacted by COVID-19, required compensation is equivalent to two-thirds of the employee's regular rate of pay. Paid sick time benefits provided under this Act are not eligible for rollover from year to year, and the employer's obligation to pay sick leave benefits ends with the

next scheduled shift after the need for paid sick leave under the Act comes to an end.

5. Employers may receive a 100% refundable sick leave credit for the amount of emergency sick time benefits paid to COVID-19 impacted employees, including certain costs to maintain the health insurance, and the employer's share of Medicare taxes for affected employees. Once the benefits are paid, employers may reduce the amount of payroll taxes normally due by an amount equivalent to the qualified benefits paid to their COVID-19 impacted employees. If the amount of payroll taxes due is less than the amount necessary to fully offset the benefits paid, then employers may file a claim for accelerated reimbursement of the amount by which the benefits paid exceed the payroll taxes. The tax credits apply to wages paid for the period beginning on April 1, 2020, and ending on December 31, 2020. Notice 2020-21. Employers file Form 7200 to request an advance payment from the IRS. See Instructions for Form 7200, Advance Payment of Employer Credits Due to COVID-19. See also IRS News Release IR-2020-57 (Mar. 20, 2020).
6. Employees may not be terminated, disciplined, or discriminated against for exercising rights to paid sick time benefits, or for starting, prompting, or participating in any complaints or proceedings related to this Act. 1280 Offering unpaid sick leave to employees, or requiring employees to utilize any other accrued paid leave benefits they may have (e.g., sick, vacation, personal leave) before allowing them to collect paid sick time, is also unacceptable and subject to penalties under FLSA. Length of employment with an employer has no bearing on whether an employee may utilize sick leave benefits under the Act.

7. The failure to pay sick leave amounts to violation of minimum wage laws under §6 of FLSA (29 U.S.C. §206). Pub. L. No. 116-127, Div. E, §5105(a). Pub. L. No. 116-127, Div. E, §5102(d).
 8. Employers that are part of a multiemployer collective bargaining agreement may satisfy their obligations to pay emergency paid sick leave on behalf of their employees working under the collective bargaining agreement and entitled to the funds by paying the benefits due to such employees into a fund from which eligible employees are able to seek payment from the arrangement.
 9. The deadline for posting the notice of benefits provided under the Act was no later than April 1, 2020. The DOL provided employers with a 30-day non-enforcement period for good faith compliance with the Act prior to the issuance of clarifying DOL guidance, expected no later than April 1, 2020.
 10. As there appears to be no prohibition on the concurrent applicability of the emergency paid sick leave benefits and emergency expanded FMLA benefits available under the Families First Coronavirus Response Act, an employee could use benefits under the emergency paid sick leave act to satisfy the first 10 unpaid days of the emergency FMLA period.
- C. Amounts of the employer portion of Social Security tax that normally would need to be paid to the government with respect to the period from March 27 to Dec. 31, 2020, do not need to be paid according to the normally applicable deposit timeline and instead may be deferred under the CARES Act.

1. There are two classes, a primary class and a secondary class, of deposits of the employer portion of Social Security tax that can be deferred.
 - a. The primary class of such deposits includes those that without the deferral relief otherwise would have been due from March 27 to Dec. 31, 2020.
 - b. The secondary class of such deposits includes those based on wages paid during the fourth quarter of 2020 that even without the deferral relief otherwise would have been due on or after Jan. 1, 2021.
2. The primary class was established by the CARES Act, and the IRS established the secondary class through administrative interpretation, with text regarding the secondary class released in the finalized instructions for the revised Form 941 (as detailed in the section on the revised form's Line 13b).
3. With regard to payment of the amount of the employer portion of Social Security tax for a quarter in light of the ability to defer, the IRS originally intended for payments due after 2020 to be based on the total amount actually deferred for the quarter, with half of the amount actually deferred due Dec. 31, 2021, and the other half due Dec. 31, 2022. However, the IRS revised the payment method so that regardless of amounts actually deferred, half of the total amount of the employer portion of Social Security tax owed for a quarter of 2020 is due Dec. 31, 2021, with the other half due Dec. 31, 2022.
4. Amounts of the employer portion of Social Security tax that were eligible for deferral but were deposited generally cannot be refunded for the purpose of retroactive deferral. However, an

