



Coronavirus Aid, Relief, and Economic Security Act “the CARES Act” *and other recent developments*

Robert S. Keebler, CPA/PFS, MST, AEP (Distinguished)

Overview

- Notice 2020-17
- Notice 2020-18
- H.R. 6201 – Families First Coronavirus Response Act
- H. R. 748 Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – NOT YET PASSED!

Warning – Rapidly Changing Legislation Ahead

The nation receive the text of the legislation three hours before this class.

New outlines will be shared as updated until the over 600 pages of text can be read and understood.

FIVE Critical Take-aways

- “Phase 2”: H.R. 6201 - Families First Coronavirus Response Act
 - Employer-side FICA tax credit to fund up 100% paid sick leave for small businesses
- “Phase 3”: H. R. 748, SEC. 1102 Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
 - Forgivable small business loans
 - FICA tax credits for employee retention
 - Deferred employer-side FICA taxes
 - Income tax relief

How Will This Information Help You

- Assurance regarding tax deadline extensions
- Protect small business and employees
 - Using new payroll tax credits to offset sick leave pay
 - Maintaining liquidity by using payroll tax deferral
 - Using new forgivable SBA loans to retain employees
- Use and manage retirement account funds
 - Special penalty free distributions – with repayment
 - Increased plan loan limits
 - RMD suspension
- Learn the income tax-relief used to support individuals & business

Payment Deadline Extension

Notice 2020-17

- Interest & penalty free extension to pay until July 15, 2020
- Applies to 2019 tax due and 2020 estimated tax payments due April 15, 2020
- All individual filers (including trusts) can defer up to \$1,000,000
- C-Corporations can defer up to \$10,000,000 in tax due
- **SUPERCEDED BY NOTICE 2020-18**

Deadline Extension

Notice 2020-18 / IR-2020-58

- Federal income tax filing deadline postponed to July 15 for taxpayers affected by the COVID-19 emergency
- Affected taxpayers do not have to file Forms 4868 or 7004 – the postponement is automatic
- Includes individuals, trusts, estates, and corporations
- Includes SECA tax
- There is no limit on the amount of payment that may be postponed tax and penalty free
- **The relief is solely for:**
 - **Income tax payments, including estimated tax payments due 4/15/20, and**
 - **2019 federal income tax returns due 4/15/20**

Deadline Extension

Notice 2020-18 / IR-2020-58

- **IRS FAQ:**

- Clarifies eligibility generally
- Makes clear, that the taxpayer does not need to be sick, quarantined, or have any other impact to qualify
- Fiscal year taxpayers with return filings and payments due 4/15/20 also qualify
- NO relief for taxpayers with a due date other than 4/15 – i.e. no relief for those with due dates on 5/15 or 6/15
- NO relief for estate or gift tax returns – normal filing and payment due dates continue to apply
- Extensions to the normal extended due date of 10/15 must be filed with payment by 7/15
- Second quarter estimated payments remain due 6/15
- The 2019 IRA contribution deadline postponed to 7/15/20

Deadline Extension

- It appears the following returns and payments are not extended:
 - Form 706
 - Form 709
 - Form 5227
 - Form 706-D
 - Form 706-T

Consider how hard it will be to compile these returns from your home office!

Notice 2020-17

Notice 2020-18 / IR-2020-58

Deadline Extension

Form 4768 (Rev. February 2020) Department of the Treasury Internal Revenue Service	Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes ▶ Go to www.irs.gov/Form4768 for instructions and the latest information.	OMB No. 1545-0181
--	--	-------------------

Part I Identification

Decedent's first name and middle initial	Decedent's last name	Date of death
Name of executor	Name of application filer (if other than the executor)	Decedent's social security number
Address of executor (number, street, and room or suite no.)		Estate tax return due date
City, state, and ZIP code	Domicile of decedent (county, state, and ZIP code)	Daytime telephone number of executor

Part II Extension of Time To File Form 706, 706-A, 706-NA, or 706-QDT (Section 6081)

Form for which extension of time to file is being requested:

Form 706
 Form 706-A
 Form 706-NA
 Form 706-QDT

Automatic Extension

Check here if you are applying for an automatic 6-month extension of time to file, and the time for filing has not passed.

