

COVID-19 Legislation

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Items to Cover

1. Notice 2020-18; Delay of Tax Season
2. Coronavirus Relief Act
 - Family and Medical Leave Expansion Act
 - Sick Leave Act
 - Tax Credits for the Above
3. Section 139

Items to Cover

4. The CARES ACT

- Stimulus Payments
- Small Business Loans
- Charitable Contribution Changes
- Retirement Plan Changes
- Employee Retention Credits
- Payroll Tax Deferral
- Net Operating Loss Changes
- Section 461(l)
- Section 163(j); Interest Limitation Rules
- QIP Fix

Notice 2020-18

Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic

- On March 13, 2020, the President issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the ongoing COVID-19 pandemic.
- Instructed the IRS to “provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a)”
- The IRS interpreted this as equivalent to a “federally declared disaster” as defined in Section 165(i)(5)(A).
- *(This Section 7508A language will become important later as we look at Section 139)*

Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic

- **Who is covered, and until when?**

- Any taxpayer who originally had...
 - A tax return,
 - A payment of 2019 tax liability, or
 - A 1st quarter 2020 estimated tax payment

... Due on April 15, 2020 now gets an AUTOMATIC EXTENSION until July 15, 2020.

- No extension form is required prior to April 15th; it's as if July 15th steps in the shoes of April 15th for both filing and payment.
- Unlike Notice 2020-17, there is no limit on the amount of tax originally due April 15 that may now be paid July 15, 2020.

Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic

■ Additional clarity from the IRS

- The following forms that were due on April 15, 2020 are now due July 15, 2020
 - Form 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR, 1040-SS (individuals)
 - Form 1041, 1041-N, 1041-QFT (trusts and estates)
 - Form 1120, 1120-C, 1120-F, 1120-FSC, 1120-H, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT, 1120-RIC, 1120-SF (corporations, REITs, RICs, etc...)
 - Form 8960 (net investment income tax)
 - Form 8991 (tax on base erosion payments)
 - A Form 990-T due on April 15th. A Form 990-T due on May 15 is NOT postponed.
 - Per Notice 2020-20: Form 709 (United States Gift and Generation-Skipping Transfer Tax Return)
- In addition, any 1st quarter 2020 estimated payment due on April 15, 2020 for individuals and corporations.

Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic

- **What returns and payments are not extended?**

- Estate (Form 706) returns
- Any partnership or S corporation return originally due March 15, 2020
- Any return with filing due dates between April 15 and July 15th, (for example, Form 990s originally due May 15, 2020)
- Payroll and excise taxes
- As you we'll see later, claims for refund for a 2016 tax return are still due April 15, 2020

Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic

■ What about fiscal year filers?

- Notice 2020-18 provides that only returns and payment for a taxpayer's 2019 return originally due on April 15, 2020 are extended until July 15.
- Thus, one would think a corporate return with a 6/30/2019 year end, with an original due date of 10/15/2019 and an extended due date of 4/15/2020, would NOT be covered, because it is the corporation's 2018 tax year rather than its 2019 tax year.
- An IRS Q&A, however, allows that return to be delayed until July 15, 2020 because the extended due date was on April 15, 2020. This may not be technically correct, and an IRS Q&A is not binding. (of course, all tax should have been paid by October 15, 2019).
- This begs the question: a 4/30/2020 year-end corporation has a 4th quarter ES payment due April 15, 2020. Is this payment delayed? The notice says only ES payments related to the 2020 tax year are delayed, but using the same the IRS employed above, is it delayed until July 15, 2020?

Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic

- **Additional extensions**

- You do NOT need to file a Form 7004, 4868 or 8992, by April 15th; rather, you file by July 15th 2020, and the extension takes you to the normal extended due date (October 15, 2020 for individuals and corporations).
- You do, however, need to continue to properly estimate your extension payment at July 15, 2020 for the extension to be respected.

- **Claim for refund**

- For purposes of the three-year statute for filing a claim for refund, the period of time is NOT extended. Thus, if you want to claim a refund for 2016, it must be filed by April 15, 2020.

Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic

■ **Estimated Payments**

- As mentioned, 1st quarter 2020 payments are now due on July 15, 2020.
- 2nd quarter ES payments remain due on June 15, 2020, however.
- Theoretically, however, you could not make ANY ES payments until July 15, 2020, by overpaying the 1st quarter payment due in July in an amount that covers both the 1st and 2nd quarters. This overpayment should then be retroactively applied to the June 15th installment.

■ **IRA/Employer Contributions/HSA Payments**

- Contributions to an IRA, employer contributions under Section 406 to a qualified retirement plan, and HSA contributions are also pushed back to July 15, 2020.

Interest and Penalties

- Interest and penalties will begin to accrue on any unpaid balances as of July 16, 2020, unless a proper extension is filed before that time.

Families First Coronavirus Relief Act

Relief Act Outline

- Free COVID-19 testing
- Meals for children required to stay home from school
- Extended unemployment insurance
- Benefits for employees and employers impacted
 - Paid emergency family and medical leave for employees
 - Paid sick leave for employees
 - Tax credits for employers for providing paid family and sick leave
- Takes effect on April 1, 2020.

Emergency Family and Medical Leave

Paid Emergency Family and Medical Leave

- These rules simply expand on the Family and Medical Leave Act of 1993. If you want to understand them, you'll have to understand the 1993 Act as well as the underlying regulations (good luck).
- Black = original law
- Red = new or changed law
- Section 102(a)(1) of the 1993 Act provided that an “eligible employee” was entitled to 12 weeks of leave for various reasons (birth of a child, serious health condition, etc...) This leave could be unpaid.
- The Coronavirus Relief Act added a new “reason” for 12 weeks of leave-for any period beginning April 1, 2020 and ending December 31, 2020, you are eligible if you have a “qualifying need” related to a “public health emergency” described in Section 110, which was added to the 1993 Act by the new legislation.

Paid Emergency Family and Medical Leave

- **New Section 110, Public Health Emergency Leave**
- **Who is an “eligible employer?”**
 - Unlike the 1993 Act general rules, this applies not to an employer with 50 or more employees, but rather less than 500.
 - You have fewer than 500 employees if, at the time the employee’s leave is to be taken, you employ fewer than 500 full-time and part-time employees within the US, DC or any territory. You should include employees on leave, temporary employees, and day laborers supplied by a temporary agency.
 - Do NOT count any independent contractors.
 - Typically, a corporation is considered to be a single employer. When a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers under the FLSA with respect to certain employees. If they are joint employers, both employers must count the employees.

Paid Emergency Family and Medical Leave

- In general, two or more entities are separate employers unless they meet the integrated employer test under the Family and Medical Leave Act of 1993 (FMLA). If two entities are an integrated employer under the FMLA, then employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave. Factors to be considered in determining if separate businesses are an integrated employer include:
 - 1. Common management,
 - 2. Interrelation between operations,
 - 3. Centralized control of labor relations, and
 - 4. Degree of common ownership or financial control.

