

# Current Federal Tax Developments

Week of March 30, 2020

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ACCOUNTING  
CONTINUING EDUCATION

CURRENT FEDERAL TAX DEVELOPMENTS  
WEEK OF MARCH 30, 2020  
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Kaplan Financial Education

## Contents

Section: 3101 Congress Enacts Small Employer Mandatory Paid Sick Time Rules and Related Refundable Payroll Tax Credit.....	<b>Error! Bookmark not defined.</b>
Section: 6651 No Automatic Extension for Returns Due on April 15, But Tax Payments Due on That Date Can Be Deferred 90 Days.....	<b>Error! Bookmark not defined.</b>
Section: 7508A Due Date Pushed Back to July 15 for Income Tax Returns Due on April 15 .....	<b>Error! Bookmark not defined.</b>



## **SECTION: 3101**

### **APRIL 1 IS THE START DATE FOR THE PAYROLL TAX CREDIT UNDER THE SICK LEAVE RULES OF FFCRA**

#### **Citation: Notice 2020-21, 3/27/20**

The IRS, lining up with the Department of Labor's start date for the mandatory sick time related to COVID-19 that was enacted in the Families First Coronavirus Response Act, has announced in Notice 2020-21<sup>1</sup> that the effective date for the refundable payroll tax credit is April 1.

Thus, employers will first qualify for the payroll tax credits, and self-employed individuals for the credit for self-employment taxes, for leave beginning April 1, 2020. No credit will be allowed for any such leave taken before that date.

The Notice states:

With respect to the period "beginning on a date selected by the Secretary (or the Secretary's delegate) which is during the 15-day period beginning on the date of the enactment of this Act" as specified in sections 7001(g), 7002(e), 7003(g), and 7004(e) of Division G of the Act, the date selected by the Secretary is April 1, 2020. This date is coordinated with the DOL's determination of the effective date for employers' compliance with the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act requirements. Accordingly, the refundable tax credits for employers apply to qualified sick leave wages and qualified family leave wages paid for the period from April 1, 2020 to December 31, 2020. Additionally, the self-employment tax credit is determined based on days occurring during the period beginning on April 1, 2020, and ending on December 31, 2020.

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<sup>1</sup> Notice 2020-21, March 27, 2020, <https://www.irs.gov/pub/irs-drop/n-20-21.pdf> (retrieved March 28, 2020)

## **SECTION: 7508A**

### **AFTER FIRST HOLDING TO APRIL 15 DUE DATE, IRS NOW PUSHES FORM 709 DUE DATE TO JULY 15**

#### **Citation: Notice 2020-20, 3/27/20**

The IRS continued to expand the return filings that will have a delayed due date due to the national emergency declared by the President under the Stafford Act. Gift and generation skipping transfer tax returns originally due on April 15, 2020 will now be due on July 15, 2020, per Notice 2020-20.<sup>2</sup> Originally the IRS had indicated in the FAQ related to the extended filings that gift tax returns would not be granted the extended time to file.

The notice first expands the definition of taxpayers affected by the COVID-19 emergency:

The Secretary of the Treasury has determined that any person (as defined in section 7701(a)(1) of the Code) with a Federal gift tax or generation-skipping transfer tax payment due or the requirement to file Form 709 (*United States Gift and Generation-Skipping Transfer Tax Return*) on April 15, 2020, is also affected by the COVID-19 emergency for purposes of the relief described in this section III (Affected Taxpayer).

The Notice goes on to provide for the three-month delay in filing:

For an Affected Taxpayer, the due date for filing Forms 709 (*United States Gift and Generation-Skipping Transfer Tax Return*) and making payments of Federal gift and generation-skipping transfer tax due April 15, 2020, is automatically postponed to July 15, 2020.

