Current Federal Tax Developments

Week of August 24, 2020

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ACCOUNTING
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CURRENT FEDERAL TAX DEVELOPMENTS
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SECTION: 402
QUALIFIED PLAN OFFSET LOAN AMOUNT PROPOSED REGULATIONS ISSUED BY IRS

Citation: REG-116475-19, 8/17/20

The IRS has issued proposed regulations[1] that provide information on the extended time period for those plan participants receiving a noncash distribution from a retirement plan that is a *qualified plan loan offset* (QPLO) to rollover the amount to another retirement plan. This provision was added to the law by the Tax Cuts and Jobs Act (TCJA).

The proposed regulations provide that taxpayers may rely on these regulations beginning with respect to plan loan offset amounts, including qualified plan loan offset amounts, treated as distributed on or after the date the proposed regulations are published in the *Federal Register*[2] and before the date the regulations are published in the *Federal Register* in final form.[3]

TCJA Law Change

The Tax Cuts and Jobs Act revised IRC §402(c)(3) in the following manner, as described in the preamble to the proposed regulations:

> Section 13613 of TCJA amended section 402(c)(3) of the Code to provide an extended rollover deadline for qualified plan loan offset (QPLO) amounts (as defined in section 402(c)(3)(C)(ii)). Any portion of a QPLO amount (up to the entire QPLO amount) may be rolled over into an eligible retirement plan by the individual's tax filing due date (including extensions) for the taxable year in which the offset occurs.[4]

Qualified Plan Loan Offset Amount

The preamble notes that a QPLO amount is defined under the statute as a plan loan offset amount treated as distributed from a qualified employer plan to an employee or beneficiary *solely* by reason of:

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[1] REG-116475-19, August 17, 2020 (to be published on August 20, 2020), https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-16564.pdf (retrieved August 17, 2020)

[2] Scheduled per the original draft release to be published on August 20, 2020

[3] REG-116475-19, August 17, 2020, Proposed Applicability Date and page one header on the original draft released in PDF form on August 17

[4] REG-116475-19, August 17, 2020, Background, Section 2

- The termination of the qualified employer plan, *or*
- The failure to meet the repayment terms of the loan from such plan because of the severance from employment of the employee.[5]

The loan must be one that met the requirements to be treated as a plan loan under §72(p)(2) not treated as a distribution right up until such time as the QPLO amount is treated as distributed.[6]

Note that not all plan loan offsets are qualified plan loan offsets—the proposed regulations defined the broad term plan loan offsets as follows:

> For purposes of section 402(c), a plan loan offset amount is the amount by which, under the plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in an employee's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, for example, when the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, accelerated, or treated as if it were in default (for example, when the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).[7]

A severance from employment is determined by reference to Reg. §1.401(k)-1(d)(2).[8] That regulation provides the following is treated as a severance from employment.[9]

> An employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan. An employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains such plan with respect to the employee. For example, a new employer maintains a plan with respect to an employee by continuing or assuming sponsorship of the plan or by accepting a

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[5] REG-116475-19, August 17, 2020, Background, Section 2, Proposed Reg. §1.402(c)-3(a)(2)(iii)(B)(1)

[6] REG-116475-19, August 17, 2020, Background, Section 2, Proposed Reg. §1.402(c)-3(a)(2)(iii)(B)(2)

[7] Proposed Reg. §1.402(c)-3(a)(2)(iii)(A)

[8] Proposed Reg. §1.402(c)-3(a)(2)(iv)(A)

[9] Proposed Reg. §1.402(c)-3(a)(2)(ii)(A)

> transfer of plan assets and liabilities (within the meaning of section 414(l)) with respect to the employee.[10]

The distribution is deemed to be offset due to the termination of employment when the following conditions are met:

> A plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the repayment terms of a plan loan because of severance from employment of the employee if the plan loan offset:
>
> > (1) Relates to a failure to meet the repayment terms of the plan loan, and
> >
> > (2) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.[11]

Note that this provides a 12 month period during which the QPLO must be recognized by the plan to be covered under these rules.