For purposes of determining employer coverage under the FMLA, the employees of all entities making up the integrated employer must be counted.

- Resources here: <https://www.dol.gov/agencies/whd/laws-and-regulations/laws/fmla>

Paid Emergency Family and Medical Leave

- Businesses with fewer than 50 employees can argue that paying the leave will jeopardize the viability of their business as a going concern and avoid paying the leave. They should document why their business meets the criteria set out by the DOL, which has NOT YET BEEN ESTABLISHED.
- Thus, the new leave requirements do NOT apply to a private sector employer with more than 500 employees.

Paid Emergency Family and Medical Leave

- Who is an “eligible employee?”
 - The 1993 Act required an employee to have been employed for at least 12 months and for at least 1,250 hours during that period.
 - Section 110 provides that for COVID-19 purposes, an eligible employee is any employee who has been employed for at least 30 calendar days before leave is requested.

Paid Emergency Family and Medical Leave

- What is a “qualifying need related to a public health emergency?”
 - Public health emergency: An emergency with respect to COVID-19 declared by a Federal, state or local authority.
 - Qualifying need for leave: An employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or if the child care provider of such son or daughter is unavailable, due to a public health emergency.
 - Thus, it appears you are not entitled to paid leave because your business closed its doors, voluntarily or involuntarily. It has to be because you need to stay home to care for a child.

Paid Emergency Family and Medical Leave

- How does the leave work?
 - Of the 12 weeks, the first two can be unpaid. We'll see that you can possibly claim sick leave for those two weeks. The next ten MUST be paid.
 - For the first two weeks of unpaid leave, the employee can elect to use paid vacation or sick leave.
 - For the next ten weeks, the employer must pay the employee based on:
 - At least 2/3 of the employees regular pay (this must be above the federal minimum wage or the applicable state or local minimum wage), and
 - The number of hours the employee would otherwise be normally scheduled to work. (You must factor in overtime hours into this computation. In addition, a part-time employee is subject to a separate calculation)
 - The leave pay is not required to exceed \$200/day or \$10,000 in the aggregate to any one employee.
 - Family leave is not subject to the 6.2% employer Social Security tax.

Paid Emergency Family and Medical Leave

- Is there a requirement that an employee on leave get his/her job back?
 - Generally, under Section 104 of the 1993 Act, yes.
 - But new Section 110 provides that if an employer has less than 25 employees, the employee is not guaranteed their job back if:
 - The position no longer exists because of economic conditions caused by COVID-19, and
 - The employer makes reasonable efforts to restore the employee to the position if the position becomes available in the next year.

Paid Sick Leave

Paid Sick Leave

- An eligible employee is entitled to up to 80 hours of paid sick leave (over a two week period) for any of the following six reasons:
 1. subject to a Federal, State, or local quarantine or isolation order related to COVID-19
 2. advised by a health care provider to self-quarantine due to concerns related to COVID-19
 3. experiencing symptoms of COVID-19 and seeking a medical diagnosis
 4. caring for an individual who is subject to quarantine or has been advised to self-quarantine
 5. caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions
 6. experiencing any other substantially similar condition

Paid Sick Leave

- Who is an eligible employer?
 - Same as in the previous slides for emergency medical leave.
- Who is an eligible employee?
 - Any employee, regardless of how long they have been employed (different from the emergency medical leave rules requiring 30 days).

Paid Sick Leave

- Rate of pay for sick leave
 - If you are taking sick leave for reasons 1, 2 or 3 (the EMPLOYEE is sick)
 - The employee is paid based on the number of hours they would normally work, and
 - The greater of:
 - The employee's regular rate of pay,
 - The federal minimum wage, or
 - A state or local minimum wage.
 - Total pay is capped at \$511/day or \$5,110 in the aggregate
 - If you are taking sick leave for reasons 4, 5 or 6 (the employee is caring for someone else)
 - The employee is paid based on the number of hours they would normally work, and
 - 2/3 of the employee's regular rate of pay.
 - Total pay is capped at \$200 per day and \$2,000 in the aggregate.

Emergency Medical Leave & Paid Sick Leave

- The two can work together if an employee is taking care of a child because school is closed or child care isn't available (reason 5 of the sick pay rules)
- In that case, the first two weeks (80 hours) could be paid sick time (maximum of \$2,000).
- The next ten weeks would be paid medical leave time (maximum payment of \$10,000).
- Thus, total payment would be \$12,000.
- Sick leave is not subject to the 6.2% employer Social Security tax.

Payroll Credits for Family/Sick Leave

Tax Credits and Grant for Emergency Unemployment Insurance

- Employers who pay family or sick leave as required under the previous slides will get a separate credit based off each payment that will reduce the employer's 6.2% share of the Social Security tax (but see IR-2020-57).
- Self-employed taxpayers are eligible for a credit against 50% of self-employment tax.
- The credits are INCREASED by the employer's 1.45% Medicare tax that is imposed on qualified family leave or sick pay wages.
- The credits are INCREASED by the employee's share of allocable health care costs.
- Any excess credit is refundable.

Tax Credits and Grant for Emergency Unemployment Insurance

- Family Leave Credit
 - Equal to 100% of “qualified family medical leave wages” that are paid by an employer for each calendar quarter from April 1st, 2020 through December 31, 2020.
 - Qualified paid family medical leave wages:
 - Capped at \$200/day per employee or \$10,000 in the aggregate
 - The wages are increased by the employee’s allocable share of costs incurred to provide group health insurance.
 - Gross income of the employer is increased by any credit allowed against payroll taxes.

Tax Credits and Grant for Emergency Unemployment Insurance

- Family Leave Credit
 - Self-employed taxpayers claim a credit for their “qualified family leave equivalent” amount
 - The # of days the individual is unable to perform their business for reasons (but not more than 50) giving rise to eligible sick leave had they been an employee multiplied by the lesser of:
 - \$200, or
 - 67% of the taxpayer’s net earnings from self-employment divided by 260.
 - These credits will be claimed on the taxpayer’s income tax return and will reduce required estimated tax payments.

Tax Credits and Grant for Emergency Unemployment Insurance

- Sick Leave Credit
 - Equal to 100% of “qualified paid sick leave wages” that are paid by an employer for each calendar quarter from April 1st, 2020 through December 31, 2020.
 - Qualified paid sick leave wages:
 - Capped at \$511/day per employee or \$5,110 in the aggregate (for reasons 1-3, EMPLOYEE is sick)
 - And \$200/day per employee or \$2,000 in the aggregate (for reasons 4-6, employee is taking care of someone else)
 - The wages are increased by the employee’s allocable share of costs incurred to provide group health insurance.
 - Gross income of the employer is increased by any credit allowed against payroll taxes.

Tax Credits and Grant for Emergency Unemployment Insurance

- Sick Leave Credit
 - Self-employed taxpayers claim a credit for their “qualified sick leave equivalent” amount
 - The # of days the individual is unable to perform their business for reasons (but not more than 10) giving rise to eligible sick leave had they been an employee multiplied by the lesser of:
 - \$511 (if the taxpayer is sick; \$211 if the taxpayer is taking care of someone else) or
 - 100% (67% if the taxpayer is taking care of someone else) of the net earnings from self-employment divided by 260.
 - These credits will be claimed on the taxpayer’s income tax return and will reduce required estimated tax payments.