The relief in this case is automatic, with the Notice also providing instructions for those needing additional time to file the return:

This relief is automatic; there is no requirement to file Form 8892 (*Application for Automatic Extension of Time to File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax*) to obtain the benefit of this filing and payment postponement until July 15, 2020. However, an Affected Taxpayer may choose to file Form 8892 by July 15, 2020, to obtain an extension to file Form 709 by October 15,

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<sup>2</sup> Notice 2020-20, March 27, 2020, <https://www.irs.gov/pub/irs-drop/n-20-20.pdf> (March 28, 2020)

2020 (any Federal gift and generation-skipping transfer tax payments postponed by this notice will still be due on July 15, 2020).

Finally, the Notice provides for relief from penalties and interest on any gift or GST tax originally due on April 15:

As a result of the postponement of the due date for filing Forms 709 and making Federal gift and generation-skipping transfer tax payments from April 15, 2020, to July 15, 2020, the period beginning on April 15, 2020, and ending on July 15, 2020, will be disregarded in the calculation of any interest, penalty, or addition to tax for failure to file a Form 709 or to pay Federal gift and generation-skipping transfer taxes shown on that Form and postponed by this notice. Interest, penalties, and additions to tax with respect to such postponed Forms 709 and payments will begin to accrue on July 16, 2020.

## **SECTION: 7508A**

### **IRS EXPANDS ON APRIL 15, 2020 TAX DAY DELAY RELIEF**

#### **Citation: Filing and Payment Deadlines Questions and Answers, 3/24/2020**

The IRS released a set of frequently asked questions that provide additional details regarding the relief initially granted in Notice 2020-18 for the extension of time to file income tax returns due on April 15, 2020 and related income tax payments due on that date.<sup>3</sup>

In Notice 2020-18 the IRS provided for an extension of time to file the 2019 individual income tax return and first estimated tax payment for 2020, using Treasury's authority granted under IRC §7508A due to the emergency under the Stafford Act declared by the President. But there were a number of questions about other acts that are also tied to that date and whether there was additional time for them.

Those questions arose because, per Reg. §301.7508A-1(b)(4), the due date for the 1040 is not treated as moved to a different date when the date is referenced in other IRC sections:

(4) **Due date not extended.** The postponement of the deadline of a tax-related act does not extend the due date for the act, but merely allows the IRS to disregard a time period of up to one year for

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<sup>3</sup> Filing and Payment Deadlines Questions and Answers,  
<https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers>,  
 March 24, 2020 (retrieved March 24, 2020)

## 4 Current Federal Tax Developments

performance of the act. To the extent that other statutes may rely on the date a return is due to be filed, the postponement period will not change the due date of the return.

Since Notice 2020-18 only directly applied to the filing of the Form 1040, this created a problem. However, the IRS has the authority to issue guidance granting relief for those other items under IRC §7508A, and per Reg. §301.7508A-1(e) the IRS has wide leeway in *how* they choose to announce the expansion of relief:

(e) **Notice of postponement of certain acts.** If a tax-related deadline is postponed under section 7508A and this section, the IRS will publish a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance (see § 601.601(d)(2) of this chapter) describing the acts postponed, the postponement period, and the location of the covered disaster area. Guidance under this paragraph (e) will be published as soon as practicable after the occurrence of a terroristic or military action or declaration of a federally declared disaster.

The FAQ seems likely to be the method the IRS is choosing to provide this guidance, though very likely followed up by a news release (since that is explicitly in the list).

### ***Specific Forms Covered***

A number of items are covered by this guidance. First, the agency deals with a list of form filings that are and are not covered by this relief in Question 3:

**Q3. What are the form numbers of the specific Federal income tax returns whose filing deadlines have been postponed, from April 15 to July 15, under the Notice?**

**A3.** The Notice postpones the filing and payment of Federal income taxes reported on the following forms:

- Form 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR, 1040-SS
- Form 1041, 1041-N, 1041-QFT
- Form 1120, 1120-C, 1120-F, 1120-FSC, 1120-H, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT, 1120-RIC, 1120-SF
- Form 8960
- Form 8991



With respect to Form 990-T, if that Form is due to be filed on April 15, then it has been postponed to July 15 under the Notice. For taxpayers whose Form 990-T is due on May 15, that due date has not been postponed under the Notice.

With respect to returns due on March 16, 2020, which include Form 1065, Form 1065-B, Form 1066, and Form 1120-S for calendar year taxpayers, the filing of those returns has not been postponed.