Time Period to Rollover the QPLO Amount

QPLO amounts receive an extended time period during which they can be rolled over by the former participant to another retirement plan. That period runs from the date of the QPLO amount distribution up through the individual's tax filing due date (including extensions) for the taxable year in which the QPLO amount is treated as distributed from the plan.[12]

The preamble provides that this rollover will be covered by the automatic extended time period to complete certain actions provided by Reg. §301.9100-2(b), so that a taxpayer that files his/her return timely will have until the extended due date of that return to complete the rollover even if no extension of time to file the return is requested. The preamble notes:

> If a taxpayer to whom a QPLO amount is distributed satisfies the conditions in §301.9100-2(b), the taxpayer will have an extended period past his or her tax filing due date in which to complete a rollover of the QPLO amount, even if the taxpayer does not request an extension to file his or her income tax return but instead files the return by the unextended tax filing due date.[13]

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[10] Reg. §1.401(k)-1(d)(2)

[11] Proposed Reg. §1.402(c)-3(a)(2)(iv)(B)

[12] Proposed Reg. §1.402(c)-3(a)(2)(ii)(B)

[13] REG-116475-19, August 17, 2020, Explanation of Provisions, Section 2

The provisions of Reg. §301.9100-2(b) apply to taxpayers that meet the following two conditions:

- The taxpayer's return was timely filed for the year the QPLO amount is treated as distributed; *and*
- The taxpayer takes appropriate corrective action within the six-month period following the original unextended due date (in this case that means completes the rollover).[14]

The extended period to rollover the QPLO amount does *not* extend the time to rollover any part of the rollover distribution that is not a QPLO amount (that is, normally the portion received in cash or employer securities by the employee or amounts withheld and transmitted to the IRS by the plan as federal withholding taxes for the participant).

Examples

The regulations provide the following examples of applying its provisions:

EXAMPLE 1, PROPOSED REG. §1.402(C)-3(A)(2)(V)

Direct rollover of balance after QPLO

(1) In 2020, Employee A has an account balance of $10,000 in Plan Y, of which $3,000 is invested in a plan loan to Employee A that is secured by Employee A's account balance in Plan Y. Employee A has made no after-tax employee contributions to Plan Y. The plan loan meets the requirements of section 72(p)(2). Plan Y does not provide any direct rollover option with respect to plan loans. Employee A severs from employment on June 15, 2020. After severance from employment, Plan Y accelerates the plan loan and provides Employee A 90 days to repay the remaining balance of the plan loan. Employee A, who is under the age set forth in section 401(a)(9)(C)(i)(II), does not repay the loan within the 90 days and instead elects a direct rollover of Employee A's entire account balance in Plan Y. On September 18, 2020 (within the 12-month period beginning on the date that Employee A severed from employment), Employee A's outstanding loan is offset against the account balance.

(2) In order to satisfy section 401(a)(31), Plan Y must make a direct rollover by paying $7,000 directly to the eligible retirement plan chosen by Employee A. When Employee A's account balance was offset by the amount of the $3,000 unpaid loan balance, Employee A received a plan loan offset amount (equivalent to $3,000) that is an eligible rollover distribution. However, under §1.401(a)(31)-1, Q&A-16, Plan Y satisfies section 401(a)(31), even though a direct rollover option was not provided with respect to the $3,000 plan loan offset amount.

(3) No withholding is required under section 3405(c) on account of the distribution of the $3,000 plan loan offset amount because no cash or other property (other than the plan loan offset amount) is received by Employee A from which to satisfy the withholding.

(4) The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset amount to an eligible retirement plan within the

[14] REG-116475-19, August 17, 2020, Background, Section 2

period that ends on the employee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

EXAMPLE 2, PROPOSED REG. §1.402(C)-3(A)(2)(V)

No QPLO at time of severance of employment, later loan default

(1) The facts are the same as in Example 1, except that, rather than accelerating the plan loan, Plan Y permits Employee A to continue making loan installment payments after severance from employment. Employee A continues making loan installment payments until January 1, 2021, at which time Employee A does not make the loan installment payment due on January 1, 2021. In accordance with §1.72(p)-1, Q&A-10, Plan Y allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due. Employee A does not make a plan loan installment payment during the cure period. Plan Y offsets the unpaid $3,000 loan balance against Employee A's account balance on July 1, 2021 (which is after the 12-month period beginning on the date that Employee A severed from employment).