Tax Credits and Grant for Emergency Unemployment Insurance

■ IR-2020-57: IRS Gives Guidance

- The IRS guidance is very friendly. It wants employers to have cash available to pay sick wages, so you get an instant reduction of the amount necessary to pay federal income tax withholding and the employer and employee's share of payroll taxes.
- In other words, don't deposit the amount with the IRS and then file a Form 941 claiming a credit; rather, reduce your deposits in real time and use the funds to pay the sick and emergency leave wages.
- If your credit is greater than the sum of federal income tax withholding and the employer's and employee's share of payroll taxes, you can apply for an instant refund that will be paid within 2 weeks or less.

Tax Credits and Grant for Emergency Unemployment Insurance

- **IR-2020-57: IRS Gives Guidance**

- *Example. X Co. paid \$5,000 in qualified sick leave during Q1 2020. X Co. has \$8,000 of total payment due on Form 941, including income and payroll taxes withheld from employees. X Co. is required to remit only \$3,000. The other \$5,000 can be used to pay the sick leave wages.*
- *Example. Y Co. paid \$10,000 in sick leave for Q2 2020 and was require to deposit \$8,000 in total taxes with Form 941. Y Co. can use the entire \$8,000 to pay sick leave wages and file a request for an accelerated credit of \$2,000.*

- **Additional Resources**

- <https://www.dol.gov/newsroom/releases/whd/whd20200324>

Section 139: Disaster Relief Payments

Section 139: Disaster Relief Payments

- President Trump issued an “emergency declaration” related to the COVID-19 pandemic, allowing the IRS to delay tax season until July 15th by relying on Section 7508A(a) of the Internal Revenue Code, which can only be done when there is a “federally declared disaster” pursuant to Code Section 165.
- This opens the door to Section 139.
- Section 139 kicks in when there has been a “federally declared disaster” as defined in Section 165(i)(5)(A).

Section 139: Disaster Relief Payments

- Section 139 – as interpreted by Situation 3 of Revenue Ruling 2003-12 -- allows an employer to make tax-free payments to reimburse or pay the employee for the following expenses that are not otherwise compensated for by insurance:
 - Reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster
 - 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.
- The payments should be fully deductible to the employer under Section 162.

Section 139: Disaster Relief Payments

- An employer could presumably make the following types of payments to employees on a tax-free basis, while still deducting the payment:
 - Medical expenses not compensated for by insurance related to COVID-19
 - Other health-related expenses including over-the-counter medication or hand sanitizer
 - Funeral expenses of the employee's family as a result of COVID-19
 - Child care for workers whose normal source of child care is unavailable due to COVID-19
 - Tutoring expenses for employees' children
 - Increased telecommuting costs such as computers, printers, or supplies

Section 139: Disaster Relief Payments

- What employees are covered?
 - The payments may be made to all of a company's employees, regardless of how long they have worked there, and there is no cap on the amounts that can be paid to any individual employee or to all employees in the aggregate.
 - There is no reason that payments to a shareholder/employee of an S corporation shouldn't be eligible to receive tax-free payments.
 - An employee cannot deduct any payments that were paid for by the employer and excludable to the employee (no double dipping). Thus, if an employer pays the employees out-of-pocket medical expenses, the employee cannot then deduct those amounts as medical expenses.

Section 139: Disaster Relief Payments

- **Is a formal plan required?**
- The statute requires no formal written plan, and at this time, there are no regulations interpreting Section 139
- RubinBrown recommends an employer maintain the following documentation when making Section 139 payments
 - A description of every eligible employee class
 - A list of the types of expenses that will be reimbursed or paid
 - A description of the method for reimbursement/payment, e.g. whether application is necessary
 - Any employer-imposed limit to be paid to each employee or in the aggregate
 - The start and end date of the program.

Section 139: Disaster Relief Payments

- As you might imagine, Section 139 has never before been utilized in response to a national pandemic; as a result, there is limited guidance as to how the provision applies to this type of disaster. If employers comply with the spirit of the provision, however, and reimburse employees for COVID-19 related costs not otherwise reimbursed by insurance, the payments should be fully deductible to the employer and tax-free to all employees.

2020 Stimulus Payments

2020 Stimulus Payments

- Basic Structure: Adds new Section 6428 to the Code
 - Section 6428(a): Individuals are entitled to a refundable credit on their 2020 tax return. (See Section 6428(b) for refundable status).
 - But in many cases, the taxpayer will receive an “advance payment” against the credit in the coming months. This advance payment is NOT taxable.
 - When the taxpayer files their 2020 tax return, the advance payment will be “trued up” with the credit; but only in a taxpayer friendly direction.
 - If the advance payment is LESS than the “actual credit” the taxpayer is entitled to the full credit on the 2020 return, less the advance payment; i.e., the taxpayer will receive the extra benefit.
 - If the advance payment is MORE than the “actual credit” the taxpayer is entitled to on the 2020 tax return, however, there is no mechanism for the taxpayer to either:
 - Report the excess advance payment as income, or
 - Repay the excess advance payment as is required with the premium tax credit.

2020 Stimulus Payments

- How is the advance payment computed?
- Section 6428(f)(1): the default is that the IRS will look at your 2019 tax return to determine your advance payment.
- Section 6428(f)(5): If no 2019 return has been filed yet, the IRS will look to your 2018 tax return.
- If no tax return has been filed for 2019 or 2018, the IRS will use:
 - Form SSA-1099, Social Security Benefit Statement, or
 - Form RRB-1099, Social Security Equivalent Benefit Statement

2020 Stimulus Payments

- So who DOESN'T get an advance payment?
- If you have not filed:
 - A 2019 tax return
 - A 2018 tax return, or
 - Received Social Security or disability benefits in 2018 or 2019 that would have been reported on a Form SSA-1099.
- Section 6428(d):
 - Nonresident aliens
 - An estate or trust
 - Any individual with respect to whom a deduction under Section 152 is allowable to another taxpayer for a tax year.
- Section 6428(g): no credit is allowed in 2020 if you don't have valid social security numbers for you, your spouse, and each child. This requirement applies for the 2019 or 2018 year on which the advance payment is computed as well. (See Section 6428(f)(2)).