### ***§965(h) Installment and §59A Payments***

The notice also provides that §965(h) installment payments that are due on April 15, 2020 do qualify for a delay in payment. Question 8 provides:

**Q8. Does the relief provided in the Notice apply to section 965(h) installment payments due on April 15, 2020?**

A8. Yes, the relief applies to section 965 installment payments due on April 15, 2020. Although the section 965(h) installment payment is generally made in respect of a taxpayer's 2017 or 2018 tax year, under section 965(h)(2), the due date of the installment payment associated with a 2019 tax return is the due date of the taxpayer's 2019 Federal income tax return. For any taxpayer whose Federal income tax return filing due date has been postponed from April 15 to July 15, 2020, the due date of that taxpayer's section 965 installment payment has also been postponed to July 15, 2020.

A similar result occurs for Form 8995 and the BEAT payment, as noted in Question 9:

**Q9. Does the relief provided in the Notice apply to estimated payments for a corporation required to make payments under section 59A (Basis Erosion and Anti-Abuse Tax, or BEAT)?**

A9. Yes, for any taxpayer whose Federal income tax return filing deadline has been postponed from April 15 to July 15, 2020, the due date for Form 8991 and the BEAT payment has been postponed to July 15, 2020.

### ***Obtaining a Full Six Month Extension of Time to File***

One issue that was somewhat unclear from Notice 2020-18 was whether a taxpayer who would not be ready to file at July 15, 2020 would still need to file Form 4868 by April

15. The good news is that the FAQ at Question 12 also provides that document can be filed by July 15, being treated as if it had been filed on April 15:

**Q12. What if I am unable to file my 2019 income tax return that would have been due on April 15 by July 15, 2020?**

A12. If you are an individual, you can request an automatic extension to file your Federal income tax return if you can't file by the July 15 deadline. The easiest and fastest way to request a filing extension is to electronically file Form 4868 through your tax professional, tax software, or using the Free File link on IRS.gov. Businesses, including trusts, must file Form 7004.

You must request the automatic extension by July 15, 2020. If you properly estimate your 2019 tax liability using the information available to you and file an extension form by July 15, 2020, your tax return will be due on October 15, 2020. To avoid interest and penalties when filing your tax return after July 15, 2020, pay the tax you estimate as due with your extension request.

### ***Withdrawal Already Scheduled for April 15***

The news is not quite so good for taxpayers who had already filed their return and have scheduled a payment to be made on April 15, 2020. While the payment can be delayed, the IRS will not be automatically making that change. Rather, taxpayers will need to take actions as described in Question 14:

**Q14. I already filed my 2019 income tax return that would have been due on April 15 and scheduled a payment of taxes for April 15, 2020. Will this payment be automatically rescheduled to July 15, 2020?**

A14. No, the payment will not be automatically rescheduled to July 15. If you do nothing, the payment will be made on the date you chose. Here is information on how to cancel and reschedule your payment:

- If you scheduled a payment through IRS Direct Pay, you can use your confirmation number from the payment to access the Look Up a Payment feature. You can modify or cancel a scheduled payment until two business days before the payment date. The email notification you received when you scheduled the payment will contain the confirmation number.
- If you scheduled a payment through Electronic Federal Tax Payment System (EFTPS), click on Payments from the EFTPS home page, login, then click Cancel a Tax Payment from the left menu and follow the instructions. You must do

so at least two business days before the scheduled payment date.

- If you scheduled a payment as part of filing your tax return (authorizing an electronic funds withdrawal), you may revoke (cancel) your payment by contacting the U.S. Treasury Financial Agent at 888-353-4537. You must call to make a payment cancellation request no later than 11:59 p.m. ET two business days prior to the scheduled payment date.
- If you scheduled a payment by credit card or debit card, contact the card processor to cancel the card payment.

### ***Second Quarter 2020 Estimated Tax Payment***

In the original Notice 2020-17 the IRS had indicated only that the first estimated payment, due on April 15, 2020, would be delayed until July 15, 2020. Observers noted that the second estimated payment was due on June 15, 2020 and, if it was not also delayed, the second estimate would be due before the first.