Extension For Cause/Form 4768 Not Filed In Time For Automatic Extension

Check here if you are applying for an extension of time to file, based on good and sufficient cause, and the time for filing has passed. Also you **must** attach a statement explaining in detail why a request for automatic extension was not timely made, why it was impossible or impractical to file the return by the due date, and the specific reasons why you have good and sufficient cause for not requesting the automatic extension. If granted, the 6-month extension for cause runs from the original due date of the return. See instructions.

Additional Extension

Tax Credits to Fund Paid Sick Leave

- Refundable **employer** FICA tax credit – basics
 - Limit if the employee is sick:
 - The lessor of wages plus healthcare costs or \$511/day
 - 10 days
 - Includes: Employee subject to a government quarantine or isolation order; Employee advised by a healthcare professional to self-quarantine; employee is experiencing symptoms and seeking diagnosis
 - Limit for family leave:
 - \$200/day
 - \$10,000 maximum
 - Includes: taking care of family member ordered or advised to quarantine; taking care of a child following a school closing
 - Treasury will set the 15-day period to which these credits are available
 - Sick leave paid will not subject the employees portion of the 6.2% FICA tax for Social Security

H.R. 6201 - Families First Coronavirus Response Act

Tax Credits to Fund Paid Sick Leave

- Refundable **employer** FICA tax credit – timing
 - Most businesses make semi-weekly deposits
 - Overpayments can be recovered when filing a Quarterly Return which are due as follows: Q1 4/30; Q2 7/31; Q3 10/31; Q4 1/31

H.R. 6201 - Families First Coronavirus Response Act

Tax Credits to Fund Paid Sick Leave

- Refundable **employer** FICA tax credit – timing
 - Timing problem example:
 - Jane makes \$200 per day & takes 10-days of paid sick leave
 - Her employer is entitled to a credit of \$2,000
 - However, Jane's employer only pays her \$15.30 of FICA tax per day or \$994.50 per quarter
 - Jane's employer will have to wait to be refunded with the next quarterly return
 - May be a problem for businesses with many employees out

H.R. 6201 - Families First Coronavirus Response Act

Tax Credits to Fund Paid Sick Leave

- Refundable employer FICA tax credit – timing
 - Employers can't claim this credit if they are also claiming the credit for the Employer credit for paid family and medical leave under IRC § 45S
 - We are learning this on the fly, but it appears the § 45S credit is generally less valuable

H.R. 6201 - Families First Coronavirus Response Act

Tax Credits to Fund Paid Sick Leave

- Tax Credit for the Self-employed
 - 100% of a individual's sick-leave equivalent amount
 - 67% of a individual's equivalent amount for family leave

H.R. 6201 - Families First Coronavirus Response Act

Payroll Protection Program

- Covered period: 2/15/20 – 6/30/20
- Basic Eligibility:
 - Any business concern, non-profit, veterans organization or Tribal business
 - Not more than 500 employees; generally

H. R. 748, SEC. 1102

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

Payroll Protection Program

- Eligibility Details:
 - Self-employed and independent contractors are eligible
 - Special eligible for restaurants (basically) with not more than 500 employees per physical location

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

- Payroll Costs Include
 - Salary, wages, commissions
 - Tips
 - Paid leave
 - Healthcare payments
 - Retirement benefit payments
 - Some independent contractors

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

- Payroll Costs Do Not Include
 - Compensation of an individual employee in excess of an annual salary of \$100,000 as prorated for the covered period
 - Qualified sick leave wages for which a credit was allowed under section 7001 of the Families First Coronavirus Response Act
 - Qualified family leave wages for which a credit was allowed under section 7003 of the Families First Coronavirus Response Act

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

Average monthly Payroll + Mortgage Payments + Rent Payments + Payments on other debt obligations incurred within the 1 year period before the date on which the loan is made (Modified calculation for seasonal employers)

X 2.5

= Loan Cap

or \$10,000,000

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

- Loan cap computation special rules
 - Seasonal employers
 - Those with outstanding loans
 - New businesses

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

- Allowable use of covered loans:
 - Payroll costs
 - Group healthcare benefits
 - Employee salary, wages, commissions, or similar
 - Payment of interest on any mortgage obligation
 - Rent
 - Utilities
 - Interest on any debt obligations incurred before the covered period

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

- No requirement that business is not able to obtain credit elsewhere
- Loans are nonrecourse – except if the proceeds are used for an unauthorized purpose
- No personal guarantee required
- No collateral required

The legislation may be internally inconsistent on this point.