2020 Stimulus Payments

- Section 151: personal exemptions.
- They still exist for 2018-2025, the amount is just zero (Section 151(d)(5)(A)).
- But look at Section 151(d)(5)(B):
 - *For purposes of any other provision of this title, the reduction of the exemption to zero...shall not be taken into account in determining whether a deduction is allowed or allowable...under this section.*
- An exemption is allowed for each individual who is a dependent under the meaning of Section 152:
 - Qualifying child: must be claimed to get a child tax credit for children < 17
 - Qualifying relative: must be claimed to get a partial credit of \$500

2020 Stimulus Payments

- *Example. H&W file tax returns for 2018 and 2019 on which they claim their child, A, as a dependent. Even though no personal exemption exists in either year, A claims the child tax credit for A in 2018 (when A is under 17) and the \$500 limited credit in 2019 (because they turned 18).*
- *A is not entitled to an advance payment because A was claimed as a dependent on H&W's 2018 and 2019 tax returns. In 2020, H&W choose not to claim A as a dependent even though she still qualifies.*
- *Question: does the “allowable” language of Section 6428(d)(2) mean that A gets no credit in 2020 because she could have been claimed by H&W in that year?*

2020 Stimulus Payments

- What is the amount of the credit? Section 6428(a)
 - \$1,200 for single, head of household, married filing separately.
 - \$2,400 for married filing jointly (does this include a surviving spouse?)
 - \$500 for each child that is under 17 at the end of the tax year.
 - Query: what if the IRS bases the credit on the 2019 return but sees that a child is 16 in 2019. The Service will know the child turns 17 in 2020 when the actual credit is computed. Will the Service still give you a credit of \$500 for the child?
- Section 6428(c): The credit is phased out by 5% of the excess of AGI over:
 - \$150,000 for a joint return (total phase-out if no children when AGI > \$198,000)
 - \$112,500 for a head of household (total phase-out if no children when AGI > \$136,500)
 - \$75,000 for everyone else. (total phase-out if no children when AGI > \$99,000)
- Section 6428(f)(2): for whatever year it uses – 2018 or 2019 – the IRS will compute the advance payment using the rules that would apply to the 2020 computation.

2020 Stimulus Payments

- *Example 1. A is a single taxpayer. On A's 2019 tax return, A had gross income of \$50,000. A is entitled to receive a check for \$1,200.*
- *Example. B is a single taxpayer who has not yet filed a 2019 return. In 2018, he had Social Security income of \$10,000. As a result, he did not file a tax return because his income was less than the \$12,000 standard deduction. The IRS will access B's Social Security statement for 2018, and issue a check to B for \$1,200.*
- *Example. H&W are married with three children. On their 2019 tax return, they reported taxable income of \$60,000 and had a tax liability of \$5,000 before withholding and credits fully eliminated the liability and gave rise to a \$3,000 refund. Nevertheless, H & W will receive a check for \$3,900 from the government as part of the 2020 stimulus payment.*
- *Example. H&W have one child and AGI of \$180,000 on their 2019 return. The advance payment of \$2,900 is reduced by \$1,500 $((\$180,000 - \$150,000) \times .05)$). Thus, H&W get an advance payment of \$1,400.*

2020 Stimulus Payments

- Should we take a closer look at MFS for certain taxpayers in 2019?
- *Example. H earns \$150,000 in 2019. W has income of \$50,000. If H&W file jointly, they get no advance payment. If they file separately, H gets no payment (he is phased out) but W is due a payment of \$1,200. Does that make up for any increase in tax caused by MFS status?*

2020 Stimulus Payments

- We can control the timing of the 2019 return. Should we rush or delay?
- *Example. In 2018, A and B are married but have no children. Adjusted gross income for the couple is \$200,000. In 2019, however, A and B have a child, and B takes a leave from work. As a result, income has dropped to \$120,000. Based on A and B's 2018 return, they would receive no stimulus payment because their income exceeds the phase-out limit. Based on their 2019 return, however, they are entitled to a payment of \$2,900 (\$2,400 + \$500). As a result, A and B should file their 2019 return as quickly as possible.*
- *Example. C is claimed as a dependent on her parents' tax return for 2018. In 2019, C graduates college and gets a job, and is no longer claimed as a dependent. Based on C's 2018 return, she is not entitled to any payment, because she is claimed as a dependent on another's return. Based on her 2019 return, however, she is entitled to a stimulus payment of \$1,200. As a result, she should file her 2019 return as quickly as possible.*
- *Example. D, a single taxpayer, left the workforce in 2017 to go back to school. D was in school full time throughout 2018 and 2019, and as of yet, has not filed a return for either year. D should quickly file a 2019 return, even with no income, in order to generate a \$1,200 stimulus payment.*

2020 Stimulus Payments

- In other scenarios, it will behoove you to delay filing your 2019 return until AFTER you've received the stimulus payment, a task made easier once the IRS delayed the April 15th filing deadline to July 15, 2020.
- *Example. In 2018, A and B have a 16-year old daughter and income of \$120,000. In 2019, they have the same income, and their daughter has turned 17. Based on A and B's 2018 return, they are due a payment of \$2,900 (\$2,400 + \$500). Based on their 2019 returns, however, the payment would drop to \$2,400, because their daughter has turned 17. As a result, A and B should delay filing their 2019 return until they receive their payment.*

2020 Stimulus Payments

- When and how will you get paid?
 - Section 6428(f)(3)(A): the IRS will make the payment as “rapidly as possible” after enactment of the CARES Act. It will be made before December 31, 2020.
 - Section 6428(f)(3)(B): It can be paid electronically to any account to which the taxpayer has authorized, on or after January 1, 2018, the delivery of a tax refund. (Direct deposit information on a 2018 or 2019 return).
 - Section 6428(f)(4): no interest is paid on the advance payment.
 - Section 6428(f)(6): within 15 days of making the payment, the IRS must mail notice of the payment to the taxpayer’s last known address. The notice will provide the amount of the payment, the method it was made, and a contact person at the IRS.
- The IRS cannot use your stimulus payment to offset any liability or interest you owe.

2020 Stimulus Payments

- What happens in 2020?
 - When a taxpayer files their 2020 return, a refundable credit will be computed using the same metrics and thresholds as the advance payment.
 - Section 6428(e)(1): the credit is reduced – but not below zero – by the advance payments received by the taxpayer.
 - Section 6428(e)(2): If an advance payment was made to a joint return and in 2020 they are no longer joint, half of the advance payment is treated as having been made to each spouse.