employer, in determining the amount of the employer portion of Social Security tax that it still may defer for a quarter, can consider amounts that it already deposited for the quarter with the original intention that these would be amounts of the employer portion of Social Security tax to instead have been amounts of another type of employment tax. The IRS considers deferrals of the employer portion of Social Security tax to be deferrals of deposits and payments, but not deferrals of liability.

D. Withholding, deposits, and payments with respect to the employee portion of Social Security tax on qualifying compensation paid during the period from Sept. 1 to Dec. 31, 2020, can be deferred by employers under a presidential memorandum signed Aug. 8, 2020. Employers are responsible for ensuring deferred amounts of the employee portion of Social Security tax are paid to the government. As per the deferral, amounts of the employee portion of Social Security tax that employers did not withhold, deposit, and pay based on qualifying compensation paid from Sept. 1 to Dec. 31, 2020, must, under Notice 2020-65, be withheld, deposited, and paid during the period from Jan. 1 to April 30, 2021. The employee Social Security tax withholding normally required for compensation paid from Jan. 1 to April 30, 2021, still would be in effect for compensation paid during that period upon which the deferred withholding also is required.

1. As per the memorandum, the deferral provisions pertaining to the employee portion of Social Security tax can apply only to compensation paid to employees whose biweekly pretax compensation generally is less than \$4,000. If the pay period applicable for an employee is other than biweekly, the deferral provisions can apply with respect to compensation paid to the employee if the employee's pretax compensation for that period

generally is less than the threshold of \$4,000 as prorated for that period.

2. A similar, but separate, requirement established by Notice 2020-65 is that applicability of the deferral provisions is determined on a pay period-by-pay period basis, with the deferral provisions able to apply to an employee's compensation for a biweekly pay period only if the amount of the employee's pretax compensation for that biweekly pay period is less than \$4,000. If the employee's pay period is other than biweekly, the employee's pretax compensation for that pay period must be less than \$4,000 as prorated for that period. When combining the requirements of the memorandum and Notice 2020-65, the deferral provisions could not apply with respect to compensation paid to an employee for a biweekly pay period if the employee generally is paid less than \$4,000 on a biweekly basis but for that pay period is paid \$4,000 or more, or if the employee generally is paid \$4,000 or more on a biweekly basis but for that pay period is paid less than \$4,000.

V. RETIREMENT

- A. The deadline for making contributions to an IRA, or for an employer to make contributions to its workplace-based retirement plan on account of 2019, is extended to July 15, 2020. The due date for filing with the IRS, and furnishing to individuals, contribution information for IRAs (as well as Coverdell ESAs) on the Form 5498 series is postponed to August 31, 2020. Notice 2020-35, *amplifying* Notice 2020-23 *and* Notice 2020-18 (*superseding* Notice 2020-20).
- B. If the deadline for the following time-sensitive actions is on or after March 30, 2020, and before July 15, 2020, then pursuant to Notice 2020-35 it is postponed to July 15, 2020:

1. Qualified retirement plan funding waiver application;
 2. Cooperative and small employer charity (CSEC) plan contributions, quarterly installments, adoption of funding restoration plan, and certification of funded status;
 3. Multiemployer defined benefit plan certification of funded status (and notice to interested parties), funding improvement plan or rehabilitation plan adoption (and notification to bargaining parties), and annual update of funding improvement plan or rehabilitation plan and related schedules;
 4. Excise tax reporting on Form 5330 for excise taxes listed in Table 1 of the Instructions; and
 5. Substitute mortality table requests for approval.
- C. The Period from March 1, 2020, until 60 days after the announced end of the National Emergency or a date announced jointly by Treasury and Labor is disregarded when determining certain notification periods related to claims procedures. Employee benefit plans and the responsible plan fiduciary will not be in violation of ERISA Title I for a failure to timely furnish a notice, disclosure, or document (other than one covered under the joint Treasury and Labor relief) that must be furnished to plan participants, beneficiaries, and other persons between March 1, 2020, and 60 days after the announced end of the Covid-19 National Emergency, if they act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. 85 Fed. Reg. 26,351 (May 4, 2020); EBSA Disaster Relief Notice 2020-01.
- D. The due date for calendar year 2020 minimum required contributions is extended to January 1, 2021. However, delayed contributions must be increased by interest accruing for the period between the original due

