2020 Tax Filing, Payment, and Refund Deadlines

Tuesday, April 14, 2019 | 1:00 pm Eastern
Sponsored by Section on Taxation
The Panel

• Jennifer Auchterlonie, IRS Office of Chief Counsel (Procedure & Administration), Washington
• Mark Sommer, Frost Brown Todd, Louisville
• Annie Wurtzebach, DLA Piper, New York
• Tom Greenaway, KPMG, Boston, *Moderator*
Objectives

• Discuss Current IRS Priorities
• Review Updated Federal Tax Filing & Payment Deadlines
• Survey Federal Refund Opportunities & Deadlines
• Cover State & Local Changes
www.irs.gov/coronavirus

IRS is offering coronavirus tax relief. Check for frequent updates.
Things Are Happening Fast

- Congressional Action
  - Phase 1: Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, P.L. 116-123 (March 6, 2020)
- Presidential National Emergency Declaration, March 13, 2020
- Presidential Disaster Declarations, all retroactive to January 20, 2020
- At least:
  - Eight IRS Notices
  - Two Revenue Procedures
  - Dozens of IRS FAQs
  - More than a dozen Treasury & IRS press releases
IRS Priorities

Economic Impact Payments

• 150 million eligible taxpayers who filed tax returns for either 2019 or 2018 will automatically receive an economic impact payment of up to $1,200 for individuals or $2,400 for married couples. Parents will also get $500 for each qualifying child. IRS implementation teams have been working long hours, every day for weeks and over weekends, to determine and deliver these payments.

• IRS needs help connecting with the millions of U.S. residents who do not file tax returns or who do not have direct deposit information on file with IRS or the Social Security Administration.

• IRS launched “Non-Filers: Enter Payment Info Here,” a web portal for eligible individuals to submit basic personal information to the IRS to receive payments.

• IRS needs help reaching out to the millions of U.S. residents who either cannot or prefer not to engage with IRS digitally. By activating our community networks, we can help IRS reach many lower income, non-filers, ethnic and other communities who might otherwise not volunteer to provide information to IRS.

• The current filing season is proceeding and refunds continue to go out. Through April 3, taxpayers filed more than 97.4 million returns, and IRS paid more than $213 billion in refunds.
IRS has suspended:

• processing of paper filed returns and other correspondence. In many cases, mail is not being delivered to IRS and it may be returned to sender.
• IRS field collection activity, generally, and all automated collection activity. Installment Agreement & Offer in Compromise payments suspended for the period April 1 to July 15.
• certain “helplines” including the “Practitioner Priority Service” (PPS), the e-Services help desk line, and the e-Services, FIRE and AIR system help desks.
• acceptance of new income verification express services (IVES) requests, and reports delays with existing IVES processing as well as CAF number authorizations. Entity units no longer processing name changes.
• most processes for filing Form SS-4 to obtain an EIN, with only the online process available, generally limited to domestic entities seeking an EIN.

The period between April 1 and July 15 is disregarded for purposes of determining certain time-sensitive acts such as deadlines for tax filings and elections, claims, and U.S. Tax Court and refund suit filings.
Notice 2020-23

• Extensions generally now apply to all taxpayers that have a filing or payment deadline falling on or after April 1, 2020, and before July 15, 2020.
• Individuals, trusts, estates, corporations, partnerships, S corporations, and other non-corporate tax filers qualify for the extra time.
• This means that anyone can now wait until July 15 to file their 2019 federal income tax return and pay any income tax due.
Notice 2020-23

• Due date for *filing* federal income tax returns and *payment* of federal income tax liabilities due between April 1 and July 15, is automatically *postponed* (not extended) to July 15.

• *Affected Taxpayers* do not have to apply for extensions. Taxpayers who want an extension to file until October 15, 2020, have until July 15, 2020 to make the request.

• Some taxpayers may choose to e-file on or before April 15, 2020. Paper filing returns is not recommended at this time.

• Interest, penalties, and additions to tax will be *disregarded* until July 15, and then start accruing after that date.

• Relief is limited to federal income tax returns and payments due between April 1 and July 15.
Postponed filing deadlines

All series of tax forms due between April 1 and July 15 now due July 15:

- Form 1040, *U.S. Individual Income Tax Return*
- Form 1041, *U.S. Trust Income Tax Return*
- Form 1120, *U.S. Corporation Income Tax Return*
- Form 709, *U.S. Gift & GST Tax Return*
- Form 990, *Exempt Organization Returns*
- Form 8960, *Net Investment Income Tax Individuals, Estates, and Trusts*
- Form 8991 (BEAT Tax)

Deadlines for information returns that must be filed with income tax returns, like Forms 3520, 5471, 5472, 8621, 8858, 8865, and 8938, are also postponed.