Paycheck Protection Loans

Paycheck Protection Loans

- The CARES Act simply modifies Section 7(a) of the Small Business Act, so if you want to FULLY understand the new Paycheck Protection Act, you have to also understand Section 7(a) of the SBA.
- New “Paycheck Protection Loans” under Section 7(a)(36) will be available during the “covered period,” from February 15, 2020 – June 30, 2020
- The loans are available from SBA and Treasury approved banks and credit unions.
- Loans are guaranteed by the SBA 100% until December 31, 2021; will be guaranteed at 85% for loans less than \$150,000, and 75% for loans over \$150,000, after that date.
- You don’t need to establish that you were unable to get credit elsewhere. No personal guarantee is required. No collateral is required.
- There will be no prepayment penalties, no guarantee fees, and no yearly fees

Paycheck Protection Loans

- The borrower needs to certify:
 - That the uncertainty of current economic conditions makes the loan necessary to support the ongoing operations of the borrower,
 - That the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments and utility payments,
 - That the borrower does not have an application for a loan under Section 7(a) for the same purpose and has not received another Section 7(a) loan from February 15, 2020 through December 31, 2020,

Paycheck Protection Loans

- Who is a “small business concern” eligible for these loans?
 - Expands upon the definition in Section 7(a) to include any
 - Business concern, nonprofit organization (Section 501(c)(3); Section 501(c)(19) veterans organizations), or tribal business concern if it has no more than the greater of:
 - 500 employees, or
 - If applicable, the size standard for the industry established by the SBA, see Section 3 of the SBA),
 - Sole proprietors, independent contractors, and eligible self-employed individuals (must provide documentation to prove status)
 - Any business with less than 500 employees per physical location that has a NAICS code of 72 (accommodation and food services)

Paycheck Protection Loans

- Guidance: affiliation rules for measuring number of employees are found at 13 C.F.R. § 121.103
- Affiliation rules are waived for certain franchisers and those in the accommodation and food service industry.
- Definition of employee:
 - Take the average number for each of the pay periods for the preceding 12 calendar months. If you haven't been in business for 12 months, take the average number for each pay period you've been in business.
 - SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, PEO, or leasing concern.

Paycheck Protection Loans

- **Maximum Loan Amount:**

- Lesser of:

- The sum of:

- (Average monthly payroll costs for the 1 year prior to the date on which the loan is made* 2.5), PLUS
 - Any outstanding disaster loan under Section 7(b)(2) of the SBA that was made after January 31, 2020 and refinanced into a 7(a) loan, and

- \$10 million.

- If you weren't in business from February 15, 2019 through June 30, 2019, take 2.5 multiplied by the average payroll costs from January 1, 2020 and ending February 29, 2020.
- A seasonal employer determines average payroll by taking the 12-week period beginning February 15, 2019, or upon election, the period March 1, 2019 and ending June 30, 2019. If you weren't in business from February 15, 2019 through June 30, 2019, Thus, they will generally loan you 250% of your average monthly payroll costs for the previous year.

Paycheck Protection Loans

- **Payroll costs:**

- Payments of compensation to employees for:
 - Wages, commission, salary (not to exceed an annual rate of pay of \$100,000)
 - For self-employed taxpayers: net earnings from self employment up to \$100,000
 - Cash tips or equivalents
 - Vacation, parental, family, medical or sick leave,
 - Severance, separation pay, and any retirement benefit
 - Group health care benefit pay including insurance premiums
 - State or local tax on the compensation of employees
- Not counted:
 - Compensation above \$100,000 for any one employee (on an annualized basis)
 - Payroll taxes
 - Compensation for an employee whose principal place of residence is outside the US
 - Qualified sick leave and family emergency leave wages (we discussed this)

Paycheck Protection Loans

- *Example. X Co. had \$2.4 million of total payroll costs for the period April 1, 2019 through March 31, 2020. X Co.'s average monthly payroll costs were thus \$200,000. X Co. is eligible for a Paycheck Protection Loan equal to the lesser of:*
 - *\$500,000, or*
 - *\$10 million.*

Paycheck Protection Loans

- **Acceptable Use of Funds**
- During the period February 15, 2020 through June 30, 2020, the borrower may use the borrowed funds for:
 - Payroll costs,
 - Group health care benefits,
 - Interest on any mortgage obligation
 - Rent
 - Utilities
 - Interest on any other debt incurred before February 15, 2020.
- Terms of the loan:
 - Maximum maturity of 10 years,
 - Maximum interest rate of 4% (usually 1%-2.75%)
 - Guaranteed deferral of repayment for 6-12 months.

Paycheck Protection Loans

- **Loan forgiveness feature: Section 1106 of the CARES Act**
- If the Paycheck Protection Loan is used for its intended purposes, the first 8 weeks worth of certain payments will be forgiven on a tax-free basis.
- What payments are covered during the first 8 weeks?
 - Interest on a mortgage incurred before February 15, 2020
 - Rent for a lease in force before February 15, 2020
 - Certain utilities for which service started before February 15, 2020
 - Payroll costs (same definition as under Section 7(a)(36))
- The limit cannot exceed the principal of the note (interest will still be owed).

Paycheck Protection Loans

- *Example. X Co. had \$2.4 million of total payroll costs for the period April 1, 2019 through March 31, 2020. X Co.'s average monthly payroll costs were thus \$200,000. X Co. is eligible for a Paycheck Protection Loan equal to the lesser of:*
 - *\$500,000, or*
 - *\$10 million.*
- *During the first 8 weeks after X Co. borrows \$500,000, it incurs payroll costs, mortgage interest, and utilities of \$440,000. The \$440,000 is eligible for forgiveness, and the remaining \$60,000 loan is deferred for at least six months and up to a year.*

Paycheck Protection Loans

- The amount eligible for forgiveness is reduced by multiplying the forgiveness amount by:
 - The quotient obtained by dividing:
 - The average number of full-time equivalent employees of the borrower during the 8-week period from the date the loan originated, by
 - Either:
 - The average number of full-time employees per month from February 15, 2019 through June 30, 2019, or
 - The average number of full time employees per month from January 1, 2020 through February 29, 2020
 - Full time employees are determined by calculating the average number of full-time equivalents for each pay period falling within the month
 - Seasonal employers use February 15, 2019 through June 30, 2019.
- *Example. X Co. had 30 full-time employees during the 8-week period after it borrows the \$500,000. During the period February 15 – June 30, 2019, it had 50; just as it did from January 1, 2020 through February 29, 2020. The loan forgiveness of \$440,000 must be reduced by $20/50$, or 40%.*

Paycheck Protection Loans

- The amount eligible for forgiveness is reduced by multiplying the forgiveness amount by:
 - The total reduction in salary during the 8-week period of an employee earning less than \$100,000 (on an annualized basis) by more than 25% when compared to the most recent quarter before the 8-week period began.
 - *Example. A, an employee of X Co. earned an annual salary of \$70,000 as of March of 2020. After X Co. takes out the Paycheck Protection Loan, A's salary is reduced to \$40,000. This was a greater-than 25% decrease in A's wages. Thus, the forgiveness amount of \$440,000 is reduced by another \$30,000. Total forgiveness is \$440,000 - \$176,000 - \$30,000, or \$234,000.*

Paycheck Protection Loans

- **Restoration of Forgiveness**
- If an employer replaces any full-time employees or restores any substantially reduced wages that occurred during the period from February 15, 2020 until 30 days after passage of the CARES Act, when compared to February 15, 2020, the full forgiveness is again allowed.
 - *Example. On February 15, 2020, X Co. had 40 employees before they were eventually cut down to 30 in April. On February 15, 2020, X Co. paid A a salary of \$60,000 that was reduced to \$30,000 on April 1st. Before June 30, 2020, X Co. rehires 10 employees and raises A's salary back to \$60,000. X Co. is entitled to the full \$440,000 forgiveness again.*

Paycheck Protection Loans

- **Application for Forgiveness: Decision to be made by lender within 60 days**
- A borrower must apply for forgiveness, and the application must include:
 - Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods:
 - The covered period (8 weeks after the loan was taken out)
 - February 15, 2019 – June 30, 2019
 - January 1, 2020 – February 29, 2020
 - February 15, 2019 – June 30, 2019 (for a seasonal employer)
 - February 15, 2020 through 30 days after the enactment of the CARES Act
 - This can be done with payroll tax filings, unemployment insurance filings, etc...
 - Documentation, including cancelled checks, verifying payments on mortgages, rent and utilities
 - A certification that the information is true and correct, and that the amount of forgives requested was used to retain employees.