date for the contribution and the actual payment date, at the effective rate of interest for the plan for the plan year that includes the payment date. Plans under benefit restrictions as outlined in IRC §436 and ERISA §206(g) may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before January 1, 2020, as the adjusted funding attainment target for plan years that include the 2020 calendar year. CARES Act §3608.

E. Coronavirus-related distributions from eligible retirement plans are not subject to the 10% excise tax on early distributions. Distributions must be made on or after January 1, 2020 and before December 31, 2020 to an individual who is diagnosed with SARS-CoV-2 or Covid-19, whose spouse or dependent is so diagnosed, or who experiences financial hardship because of quarantine or other factors. Coronavirus-related distributions may not exceed \$100,000 in the aggregate for any taxable year. Taxpayers may elect to ratably spread the income over a 3-year period beginning with taxable year 2020. Taxpayers may also avoid income recognition by repaying the distribution to the retirement plan within three years of receipt. CARES Act §2202(a); Notice 2020-50.

1. In Notice 2020-50, the IRS expanded the categories of individuals eligible for coronavirus-related distributions and loans (referred to as "qualified individuals") by taking into account additional factors such as reductions in pay, rescissions of job offers, and delayed start dates with respect to an individual, as well as adverse financial consequences to an individual arising from the impact of the Covid-19 coronavirus on the individual's spouse or household member.

2. The following amounts are not coronavirus-related distributions:

a. corrective distributions of elective deferrals and employee contributions, excess elective deferrals under IRC

- §402(g), excess contributions under IRC §401(k), and excess aggregate contributions under §401(m);
- b. loans that are treated as deemed distributions pursuant to IRC §72(p);
 - c. dividends paid on applicable employer securities under IRC §404(k);
 - d. the costs of current life insurance protection;
 - e. prohibited allocations that are treated as deemed distributions pursuant to IRC §409(p);
 - f. distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of IRC §414(w); and
 - g. distributions of premiums for accident or health insurance under Treas. Reg. §1.402(a)-1(e)(i).
3. If a distribution is eligible for tax-free rollover, an individual may at any time in the 3-year period beginning the day after the date of the distribution, recontribute any portion not in excess of the amount of the distribution to an eligible retirement plan. A recontribution will not be treated as a rollover contribution for purposes of the one-rollover-per-year limitation under IRC §408(d)(3)(B).
- a. For taxpayers who use the 1-year income inclusion method, the amount of the recontribution will reduce the amount of the distribution included in gross income for the year of the distribution and the amount will be reported on Form 8915-E.

- b. For taxpayers who use the 3-year ratable income inclusion method, the amount of the recontribution will reduce the ratable portion of the distribution that is includible in gross income for that year. Further, the excess amount may be carried forward in the next tax year in the 3-year period or, alternatively, carried back to a prior taxable year(s) in which the individual included income attributable to a coronavirus-related distribution.
 - c. If a qualified individual dies before the full taxable amount has been included in gross income, the remainder must be included in gross income for the taxable year that includes the individual's death.
 - d. For individuals receiving substantially equal periodic payments, coronavirus-related distributions will not be treated as a change in substantially equal payments under IRC §72(t)(4).
 - e. A qualified individual who receives a coronavirus-related distribution that is eligible for tax-free rollover treatment may recontribute, at any time in a 3-year period, any portion of the distribution to an eligible retirement plan that may accept eligible rollover contributions. The relief in Q&A-14 of Treas. Reg. § 1.401(a)(31)-1 applies to an employer retirement plan accepting recontributions of coronavirus-related distributions.
4. A distribution designated as a coronavirus-related distribution by an employer retirement plan is treated as meeting the distribution restrictions for qualified cash or deferred arrangements under IRC §401(k)(2)(B)(i), custodial accounts under IRC §403(b)(7)(A)(i), annuity contracts under IRC §403(b)(11),