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

- Good Faith Certification Required
 - The current uncertainty makes the loan necessary to support ongoing operations
 - The funds will be used to retain works and maintain payroll or make mortgage payments, lease payments, and utility payments
 - No duplicative amounts

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

- Remaining Balance after Forgiveness
 - Guaranteed by the SBA
 - Maximum maturity of 10-years from the date on which loan forgiveness is applied for

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

- General terms
 - INTEREST RATE: During the covered period, a covered loan shall bear an interest rate not to exceed 4 percent
 - PAYMENT DEFERMENT: 6-12 month of deferment including principal, interest and fees
 - ORIGINATION FEES: Lender reimbursed by the SBA

H. R. 748, the CARES ACT, SEC. 1102

Payroll Protection Program

- **Loan Forgiveness** – Principal forgiven in an amount equal to the following costs incurred during the covered period (2/15 – 6/30):
 - Payroll costs
 - Mortgage interest
 - Rent
 - Utilities

H. R. 748, the CARES ACT, SEC. 1106

Payroll Protection Program

- Loan Forgiveness Reduction for FTE Employee Headcount:

Forgiveness eligible costs ×

$$\frac{\text{Avg.FTE Employees per Month During the Covered Period}}{\text{Avg.FTE Employees per Month Feb.15,2019 – June 30,2019}} =$$

Forgiveness

H. R. 748, the CARES ACT, SEC. 1106

Payroll Protection Program

OR ALTERNATIVELY AT THE BUSINESSES ELECTION:

Forgiveness eligible costs ×

$$\frac{\text{Avg.FTE Employees per Month During the Covered Period}}{\text{Avg.FTE Employees per Month Jan. 1,2020 –Feb.29,2020}} =$$

Forgiveness

H. R. 748, the CARES ACT, SEC. 1106

Payroll Protection Program

- Loan Forgiveness Reduction if Salaries & Wages are reduced:
 - Forgiveness reduced by the amount of reduction of salaries or wages of any employee that is in excess of 25% during the covered period, compared to the most recent full quarter
 - Excludes employees with annualized pay greater than \$100,000

H. R. 748, the CARES ACT, SEC. 1106

Payroll Protection Program

- Loan Forgiveness Reductions:
 - Exemption for those re-hired within 30 days of enactment
 - Applies to FTE headcount test
 - Applies to salary reduction test

H. R. 748, the CARES ACT, SEC. 1106

Payroll Protection Program

- Loan Forgiveness Taxability
 - Any amount forgiven is excluded from gross income

	Finance	Tax
Loan	\$ 1,000,000	\$ -
Salary Paid	(1,000,000)	(1,000,000)
Net	<u>\$ -</u>	<u>\$ (1,000,000)</u>

H. R. 748, the CARES ACT, SEC. 1106

Individual Tax Relief

- IRC § 6428 – 2020 Recovery Rebates for Individuals
 - Credit equal to the lesser of: (1) Net income tax liability or (2) \$1,200 (\$2,400 MFJ)
 - \$500 for each qualified child (under § 24(c))
 - Credit reduced by 5% of the amount of AGI which exceeds \$75,000 (\$112,500 HoH; \$150,000 MFJ)
 - No credits for non-resident aliens, dependents or trusts

H. R. 748, the CARES ACT, SEC. 2201

Individual Tax Relief

- Recovery Rebates
 - Rebate treated as a 2019 payment
 - Refunds to be made as rapidly as possible
 - “No refund or credit shall be made or allowed under this subsection after December 31, 2020”
 - No overpayment interest
 - For those who have not yet filed a 2019 return, the rebates may be determined:
 - Using the taxpayers 2018 return
 - Or using the 2019 SSA-1099
 - Confirmation letters will go out after payments

H. R. 748, the CARES ACT, SEC. 2201

Individual Tax Relief

- Retirement Plan Distributions
 - \$100,000 “coronavirus-related distribution” exemption from § 72(t)
 - A person:
 - diagnosed with COVID-19,
 - whose spouse is diagnosed with COVID-19,
 - who experiences adverse financial consequences as a result being quarantined, furloughed, or laid off or having work hours reduced, being unable to work due to lack of child care, closing or reducing hours of a business owned or operated or other factors determined by the Secretary