Other Loan Options

- **Disaster Loans under Section 7(b)(2) of the SBA**
- Loans of up to \$2 million made directly from the SBA are available to meet working capital needs or normal business operating expenses when there has been a qualified disaster.
- Current covered period is January 31, 2020 through December 31, 2020.
- Term is 30 years, rate is 3.75% for for-profit businesses; 2.75% for a not-for-profit.
- No personal guarantee is needed for loans up to \$200,000.
- Available to:
 - Businesses and tribal concerns with less than 500 employees
 - A sole proprietorship, with or without employees, or an independent contractor
 - An ESOP; a Section 501(c)(3)
- No longer required to be in business for 1 year before the disaster

Other Loan Options

- **Disaster Loans under Section 7(b)(2) of the SBA**
- These loans, when made after January 31, 2020 for payroll purposes and before the date Paycheck Protection Loans are ready to go, may be refinanced into Paycheck Protection Loans.
- The CARES Act provides that you can still take a disaster loan between January 31, 2020 and the day Paycheck Protection Loans will be made available, and as long the loan is for purposes OTHER than paying payroll, you can still get a Paycheck Protection Loan.

Other Loan Options

- **Emergency Grant**
- From January 31, 2020 through December 31, 2020, an applicant for a Section 7(b)(2) disaster loan may request up to a \$10,000 advance.
- The advance can be used to pay sick leave, maintain payroll, meet increased costs of materials, make rent or mortgage payments, or repay obligations.
- The \$10,000 is not required to be repaid, even if the disaster loan is denied.
- If an application for a disaster loan transfers into a Paycheck Protection Loan, the \$10,000 advance amount is reduced from the loan forgiveness amount discussed previously.
- The funds are to be advanced within 3 days of an application.

Other Loan Options

- **Traditional 7(a) Loans**

- Can still apply for a traditional 7(a) loan.
- Max loan \$5 million
- 10 year term without real estate purchase; can go up to 25 years with real estate purchase.
- Typically 1-2.75% rate.
- 75%-85% is guaranteed by the SBA.

- **Subsidy Payments**

- The SBA will pay 6 months of principal, interest and fees on a Section 7(a) loan OTHER THAN a Paycheck Protection Loan.

Other Loan Options

■ How do these loans interact?

- Borrowers may apply for Paycheck Protection Loans and other SBA financial assistance, including disaster loans and 7(a) loans. However, you cannot use your Paycheck Protection Loan for the same purpose as your other SBA loan(s). For example, if you use your Paycheck Protection Loan to cover payroll for the 8-week covered period, you cannot use a different SBA loan product for payroll for those same costs in that period, although you could use it for payroll not during that period or for different workers.
- Disaster loan and \$10,000 grant recipients and those with 7(a) loans receiving a six-month subsidy may apply for and take out a Paycheck Protection Loan as long as there is no duplication in the uses of funds. If so, the \$10,000 grant reduces the forgiveness amount.
- When would you choose the disaster loan?
 - You have significant non-payroll costs.
 - If it was for payments that won't be forgivable – or if you won't be able to get forgiveness because you lay people off or cut salaries – because the disaster loan has more favorable terms (a 30-year period).

Other Loan Options

- **Summary of Loans:**

- General Section 7(a): available at all times
- Section 7(a)(36) Paycheck Protection Loans: Available from now until June 30th
- Section 7(b)(2) disaster loans: Available from January 31, 2020 through December 31, 2020

- **Additional Resources**

- [Small Business Act](#)
- [Affiliation Rules](#)
- [Senate Committee on Small Business Owner's Guide to the CARES Act](#)
- [Application for disaster loan](#)

Changes to Retirement Plan Rules

Retirement Plan Changes

- **Old Rules:**

- A premature distribution from a qualified retirement plan is subject to a 10% additional tax unless an exception is met.

- **New Rule:**

- The 10% penalty won't apply to a "Coronavirus-related distribution" of up to \$100,000 made in 2020 made to an individual:
 - Who is diagnosed with SARS-CoV-2 or COVID-19 by a test approved by the CDC
 - Whose spouse or dependent is diagnosed with the virus or disease
 - Who experiences adverse financial consequences as a result of being quarantined, furloughed or laid off work or having hours reduced due to COVID-19, being unable to work because of lack of child care, or closing one's own business.
- The administrator may rely on the employee's certification that the employee satisfies the above conditions.
- The distribution is still generally subject to income tax, however. But the income is spread over 3 years starting in 2020, unless the taxpayer elects otherwise.

Retirement Plan Changes

- **Old Rules:**

- Distributions from a qualified plan or IRA that are eligible for rollover must be rolled over within 60 days to avoid income recognition. (See Sections 402(c), 403(a)(4), 408(d)(3))

- **New Rule:**

- An individual who receives a coronavirus-related distribution may repay the distribution within 3 years and avoid paying tax on the distribution.

Retirement Plan Changes

- **Old Rules:**

- A taxpayer can borrow up to \$50,000 from a qualified plan.

- **New Rules:**

- Temporarily increases to \$100,000 the maximum amount that an individual can borrow from his or her plan account balance, starting on the date the CARES Act is enacted and ending 180 days later. It would also allow qualified individuals to borrow up to the lesser of \$10,000 or 100% of their account balance, rather than 50% of their account balance under current rules. It appears that plans may, but are not required to, incorporate these limit increases.
- The due date for repayment of an existing loan that came due between the enactment of the CARES Act and December 31, 2020 is pushed back one year.

Retirement Plan Changes

- **Old Rules:**

- Section 401(a)(9) provides required minimum distribution rules for taxpayers over age 70 ½ (72 under new rules passed in December 2019).

- **New Rules:**

- Plans are allowed to suspend making required minimum distributions in 2020. This suspension would also apply to participants who turned age 70-1/2 in 2019 and had not yet received their 2019 distribution.

Changes to Charitable Contributions

Charitable Contributions

- **Old Rules:**

- Charitable contributions are itemized deductions under Section 67.

- **New Rules:**

- A new above-the-line deduction is available in 2020 and beyond for up to \$300 of cash contributions made to a church, school, hospital, etc... (Section 170(b)(1)(A))
 - Not to a Section 509(a)(3) supporting organization or a donor advised fund
- This does NOT apply to anyone who itemizes.