governmental deferred compensation plans under IRC §457(d)(1)(A), and the Thrift Savings Plan under 5 U.S.C. §8433(h)(1). CARES Act §2202(a); Notice 2020-50.

- a. If a distribution is treated as a coronavirus-related distribution by an employer retirement plan, the rules for eligible rollover distributions under IRC §401(a)(31), §402(f), and §3405 are not applicable to the distribution. Thus, the plan is not required to offer a direct rollover or provide §402(f) notice. Further, the plan administrator or payor is not required to withhold an amount equal to 20% of the distribution.
- b. The employer may choose whether and to what extent to treat distributions under its plans as coronavirus-related distributions. The administrator may rely on an individual's certification that the individual satisfies the conditions to be a qualified individual.
- c. Eligible retirement plans are generally not required to accept rollover contributions.
- d. An eligible retirement plan must report the payment of a coronavirus-related distribution on Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. This reporting is required even if the individual recontributes the distribution to the same eligible retirement plan in the same year. If a payor is treating the payment as a distribution and no other appropriate code applies, the payor may use distribution code 2 in box 7 of Form 1099-R.

- F. Loans from qualified employer plans up to \$100,000 (increased from \$50,000) are permitted in the 180 days beginning on the date of enactment (loans made on or after March 27, 2020 and before September 23, 2020). The full present value of the nonforfeitable accrued benefit of the employee under the plan, as opposed to one-half thereof, is used in applying the IRC §72(p)(2)(A)(ii) exception to treatment of the loan as a taxable deemed distribution. CARES Act §2202(b); Notice 2020-50.
1. For outstanding loans on or after March 27, 2020, if the due date under IRC §72(p)(2)(B) or (C) for any repayment occurs during the period beginning on March 27, 2020, and ending on December 31, 2020, the due date is suspended for 1 year. Any subsequent repayments are adjusted to reflect the delay and any interest accruing during the delay, and the period of the delay must be disregarded in determining the 5-year period and the term of the loan under IRC §72(p)(2)(B) and §72(p)(2)(C).
 2. The loan repayments must resume after the end of the suspension period, and the term of the loan may be extended by up to 1 year from the date the loan was originally due to be repaid. If a qualified employer plan suspends loan repayments during the suspension period, the suspension will not cause the loan to be deemed distributed even if, due solely to the suspension, the term of the loan is extended beyond 5 years.
- G. Employers may reduce or suspend certain contributions made under their safe harbor §401(k) or §401(m) plans in certain circumstances without complying with certain requirements that otherwise apply. The temporary relief also extends to §403(b) plans that apply §401(m) safe harbor rules pursuant to IRC §403(b)(12). IRC §401(k), §401(m); Notice 2020-52, clarifying Notice 2016-16.

1. If a plan amendment reducing or suspending safe harbor matching or nonelective contributions during a plan year is adopted between March 13, 2020 and August 31, 2020, the plan will not be deemed out of compliance with safe harbor rules where the employer (1) is operating at an economic loss for the plan year (as defined in IRC §412(c)(2)(A)) or (2) has a safe harbor notice that includes a statement that the plan may be amended during the plan year to reduce or suspend safe harbor contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided with notice for the reduction and/or suspension.
2. Supplemental notice of plan amendments that reduce or suspend safe harbor nonelective contributions are not required to be provided at least 30 days prior to the effective date of the reduction or suspension, as long as the supplemental notice is provided to all eligible employees no later than August 31, 2020, and the amendment is adopted no later than the effective date of the reduction or suspension of the nonelective safe harbor contributions.
3. Contributions made on behalf of highly compensated employees (HCEs) are not safe harbor contributions; therefore, a mid-year change that only reduces contributions made on behalf of HCEs is not a reduction or suspension of safe harbor contributions. However, HCEs impacted by a mid-year change must be given an updated safe harbor notice and be afforded the opportunity to make changes to elections. HCEs impacted by mid-year changes are to be determined as of the issuance date for the updated safe harbor notice.