Note: FBARs are automatically extended to October 15.
Postponed Payment Deadlines

Payments & contributions originally due between April 1 and July 15 now due July 15

Payments

- Balance due on 2019 income tax returns (original due date or extended fiscal year due date)
- 2019 payments with income tax extensions
- Estimated tax payments
- Section 965(h) installment payments
- BEAT payments

Contributions to IRAs, qualified retirement plans, HSAs, and Archer MSAs
Specified Time-Sensitive Actions

Affected Taxpayers also have until July 15, 2020, to perform all Specified Time Sensitive Actions, that are due to be performed on or after April 1 and before July 15.

- Filing a refund suit, petition with Tax Court or for review of a decision of the Tax Court;
- Filing a claim for credit or refund of any tax;
- Any other time-sensitive act listed in Rev. Proc. 2018-58 (more than 270 specific acts listed); and
A 30-day postponement is granted for *Time Sensitive IRS Actions* if the last date for performance of the action is on or after April 6, 2020, and before July 15, 2020 in the case of taxpayers:

- under examination,
- in Appeals, or
- who file amended returns subject to section 6501(c)(7).
What Is Not Postponed?

- Excise tax returns & payments, except those on wine, beer, distilled spirits, tobacco products, cigarette papers and tubes, firearms, and ammunition. TTB Industry Circular 2020-2 (allowing 90-day delay).
- Payroll & employment tax filing & payment deadlines, *but see* CARES Act § 2302.
- Deposit deadlines, *but see* CARES Act § 2301(k), Notice 2020-22.
- Information returns due before April 1.
Deferrals for Employment Taxes & SECA

Under section 2302 of the CARES Act, payment is deferred for:

• 100% of *Applicable Employment Taxes* &
• 50% of self-employment tax (SECA)

Incurred during the *Payroll Tax Deferral Period*:
- March 28, 2020, to December 31, 2020

Payment on deferrals due:
- 50% by December 31, 2021 and
- 50% by December 31, 2022.

Notes:

• *Applicable Employment Taxes* are the employers’ share (6.2%) of the social security tax employers otherwise are responsible for paying in 2020.
• In FY2018, employers and self-employed individuals paid over $1 trillion in Applicable Employment Taxes and SECA.
• Income tax deduction for applicable employment taxes is generally deferred until payment, unless paid within 8 ½ months after close of tax year.
IRS waives additions to tax (penalties) for failure to deposit of taxes for:

- Employers required to pay qualified sick leave wages and qualified family leave wages as mandated by the Phase 2 Act and qualified health plan expenses allocable to these wages, and
- Certain employers subject to a full or partial closure order due to COVID-19 or experiencing a statutorily specified decline in business pursuant to provisions of the CARES Act.
Information returns were not postponed

<table>
<thead>
<tr>
<th>Calendar Year Information Returns</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form W-2, <em>Wage and Tax Statement</em></td>
<td>Feb 2 (SSA)</td>
</tr>
<tr>
<td>Forms 1097, 1098, 1099, 3921, 3922, or W-2G</td>
<td>Mar 1 (paper)</td>
</tr>
<tr>
<td></td>
<td>Mar 31 (electronic)</td>
</tr>
<tr>
<td>Form 1065, <em>U.S. Partnership Income Tax Return</em></td>
<td>Mar 15</td>
</tr>
<tr>
<td>Form 1042-S, <em>Foreign Person's U.S. Source Income Subject to Withholding</em></td>
<td>Mar 15</td>
</tr>
<tr>
<td>Form 3520-A, <em>Annual Information Return of Foreign Trust With a U.S. Owner</em></td>
<td>Mar 15*</td>
</tr>
</tbody>
</table>

* In some cases, taxpayers may file a substitute Form 3520-A by the postponed due date for Form 3520.
• Congress, Treasury, and IRS gave taxpayers many new levers to pull to generate tax refunds.
• Preparing and processing those refunds will be challenging for practitioners and IRS alike.
• Beginning April 17, taxpayers may fax certain tentative carryback applications to IRS (100 page limit).
  • Form 1045 – Fax to 844-249-6237
  • Form 1139 – Fax to 844-249-6236
Only claims allowed under section 2303 and 2305 of the CARES Act may use this procedure (Minimum Tax Credit refunds & 2018, 2019, or 2020 NOL Carrybacks).
Losses & other refund opportunities