- *Example. A files his tax return in 2020 and reports \$40,000 of income and a \$12,400 standard deduction. A also contributed \$300 to his church during 2020. A may deduct the \$300 in computing his adjusted gross income. Thus, the deduction is in addition to his standard deduction.*
- *Example. B files his tax return in 2020 and reports \$40,000 and itemized deductions of \$15,000, including \$800 of charitable contributions. B is not permitted to an above-the-line deduction for \$300 of the contributions because B itemizes his deductions.*

Charitable Contributions

- **Old Rules:**

- Section 170(b)(1) limits an individual's cash contributions to public charities at 60% of adjusted gross income.
- Section 170(b)(2) limits a corporation's contributions to 10% of taxable income.

- **New Rules:**

- Individuals can make cash contributions to public charities in 2020 ONLY that are deductible up to 100% of adjusted gross income, but only to the extent they do not exceed 100% of AGI less other charitable contributions that would have traditionally been deductible against the 60% limit.
 - Any excess amount is added to the carryforward under Section 170(d)(1) and moves to the next five years.
- A corporation can make cash contributions to public charities in 2020 up to 25% of taxable income.
 - Any excess is added to the carryforward under Section 170(d)(2) for the next five years.
- This is an election. For a partnership or S corporation, the election is made by each separate partner or shareholder.

Employer-Paid Student Loan Payment

Employer-Paid Student Loan Payments

- **Old Rules:**

- Section 127 allows an employer to pay up to \$5,250 of “educational assistance” to an employee on a tax-free basis.

- **New Rules:**

- Section 127 is amended to provide that the \$5,250 can be used for a combination of educational assistance and – for 2020 only -- to pay the principal and interest of an employee’s student loan payment.
- The employee, of course, cannot deduct any interest paid by the employer as student loan interest under Section 221 .

- *Example. RubinBrown pays \$4,000 for A to get a Master’s in Taxation in 2020. In addition, RubinBrown pays \$2,000 of A’s student loan payments for 2020. A may only exclude \$5,250 of the payment. Presumably, the first \$4,000 would be treated as educational payments. As a result, if the \$2,000 of student loan payment was all interest, A could deduct the excess amount of \$750 on her 2020 tax return under Section 221, subject to limitation.*

Employee-Retention Payroll Credit

Employee Retention Credit

- **Old Rules:** N/a
- **New Rules:**
 - A new credit is created to encourage employers to retain employees and maintain salary during the rest of 2020.
 - The credit is against payroll – not income – taxes. Specifically, the employer’s share of the Social Security tax, so 6.2% of wages paid. It is fully refundable. First, however, the payroll tax is reduced by qualified sick leave and family leave credits as discussed previously.
 - The credit is equal to 50% of “qualified wages” paid to each employee, and is done on a calendar quarter basis. It applies only to wages paid after March 12, 2020 and before January 1, 2021. Thus, the maximum credit is for part of Q1, and then Q2, Q3 and then Q4 of 2020.
 - The TOTAL wages taken into account for any employee is \$10,000 plus allocable health care cost. Thus, an employee making more than \$40,000/year will only generate a credit for one quarter.
 - You can’t take this credit AND get a Paycheck Protection Loan OR Work Opportunity Credits; you have to choose.

Employee Retention Credit

- **Who gets the credit?**

- Any employer who:

- Was carrying on a trade or business during 2020,

- Satisfies for ANY calendar quarter in 2020:

- **A furlough test:** A full or partial suspension due to orders from an appropriate government authority limiting commerce, travel, or group meetings due to COVID-19,
or

- **A drop in receipts test.** A quarter for which:

- gross receipts for the quarter is less than 50% of gross receipts for the SAME calendar quarter in the prior year, and continuing until

- The quarter for which receipts returns to at least 80% of receipts for the same quarter in the prior year.

- Includes a tax-exempt organization.

Employee Retention Credit

- **What are qualified wages?**
 - If you had more than 100 full-time employees during 2019:
 - Count all wages paid during any quarter for which someone was not providing services during a quarter in which you pass the furlough test or drop in receipts test
 - If you had less than 100 full-time employees, you count all wages paid to employees – whether or not they were working -- during the furloughed period or any the “drop in receipts” period.
 - Only count wages paid from March 12 – December 31, 2020.
- In counting the 100 employees, related employers must be aggregated (see Sections 52 and 414).
- Qualified wages for any employee cannot exceed the amount the employee would have been paid for working the same duration during the 30 days preceding the period (what does this even mean?)
- Qualified wages are capped for each employee at \$10,000, but MAY BE INCREASED an employee’s allocable share of qualified health plan expenses

Employee Retention Credit

- **What are qualified wages?**

- Rules similar to those of Section 51(i)(1) apply. As a result, you can't count wages paid to:
 - A child, sibling or step-sibling, parent, step-parent, niece or nephew, aunt or uncle or in-law of anyone who owns more than 50% of the stock of a corporation or 50% of the capital or profits interest in a partnership (after applying the attribution rules of Section 267)
- Rules similar to Section 280C(a) also apply. This means no deduction is allowed for wages equal to the amount of credit claimed. Thus, 50% of all qualified wages up to \$10,000 per employee will not be allowed as a deduction.
- Qualified wages are reduced by any wages for which a work opportunity credit is taken.

Employee Retention Credit

- *Example. X Co. was in business for all of 2020. From April 1 through June 30th, X Co. had to shut its doors, and its 6 employees were sent home. They were still paid wages of \$6,000 each for the quarter. From July 1st through September 30th, the business reopens its doors, but gross receipts are only 30% of what they were for the same period in 2019. The 6 employees are paid \$5,000 each for this quarter. From October 1, 2020 through December 31, 2020, the gross receipts of X Co. returns to 85% of the prior year's 4th quarter.*
- *Because X Co. has fewer than 100 employees, it can count the wages paid to its six employees for both the 2nd and 3rd quarters of 2020, up to \$10,000 each. The credit for Q2 is \$18,000 (50% * \$36,000). The Social Security liability was \$2,232. Thus, X Co. will get a credit of \$15,768.*
- *For Q3, X Co. will get a credit of \$24,000 (6 employees * \$4,000, because qualified wages are capped at \$10,000). The credit is \$12,000 and the Social Security tax is \$1,860; thus, the refund is \$10,140.*
- *If X Co. had 110 employees who were each paid \$6,000 in Q2 and \$5,000 in Q3, because X Co.'s total employees exceeded 100, X Co. could only count as qualified wages those wages paid to the 110 employees during times the employees were not working in Q2. X Co. could not count the wages paid to employees during the drop in gross receipts period because it has more than 100 employees. Thus, the credit would be limited to 50% of \$6,000 of wages each.*

Employee Retention Credit

- The credit will be very large initially, but many employees will quickly cap out at \$10,000 in total comp.
- *Example. Y Co. has four employees, A, B, C, and D. Y pays each employee \$12,000 of salary during Q3, 2020, a quarter in which gross receipts of Y. Co. dropped to less than 50% of Q3, 2019. Y Co.'s share of the Social Security tax on \$48,000 of wages is \$2,976.*
- *Y Co. may claim a credit of \$20,000 (50% * qualified wages of \$40,000 (each employee is capped at \$10,000)). Thus, Y Co. will get a refund of Social Security taxes of \$17,034. In future quarters, however, Y Co. will receive no credit because each employee has capped out. Y Co. may, however, as discussed later in this seminar, defer any remaining employer-share of Social Security taxes until 2021 and 2022.*