(2) The conclusion is the same as in Example 1, except that the $3,000 plan loan offset amount is not a qualified plan loan offset amount (because the offset did not occur within the 12-month period beginning on the date that Employee A severed from employment). Accordingly, Employee A may roll over up to the $3,000 plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs).

EXAMPLE 3, PROPOSED REG. §1.402(C)-3(A)(2)(V)

Offset due to terms of plan, employee does not request an offset

(1) The facts are the same as in Example 1, except that the terms governing the plan loan to Employee A provide that, upon severance from employment, Employee A's account balance is automatically offset by the amount of any unpaid loan balance to repay the loan. Employee A severs from employment but does not request a distribution from Plan Y. Nevertheless, pursuant to the terms governing the plan loan, Employee A's account balance is automatically offset on June 15, 2020, by the amount of the $3,000 unpaid loan balance.

(2) The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

EXAMPLE 4, PROPOSED REG. §1.402(C)-3(A)(2)(V)

Employee takes a cash distribution after QPLO rather than a direct rollover

(1) The facts are the same as in Example 1, except that Employee A elects to receive a cash distribution of the account balance that remains after the $3,000 plan loan offset amount, instead of electing a direct rollover of the remaining account balance.

(2) The amount of the distribution received by Employee A is $10,000 (not $3,000). Because the amount of the $3,000 plan loan offset amount attributable to the loan is included in determining the amount of the eligible rollover distribution to which withholding applies, withholding in the amount of $2,000 (20 percent of $10,000) is required under section

3405(c). The $2,000 is required to be withheld from the $7,000 to be distributed to Employee A in cash, so that Employee A actually receives a cash amount of $5,000.

(3) The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset to an eligible retirement plan within the period that ends on the Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs. In addition, Employee A may roll over up to $7,000 (the portion of the distribution that is not related to the offset) within the 60-day period provided in section 402(c)(3).

Note that in this example, the employee will need to come up with the $2,000 of taxes withheld within 60 days to complete a rollover. Only the $3,000 QPLO amount receives the extended period during which a rollover may be completed.

EXAMPLE 5, PROPOSED REG. §1.402(C)-3(A)(2)(V)

Employer securities rather than cash distributed

(1) The facts are the same as in Example 4, except that the $7,000 distribution to Employee A after the offset consists solely of employer securities within the meaning of section 402(e)(4)(E).

(2) No withholding is required under section 3405(c) because the distribution consists solely of the $3,000 plan loan offset amount and the $7,000 distribution of employer securities. This is the result because the total amount required to be withheld does not exceed the sum of the cash and the fair market value of other property distributed, excluding plan loan offset amounts and employer securities.

(3) Employee A may roll over up to the $7,000 of employer securities to an eligible retirement plan within the 60-day period provided in section 402(c)(3). The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (a)(2)(iii)(B) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

EXAMPLE 6, PROPOSED REG. §1.402(C)-3(A)(2)(V)

Employee fails to make payments on plan loan

(1) Employee B, who is age 40, has an account balance in Plan Z. Plan Z provides for no after-tax employee contributions. In 2022, Employee B receives a loan from Plan Z, the terms of which satisfy section 72(p)(2), and which is secured by elective contributions subject to the distribution restrictions in section 401(k)(2)(B).

(2) Employee B fails to make an installment payment due on April 1, 2023, or any other monthly payments thereafter. In accordance with §1.72(p)-1, Q&A-10, Plan Z allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due (September 30, 2023). Employee B does not make a plan loan installment payment during the cure period. On September 30, 2023, pursuant to section 72(p)(1), Employee B is taxed on a deemed distribution equal to the amount of the unpaid loan balance. Pursuant to §1.402(c)-2, Q&A4(d), the deemed distribution is not an eligible rollover distribution.