H. R. 748, the CARES ACT, SEC. 2202

Individual Tax Relief

- Retirement Plan Distributions
 - Distributions must take place in 2020
 - Income from the distribution recognized ratably over a three year period
 - Amount distributed can be repaid over a three year period
 - Exemption from trustee-to-trustee rules and withholding rules

H. R. 748, the CARES ACT, SEC. 2202

Individual Tax Relief

- Retirement Plan Loans
 - Applies to loans made within 180-days of enactment
 - Limit increased from \$50,000 to \$100,000
 - Limit increased to 100% of the balance from 50%
 - Outstanding loan repayment delayed due between enactment and year-end delayed one year

H. R. 748, the CARES ACT, SEC. 2202

Individual Tax Relief

- Temporary Waiver of RMDs
 - RMDs are generally not required in 2020
 - Includes those with a 2020 RBD
 - Taxpayers subject to the 5-year rule can “skip” 2020

H. R. 748, the CARES ACT, **SEC. 2203**

Individual Tax Relief

- IRC § 62(a)(22) – New Above-the-line Charitable Contributions Deduction
 - Beginning in 2020
 - Cannot itemize
 - \$300 Limit
 - Must be cash
 - Must be allowed under § 170
 - No Donor Advised Funds (DAFs)
 - Can't “double-up” with an itemized deduction

H. R. 748, the CARES ACT, SEC. 2204

Individual Tax Relief

- Modification to Charitable Contribution Limitations
 - Individuals:
 - Percentage limitations eliminated (e.g. up to 100% of AGI is deductible)
 - Amount in excess of the contribution base can be carried over
 - Individuals partners or shareholders must make elections separately for contributions from partnerships or S-corporations

H. R. 748, the CARES ACT, SEC. 2205

Business Tax Relief

- Charitable Contributions
 - Corporations:
 - Contributions cannot exceed the excess of 25% of the taxpayers taxable income (up from 10%)
 - Food inventory
 - 25% substituted for 15%

H. R. 748, the CARES ACT, SEC. 2205

Business Tax Relief

- Employee Retention Credit
 - 50% of qualified wages up to \$10,000 (\$5,000 credit)
 - Credit against employment taxes and is refundable
 - Reduced for credits in Section 7001 and 7003 of the Families First Coronavirus Response Act

H. R. 748, the CARES ACT, SEC. 2301

Business Tax Relief

- Delay of Employer Payroll Taxes
 - Payroll tax deposits delayed until the applicable date
 - Exception for taxpayers which had indebtedness forgiven by the SBA loan program
 - **Applicable Date**
 - 12/31/2021: 50% of the amount due
 - 12/31/2022: the remaining amount due
 - Includes 50% of SECA taxes

H. R. 748, the CARES ACT, SEC. 2302

Business Tax Relief

- NOL Modifications: § 172(a)

	Existing	CARES Act
- 2015	Generally not amendable in 2020	
2016	<ul style="list-style-type: none"> • 3-year carry-back • 20-year carry-forward 	<ul style="list-style-type: none"> • 3-year carry-back • Indefinite carry-forward • NO 80% cap
2017		
2018	<ul style="list-style-type: none"> • No carry-back of current losses • Indefinite carry-forward of current losses • 80% of taxable income cap for currently claimed losses 	<ul style="list-style-type: none"> • 5-year carry-back for current losses • Indefinite carry-forward • No 80% cap
2019		
2020		<ul style="list-style-type: none"> • 20-year carryforward NOLs before 1/1/18 • PLUS the Lesser of: (1) all NOLs after 12/31/17, or (2) 80% of taxable income
2021 +		

H. R. 748, the CARES ACT, SEC. 2303

Business Tax Relief

- Limitation on excess business losses - §461(l):
 - Pre-CARES Act
 - Excess business losses denied – basically pass-through business tax losses greater than \$500,000
 - Applies for 2018-2025
 - Excess business losses treated as a NOL in the following taxable year
 - CARES Act
 - Denied excess business loss treated as NOL in the current taxable year for the purposes of determining carryovers
 - Excludes losses from the sale or exchange of capital assets

H. R. 748, the CARES ACT, SEC. 2304

Business Tax Relief

- Additional Changes of interest
 - Corporate AMT relief
 - Limitation on the deduction for interest paid relief
 - Qualified Improvement Property technical corrections

H. R. 748, the CARES ACT, SEC. 2305, 2306, 2307

Conclusion