Deferral of Payroll Taxes

Deferral of Payroll Taxes

- **Combination of payroll tax changes:**

- Coronavirus Relief Act provides sick leave and family leave credits that reduce payroll taxes (statute says only the employer share of Social Security taxes, but IR-2020-57 says you can reduce federal income withholding and the employee's share of payroll taxes as well),
- Then, certain employers get an additional credit against the employer's share of Social Security taxes as part of the Employee Retention Credit just discussed, and then
- Once you determine the net amount of payroll taxes actually owed in 2020, Section 2302 of the CARES Act allows you to defer the employer's 6.2% share of Social Security taxes incurred between the date of enactment and December 31, 2020 until 2021 (50%) and 2022 (50%).
- However, you cannot defer payroll taxes if you have a Paycheck Protection Loan that is forgiven.
- A self-employed taxpayer can defer 50% of self-employment tax until 2021 (25%) and 2022 (25%). When the taxes come due in 2021 and 2022, the self-employed taxpayer will not have to make estimated payments against those deferred self-employment taxes.

Deferral of Payroll Taxes

- *Example. During 2020, X Co. has a total employer's share of Social Security taxes of \$30,000.*
- *In Q1, the liability is \$9,000. X Co. paid the amount in full with the quarterly Form 941.*
- *In Q2, the liability was \$6,000. the liability was reduced to zero by Sick Leave and Family Leave credits for sick leave wages and family leave wages paid during the quarter.*
- *In Q3, X Co. closed its doors, but continued to pay its employees. The Social Security liability was \$5,000, but was fully offset by X Co.'s Employee Retention Credit. The credit was maxed out as each employee had wages of over \$10,000 during the quarter.*
- *In Q4, X Co. opened its doors and had a Social Security liability of \$10,000. No credit was available to offset the liability (no sick or family leave was paid, and the Employee Retention Credit was maxed out in Q3).*
- *X Co. may pay the \$10,000 liability in 2021 (\$5,000) and 2022 (\$5,000).*

Changes to Net Operating Loss Rules

Changes to Net Operating Losses

■ Old Law:

- After passage of the TCJA, net operating losses for 2018 and beyond could not be carried back, and when carried forward ,could only offset 80% of taxable income.

■ New Law:

- Net operating losses for 2018, 2019 and 2020 can be carried back for up to five years and if carried forward, can offset 100% of taxable income until 2021.
- Come 2021, losses from pre-2018 can offset up to 100% of post-2020 taxable income, but losses from 2018 forward can only offset 80% of post-2020 income.
- Technical correction to TCJA:
 - The TCJA was intended to apply the no carryback/80% limit carryforward rules to tax years BEGINNING after December 31, 2017. Instead, the statutory language applied the rules to tax years ENDING after December 31, 2017.
 - The CARES Act corrects this. Carryback claims for a fiscal year traversing December 31, 2017 can be made or an election to forgo the carryback can be made within 120 days after the enactment of the CARES Act.

Changes to Net Operating Losses

■ How do we claim carrybacks for 2018 or 2019?

- Section 2303(b)(1)(D)(v)(II) of the CARES Act provides “An election [for a 5-year carryback] with respect to a net operating loss arising in a taxable year beginning in 2018 or 2019 shall be made by the due date (including extensions of time) for filing the taxpayer’s return for the first taxable year ending after the date of the enactment of this subparagraph.”
- This is similar to the provision provided in the relief act we saw in 2009; however, there the language set the due date of the election as the date (including extensions) for filing the return for the taxpayer’s last taxable year beginning in 2009 and granted authority to the Secretary to provide the manner for filing the election, which was provided in Rev. Proc. 2009-52
- Rev. Proc. 2009-52 provided three methods for making the election: 1) attach a statement to the return (or amended return) for the NOL year, or 2) use either 1139/1045 or 1120X/1040X and file by the due date (including extensions) of the taxpayer’s last tax year beginning in 2009, or 3) file an amended return for the carryback year.
- I would expect you can file 1139/1045 or an amended return for the NOL year or carryback year by the due date (including extensions) of the 2020 return for calendar year taxpayers.

Changes to Individual Loss Limitation Rules

Changes to Individual Loss Limitation Rules

- **Old Law:**

- For 2018-2025, “excess business losses” of an individual were limited to \$250,000 (if single; \$500,000 if married filing jointly) under Section 461(l)
- The presumption was that wages counted as business income.

- **New Law:**

- Section 461(l) is suspended for 2018, 2019, and 2020. Losses can be used without limitation (provided Sections 704/1366, 465, and 469 are satisfied).
- Note, however, that when Section 461 kicks back in during 2021, wages will NOT count as business income.

Changes to Corporate Minimum Tax Credits

Changes to Corporate AMT Rules

- **Old Law:**

- Corporate AMT was repealed effective 2018. Corporations could still claim minimum tax credits for tax years beginning before 2021, and in 2021 any remaining credits would become fully refundable.
- Under Section 53, the credit was refundable in 2018, 2019, and 2020 at 50% of the excess credit for the year over the amount of the credit allowed against regular tax liability. The remaining excess credit would be taken in 2021.

- **New Law:**

- The CARES Act accelerates the credit to 2018 and 2019. Effectively, any remaining minimum tax credit will be fully used by the end of 2019. Alternatively, an election is available to claim the entire credit in 2018.

Changes to Interest Limitation Rules

Change to Interest Limitation Rules

- **Old Law:**

- Beginning in 2018, the “business interest expense” of many businesses is limited to 30% of a new term of art, “adjusted taxable income.”
- For partnerships, any excess business interest is allocated to the partner and suspended at the partner level until they are allocated either excess taxable income (ETI) or excess business interest income (EBII) from the partnership.

- **New Law:**

- For 2019 and 2020, the 30% of ATI floor is increased to 50%.
- For a partnership, the 30% limit still applies for 2019, but
 - Any excess business interest allocation to the partner:
 - 50% of the interest is freed up in 2020 and not subject to limitation
 - 50% is subject to the same limitations as under current law.
- In 2020, a taxpayer can elect to use 2019 ATI.

Qualified Improvement Property Fix

Qualified Improvement Property Fix

- At long last, qualified improvement property is given its rightful 15 year life, and becomes 100% bonus eligible.
- In addition, the ADS life is reduced to 20 years, as was intended.
- The change is effective as if the law were originally written correctly.
- But how do we get the benefits for 2018? Will we get the ability to make a Section 481 adjustment, or must we amend?
- Bigger question: what happens to those taxpayers who elected out of Section 163(j) as a “real property trade or business” in 2018 because QIP wasn’t bonus eligible, and now they find they are locked out of QIP bonus? Will they get retroactive relief?