- IRC § 165(i) disaster casualty loss election
- Accounting method changes
- CARES Act Provisions
  - Sec. 2303. Modifications for net operating losses (See § 172).
  - Sec. 2304. Modification of limitation on losses for taxpayers other than corporations (See § 461(l)).
  - Sec. 2305. Modification of credit for prior year minimum tax liability of corporations (See § 53).
  - Sec. 2306. Modifications of limitation on business interest (See § 163(j)).
  - Sec. 2307. Technical amendments regarding qualified improvement property (See § 168).
Rev. Proc. 2020-23

- Allows Eligible Partnerships to file an amended return to make adjustments with respect to those returns—instead of filing an Administrative Adjustment Request (AAR).
- Eligible Partnerships are BBA Partnerships that filed Forms 1065 and furnished Schedules K-1s to their partners for tax years beginning in 2018 or 2019 before April 8, 2020.
- Under the general BBA partnership rules, favorable 2018 & 2019 AAR benefits would generally flow to partners in their 2020 tax year.
- Eligible Partnerships may utilize the amended return procedure to adjust any items from tax years beginning in 2018 or 2019, regardless of whether the items are adjusted as a result of the CARES Act provisions.
- Notate at the top of the amended return and to statements with amended K-1s: “Filed Pursuant to Rev Proc 2020-23.”
Notice 2020-26

- Notice 2020-26 grants a six-month extension of time to file Form 1045 or Form 1139, as applicable, to taxpayers that have an NOL that arose in a taxable year that began during calendar year 2018 and that ended on or before June 30, 2019.
- This extension of time is limited to requesting a tentative refund to carry back an NOL and does not extend the time to carry back any other item.
- If taxpayers want to claim NOL carrybacks and the section 53(e) MTC election together on one Form 1139, the earlier due date controls.
- File Form 1045 or 1139 no later than 18 months after the close of the taxable year in which the NOL arose (that is, no later than June 30, 2020, for a taxable year ending December 31, 2018);
- Include on the top of the applicable form “Notice 2020-26, Extension of Time to File Application for Tentative Carryback Adjustment.”
- See also Rev. Proc. 2020-24 (guidance on CARES Act NOL elections).
## Income tax refund paths

<table>
<thead>
<tr>
<th>Tax / Credit</th>
<th>Individ.</th>
<th>Corp.</th>
<th>Due on or Before</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019 Estimated Tax Overpayments</td>
<td>Form 1040</td>
<td>Form 4466</td>
<td>July 15, 2020</td>
<td>IRC § 6425, Notice 2020-23</td>
</tr>
<tr>
<td></td>
<td>Form 1120</td>
<td></td>
<td>July 15, 2020</td>
<td>Notice 2020-23</td>
</tr>
<tr>
<td>Minimum Tax Credit</td>
<td>Form 4466</td>
<td></td>
<td>July 15, 2020</td>
<td>CARES Act § 2305</td>
</tr>
<tr>
<td></td>
<td>Forms 1040, 1040-X</td>
<td>Forms 1120, 1120-X</td>
<td>July 15, 2020</td>
<td>Notice 2020-23</td>
</tr>
<tr>
<td></td>
<td>Form 1139</td>
<td></td>
<td>December 31, 2020</td>
<td>IRC § 6411, CARES Act § 2305</td>
</tr>
<tr>
<td>Fiscal Years ending in 2018</td>
<td>Form 1139</td>
<td>Form 1120-X</td>
<td>July 27, 2020 Orig. return + 3 years*</td>
<td>CARES Act § 2303(d)(4)(A) IRC § 6511</td>
</tr>
<tr>
<td>2018 calendar year NOL carrybacks</td>
<td>Form 1045</td>
<td>Form 1139</td>
<td>June 30, 2020 Orig. return + 3 years*</td>
<td>IRC § 6511, CARES Act § 2303 &amp; 2304, Notice 2020-26</td>
</tr>
<tr>
<td>2019 calendar year NOL Carrybacks</td>
<td>Form 1045</td>
<td>Form 1139</td>
<td>December 31, 2020 Orig. return + 3 years*</td>
<td>IRC §§ 6411, 6511, CARES Act § 2303 &amp; 2304</td>
</tr>
<tr>
<td>Fiscal years beginning in 2018 and ending after June 30, 2019</td>
<td>Form 1139</td>
<td>Form 1120-X</td>
<td>Fiscal Year End + 18 months Orig. return + 3 years*</td>
<td>IRC § 6511, CARES Act § 2303, Notice 2020-26</td>
</tr>
</tbody>
</table>