(3) Because Employee B has not severed from employment or experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that

secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time of the deemed distribution. Thus, there is no distribution of an offset amount that is an eligible rollover distribution on September 30, 2023.

EXAMPLE 7, PROPOSED REG. §1.402(C)-3(A)(2)(V)

Employee defaults on plan loan, separates from service afterward

(1) The facts are the same as in Example 6, except that Employee B has a severance from employment on November 1, 2023. On that date, Employee B's unpaid loan balance is offset against the account balance on distribution.

(2) The plan loan offset amount is not a qualified plan loan offset amount. Although the offset occurred within 12 months after Employee B severed from employment, the plan loan does not meet the requirement in paragraph (a)(2)(iii)(B) of this section (that the plan loan meet the requirements of section 72(p)(2) immediately prior to Employee B's severance from employment). Instead, the loan was taxable on September 30, 2023 (prior to Employee B's severance from employment on November 1, 2023), because of the failure to meet the level amortization requirement in section 72(p)(2)(C). Accordingly, Employee B may roll over the plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee B's tax filing due date (including extensions) for the taxable year in which the offset occurs).

SECTION: 408
TAXPAYER THAT TOOK IRA FUNDS TO MAKE CASH OFFER ON RESIDENCE DENIED LATE ROLLOVER RELIEF

Citation: PLR 2020033008, 8/15/20

While the IRS has issued numerous private letter rulings over the years granting taxpayers relief for late IRA rollovers, far fewer rulings have been issued denying relief. But in PLR 2020033008[15] the IRS did just that for a taxpayer's request for permission to make a late rollover, as the taxpayer had effectively attempted to borrow the funds from the IRA to make a cash offer on a residence.

Most advisers have heard it claimed that taxpayers can use the rollover rules to allow that taxpayer to borrow funds from the IRA and then roll the funds back in. This "loan" provision referred to is found at IRC §408(d)(3)(A):

> (A) In general Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual

[15] PLR 2020033008, August 15, 2020 https://www.irs.gov/pub/irs-wd/202033008.pdf (retrieved August 15, 2020)

> retirement annuity to the individual for whose benefit the account or annuity is maintained if—
>
> > (i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or
> >
> > (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).
>
> For purposes of clause (ii), the term "eligible retirement plan" means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

The IRS has conceded that, if the requirements are strictly followed, the taxpayer can do what he/she wishes to do with the funds, a key requirement being returning the funds within 60 days.

While IRC §408(d)(3)(I) does grant the IRS the authority to waive a late rollover "where the failure to waive such requirement would be against equity or good conscience," the agency has stated clearly that returning a "loan" late will not meet that criteria. The agency's view is that while the "borrowing" noted above is permitted since nothing in the IRC bars it, that was not the purpose of the rollover provision. That provision was meant to allow taxpayers to move funds from one account to another and, in the view of the agency, it is not against "equity or good conscience" to deny relief when a taxpayer was using the provision for other purposes.

But this taxpayer was hopeful that the situation the taxpayer faced was different enough to allow for such relief:

> In Year 1, Taxpayer A and his spouse worked with a real estate agent in selling their existing home and purchasing a new one. The real estate agent advised Taxpayer A to make a cash offer for the purchase of a new residence using funds from IRA B. The real estate agent assured Taxpayer A that he could repay the amount back into his IRA at a later time, after the sale of his current residence, and made no mention of the 60-day rollover period.
>
> Lacking other available funds and acting on the advice of the real estate agent, Taxpayer A completed a distribution request form provided by Financial Institution C. Taxpayer A indicated on the form that the purpose for the distribution was to purchase a new home. Financial Institution C's distribution request form stated that the