- H. A nonqualified deferred compensation plan subject to IRC §409A may provide for a cancellation of a service provider's deferral election, or such a cancellation may be made, due to an unforeseeable emergency or a hardship distribution pursuant to Treas. Reg. §1.401(k)-1(d)(3). If a service provider receives a distribution from an eligible retirement plan that constitutes a coronavirus-related distribution, that distribution will be considered a hardship distribution. Thus, a nonqualified deferred compensation plan may provide for a cancellation of the service provider's deferral election, or such a cancellation may be made, due to a coronavirus-related distribution. The deferral election must be cancelled, not merely postponed or delayed. IRC §409A; CARES Act §2202; Notice 2020-50.
- I. Minimum distribution rules are waived for calendar year 2020 for IRAs and certain defined contribution plans. Waiver does not apply to required beginning dates in calendars year after 2020, and amounts which would otherwise be required to be distributed are not eligible rollover distributions. IRC §401(a)(9)(I); IRC §402(c)(4); CARES Act §2203; Notice 2020-51.
1. For distributions to be made over a 5-year period that includes calendar year 2020, calculations of the distribution period may disregard calendar year 2020.
 2. Plan amendments to comply with this provision must be made on or before the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024 for governmental plans). Plans operated in accordance with these changes between the amendment's effective date and December 31, 2020, will not be deemed to have a plan qualification failure, or an anti-cutback rule failure, under IRC §411(d)(6).

3. The IRS provides transition relief for plan administrators and payors in connection with the change in required beginning date for required minimum distributions (“RMD”) under IRC §401(a)(9). A distribution from a plan made during 2020 to a participant who will attain age 70 1/2 in 2020 that would have been an RMD but for the change in the required beginning date will not be considered as failing the requirements of IRC §401(a)(31), §402(f) and §3405(c).
4. The relief allows taxpayers who receive certain distributions to roll them into an eligible retirement plan, even if the distribution normally would be treated as part of a series of substantially equal periodic payments. The following distributions from a plan (other than a defined benefit plan) may be rolled over, provided the other rules of IRC §402(c) are satisfied:
 - a. Distributions to a plan participant paid in 2020, if the payments equal the amounts that would have been required minimum distributions in 2020, but for CARES Act §2203, or are one or more payments in a series of substantially equal periodic payments made at least annually and expected to last for the life of the participant, the joint lives of the participant and the participant’s designated beneficiary, or for a period of at least 10 years; and
 - b. For a plan participant with a required beginning date of April 1, 2021, distributions that are paid in 2021 that would have been a required minimum distribution for 2021 but for CARES Act §2203.
5. The 60-day rollover period for such distributions, as well as for IRA distributions in 2020 that would have been RMDs in 2020

but for CARES Act §2203 or SECURE Act §114, is extended in 2020 so that the deadline for rolling over such distributions will not be before August 31, 2020 (note that, effectively, this only applies for employees taking such distributions more than 60 days prior to August 31, 2020).

6. The IRS additionally allows for the repayment of required minimum distributions previously distributed from an IRA in 2020. The recipient may repay the distribution to the distributing IRA, even if the repayment is made more than 60 days after the distribution, provided the repayment is made no later than August 31, 2020. The repayment will be treated as a rollover for purposes of IRC §408(d)(3), except for purposes of the one rollover per 12-month period limitation and the restriction on rollovers for nonspousal beneficiaries.