*“Orig. return” is the later of: (1) the 15th day of the fourth month after the close of the taxable year or (2) the date original return was actually filed, assuming valid extension*
Virtually all states have announced some extension of time to file and pay taxes, and/or offered penalty and interest relief

• Most extensions relate to income taxes, not sales or other excise-type taxes
  • Some states have authorized deferred remittance of sales and use tax

• Now, property tax filing extensions are rolling out
  • Annual real property valuation appeals possibly extended
• Most states have adopted the federal extension of time to file and pay from April 15 to July 15
  
  • Some states may not be able to waive interest, but several are
  
  • Sometimes not clear what types of “income taxes” are covered (e.g., trusts and estates, bank taxes, capital stock or franchise taxes, etc.)
  
  • Relief for fiscal year filers not always addressed and if so, unclear at times
  
  • Extended due dates currently remain the same
State and Local Tax (SALT) extensions and guidance (Cont.)

- Individual Income tax—current State exceptions to federal conformity:
  - **Nonconforming 2019 Extension Dates**: Mississippi (May 15th), Virginia (Filing - May 1st, Payment - June 1st), Idaho (June 15th), Hawaii (July 20th), Iowa (July 31st).
  - **Interest Due on Deferred Payments**: North Carolina and Virginia are still charging interest for 2019 extensions payments and 2020 first quarter estimated payments made after April 15th for North Carolina and May 1st for Virginia even though the payment deadline was extended.
• Important to read state and local guidance carefully, not only for extension but SOL, etc…

• Kentucky Example: The Department of Revenue shall adhere to any declarations or changes in tax filing and payment requirements provided by the U.S. Treasury Department or the Internal Revenue Service and provide the same to taxpayers for comparable tax filing and payment requirements under Kentucky law, including an extension of time to file a return or report and an extension of time to pay any tax due with that return or report, without the imposition of penalty under KRS 131.180, 141.044, 141.305, or 141.990 on that extended payment, and notwithstanding KRS 131.175 and 141.170, without the imposition of interest under KRS 131.183 or 141.985 (2020 SB 150)
State refund claims and elections

Generally, each COVID-19 extension looks forward, not backward

• Most refund claim or amended return due dates do not toll because of COVID-19 extension

• However, see e.g. 2020 Ohio House Bill 197 (tolling the Statute of Limitations otherwise expiring from March 9, 2020 to July 30, 2020)
  • Does this include refund or assessment SOLs?

• Tax elections generally not tolled but if clearly tied to an initial 2019 return should be

• “Protective” filings or claims for possible NOL carryback(s) or other amendments?
  • Helpful or not?
State penalty abatement

Most states have announced waiver of penalties associated with underpayment, etc…

• Forecast: look for broad administrative interpretation and application of “reasonable cause” in penalty situations arising from non-compliance due to COVID-19

• Communications with tax advisors as proof of “trying to do the right thing”

• However, personal/officer liability for withholdings made but not remitted to governments will be pursued, reasonable cause notwithstanding
Questions?

All attendees can submit questions via the Q&A feature on the webinar interface.
For more information

- IRS COVID-19 Disaster Relief Hotline: (202) 317-5436

- Mark Sommer, Frost Brown Todd, Louisville
  - msommer@fbtlaw.com

- Annie Wurtzebach, DLA Piper, New York
  - anne.wurtzebach@dlapiper.com

- Tom Greenaway, KPMG, Boston
  - tgreenaway@kpmg.com
Authorities

- Phase I: Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. 116-123
- Phase 2: Families First Coronavirus Response Act, Pub. L. 116-127
- Notice 2020-23, amplifying Notice 2020-18 & Notice 2020-20
- Rev. Proc. 2020-23
- Rev. Proc. 2020-24
- Notice 2020-26

- See irs.gov/coronavirus
Upcoming ABA CARES Act Webcasts

• Complications of stimulus implementation
• CARES Act: Employer Focused
• CARES Act: Business Provisions (Corporate):
  • Domestic and international tax,
  • Troubled company issues, and
  • Consolidated return issues.
• CARES Act: Individuals and Families.