The FAQ in Question 16 confirms that, in fact, that is how the relief works—the second estimate is still due on June 15, 2020:

**Q16. The Notice postpones the deadline for first quarter 2020 estimated income tax payments due on April 15, 2020. What about second quarter estimated tax payments due on June 15? Have they been postponed as well?**

A16. No, second quarter 2020 estimated income tax payments are still due on June 15, 2020. First quarter 2020 estimated income tax payments are postponed from April 15 to July 15, 2020.

### ***IRAs and Other Retirement Plans***

The IRS has also pushed back the date for making contributions to IRAs and employer retirement plans in Questions 17-20:

**Q17. Does this relief provide me more time to contribute money to my IRA for 2019?**

A17. Yes. Contributions can be made to your IRA, for a particular year, at any time during the year or by the due date for filing your return for that year. Because the due date for filing Federal income tax returns has been postponed to July 15, the deadline for making contributions to your IRA for 2019 is also extended to July 15, 2020. For more details on IRA contributions, see Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs).

**Q18. If I owe the 10% additional tax on amounts includible in gross income from a distribution that I took from my IRA or workplace-based retirement plan in 2019, is the due date for paying that additional tax also extended to July 15, 2020 on account of this relief?**

A18. Yes, because the 10% additional tax is calculated, reported, and paid at the same time as the income tax owed on the amounts includible in gross income on the distribution, the reporting and payment of the 10% additional tax also has been extended to July 15, 2020 as a result of this relief.

**Q19. I made excess elective deferrals to my workplace-based retirement plan in 2019. Do I have to take those excess deferrals (and income) out of the retirement plan no later than April 15, 2020, in order to exclude the distributions from income?**

A19. Yes, because that date is not also extended as a result of this relief.

**Q20. For employers with a federal income tax return due date of April 15, 2020, is the end of the grace period under section 404(a)(6) to make contributions to their qualified retirement plans on account of 2019 also July 15, 2020 as a result of this relief?**

A20. Yes, because these employers are Affected Taxpayers under Notice 2020-18 for whom the due date for filing Federal income tax returns and making Federal income tax payments that would be due April 15, 2020, is now July 15, 2020, the end of the grace period for these employers is also July 15, 2020 under this relief. So, for example, if an employer is a corporation with an April 15, 2020 due date for filing the Form 1120, then the grace period under section 404(a)(6) for the employer to make contributions to its workplace-based retirement plan that are treated as made on account of 2019 ends on July 15, 2020.

### ***HSA and MSA Funding***

Question 21 provides relief for HSA and MSA contributions:

**Q21. Does this relief provide me more time to contribute money to my HSA or Archer MSA for 2019?**

A21. Yes. Contributions may be made to your HSA or Archer MSA, for a particular year, at any time during the year or by the due date for filing your return for that year. Because the due date for filing Federal income tax returns is now July 15, 2020, under this relief, you may make contributions to your HSA or Archer MSA for 2019 at any time up to July 15, 2020. For more details on HSA or Archer MSA

contributions, see *Publication 969, Health Savings Accounts and other Tax-Favored Health Plans*.

### **Less Favorable News**

Notice 2020-18 indicated that it only applied to income taxes, but some thought that perhaps the IRS would grant relief for gift tax returns since they had the same due date. However, Question 6 makes clear this is not the case:

**Q6. Does the relief provided in the Notice apply to payroll or excise taxes?**

A6. No, under the Notice, normal filing, payment, and deposit due dates continue to apply to both payroll and excise taxes.

As well, the relief does not serve to extend the statute of limitation for filing a claim for refund from a 2016 return where the statute would expire this April 15:

**Q22. I want to file a claim for a refund for 2016, which must be filed by April 15, 2020 to be timely. Does this relief give me more time to claim my 2016 refund?**

A22. No, the relief provided for filing Federal income tax returns applies only to Federal income tax returns for the 2019 taxable year. The Notice does not extend relief to any filings or payments for taxable year 2016.