- J. On April 10, 2020, the PBGC informally announced that, unless a filing is on an exceptions list (e.g., advance notices of reportable events under ERISA §4043), filers can be assured that PBGC will grant disaster relief for required filings when, where, and for the same relief period that the IRS grants relief for taxpayers affected by a disaster. Filers do not have to wait for the PBGC to issue a separate announcement.

VI. MICHIGAN

- A. The governor issued an executive order on March 27, 2020 announcing that the deadline for an annual state income tax return or payment otherwise due on April 15, 2020, will instead be due on July 15, 2020. The order also announced that an annual state income tax return or payment due on April 30, 2020, will be due on July 31, 2020. The order extended the deadline for all taxpayers required to file an annual city income tax return in April 2020 to July 2020.

- B. The Michigan Department of Treasury announced on April 14, 2020 that it has extended the due date to May 20, 2020, for sales tax, use tax, and or quarterly return due on April 20, 2020. The waiver was effective for a period of 30 days; therefore, any monthly or quarterly payment or return currently due on April 20, 2020 could be submitted to the Department without penalty or interest through May 20, 2020.
- C. The Michigan Department of Treasury issued guidance on April 17, 2020 expanding and recapping tax relief. To conform with IRS Notice 2020-23, Michigan extended the due date for first and second quarter estimated income tax payments to July 15, 2020. Estimated payments for fiscal year filers due after April 15, 2020 and before July 15, 2020, were now due on July 15, 2020. Individual extensions had to be requested and required tax paid by July 15, 2020, for an extension to Oct. 15, 2020. Corporate extensions for calendar year filers had to be requested and required tax paid by July 31, 2020, for an extension to Dec. 31, 2020.
- D. The Michigan Department of Treasury announced on May 1, 2020 that 2019 City of Detroit Income Tax Returns would be due July 15, 2020.
- E. On May 14, 2020, the governor signed Executive Order 2020-87, which provided an extended opportunity for individuals to dispute the assessed value of their property, extended certain equalization filing and meeting deadlines for local and county officials, and extended the deadline for filing petitions to appeal assessment determinations as to commercial and industrial property.
- F. The Michigan Department of Treasury announced on May 16, 2020 that Michigan business taxpayers who were scheduled to make sales and use and/or withholding tax payments due in March, April, and May, including quarterly filers, could defer filing requirements until June 20, 2020. The Michigan Department of Treasury will waive penalties and

interest on those deferred payments. This does not apply to accelerated tax filers. The previous extension was until May 20, 2020.

- G. The Michigan Department of Treasury announced on May 27, 2020 an installment payment option available for business taxpayers deferring sales and use, and withholding tax (SUW) payments for individual income, corporate income, and sales and use tax purposes. Specifically, taxpayers could make SUW tax payments for the February, March, April, and May tax periods on June 20 to either pay the outstanding balance in its entirety or in monthly payments over the next 6 months.
- H. The governor issued an executive order on May 28, 2020 extending the deadline by which property forfeited to a county treasurer may be redeemed from March 31, 2020, to June 29, 2020. This extended deadline did not apply to property already subject to a court order providing a deadline later than June 30, 2020.
- I. The Michigan Department of Treasury issued a notice on June 8, 2020 regarding Michigan's conformity to the CARES Act. The notice states that Michigan conforms to the federal limitation on business interest expenses when computing CIT liability.
- J. on June 11, 2020, Michigan enacted H.B. 5766 which extends the deadline for property tax appeals until Aug. 31, 2020, for deadlines that are between May 27, 2020, and Sept. 1, 2020.
- K. June 26, 2020: The Michigan Treasury issued guidance on June 26, 2020 regarding the deadline extension from June 1, 2020, to June 30, 2020, for the principal residence exemption affidavit, in light of Public Act 96.
- L. The Michigan Department of Treasury issued an administrative bulletin on July 20, 2020 regarding the application of the sales and use tax

industrial processing exemption to personal protective equipment and safety equipment used to prevent the spread of infectious diseases, such as COVID-19.