> individual requesting a distribution and signing the form understands that a 10 percent tax penalty and ordinary income taxes may apply to the distribution, and the individual agrees to obtain legal and tax advice to make this determination. Although the form provided a rollover option, it made no mention of the 60-day rollover period.
>
> On Date 2, Taxpayer A withdrew Amount 1 from IRA B to purchase the new residence. On Date 3, Taxpayer A used the distribution of Amount 1 for the purchase of his new house. On Date 4, after the expiration of the 60-day rollover period, Taxpayer A's prior residence was sold. After this sale, Taxpayer A contacted Financial Institution C to try to repay Amount 2 (a portion of total distribution Amount 1), back into IRA B. However, Financial Institution C informed him that it could not accept the repayment of Amount 2 because the 60-day rollover period had passed.[16]

The taxpayer argued that since the financial institution had not informed the taxpayer about the 60-day rollover rule, the IRS should grant relief based on what the taxpayer saw as an error of the financial institution.

However, the IRS pointed out the following:

> However, unlike a plan qualified under section 401(a), the Code does not impose a requirement on an IRA custodian to inform individuals of the rollover rules, and the failure of the realtor and the financial institution to provide this information does not rise to the level of financial institution error.[17]

Thus, the IRS goes on to deny the taxpayer's request for relief:

> In this case, the information and documentation submitted show that Taxpayer A withdrew Amount 1 from IRA B for use as a short-term, interest-free loan to purchase a new home. One of the factors in Rev. Proc. 2003-16 is the use of the amount distributed, for example, whether the amount was cashed. The Committee Report describing legislative intent indicates that Congress enacted the rollover provisions to allow portability between eligible plans including IRAs. Using a distribution as a short-term loan to cover personal expenses is not consistent with the intent of Congress to allow portability between eligible plans. Therefore, under the facts and circumstances presented in this case, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B.[18]

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[16] PLR 2020033008, August 15, 2020, p. 2

[17] PLR 2020033008, August 15, 2020, pp. 3-4

[18] PLR 2020033008, August 15, 2020, p. 4

SECTION: 3201
US CHAMBER OF COMMERCE AND OTHER BUSINESS ORGANIZATIONS SEND LETTER INDICATING MANY EMPLOYERS WILL LIKELY NOT PARTICIPATE IN PAYROLL TAX DEFERRAL ONLY PROGRAM SCHEDULED TO BEGIN SEPTEMBER 1

Citation: "Implementation of the Executive Order Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster," Letter from U.S. Chamber of Commerce, 8/18/20

The U.S. Chamber of Commerce has sent a letter,[19] signed by the Chamber and a number of business industry organizations, to Treasury Secretary Mnuchin, House Speaker Nancy Pelosi and Senate Majority Leader Mitch McConnell stating that many of the employers who are members of the organizations will likely decline to participate in the payroll tax holiday outlined in the Presidential memorandum issued earlier in August. The organizations indicate that the lack of forgiveness for the taxes not withheld creates issues for both employers and employees.

The letter notes that:

> Under current law, the EO creates a substantial tax liability for employees at the end of the deferral period. Without Congressional action to forgive this liability, it threatens to impose serious hardships on employees who will face a large tax bill as a result of deferral.

The letter contains a table of example amounts of total deferral that would come due in a lump sum under the current proposal, showing that an employee with a $50,000 annual income on a biweekly payroll would, presuming there will be 9 pay periods from September 1 to December 31, see a weekly increase in pay of $119.23, but would then owe $1,073.08 in a lump sum once the deferral ends.

The letter notes the major problem comes from the memorandum merely providing for a deferral of the tax:

> If this were a suspension of the payroll tax so that employees were not forced to pay it back later, implementation would be less challenging.

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[19] "Implementation of the Executive Order Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster," Letter from U.S. Chamber of Commerce, August 18, 2020, https://www.uschamber.com/sites/default/files/200818_coalition_payrolltax_eo_mcconnellpelosimnuchin.pdf (retrieved August 19, 2020)

> But under a simple deferral, employees would be stuck with a large tax bill in 2021.

Absent Congressional action to provide for forgiveness, the letter concludes that many, or even most, employers will reasonably conclude the best course is to just continue to withhold and remit the taxes under current law, ignoring the deferral:

> Many of our members consider it unfair to employees to make a decision that would force a big tax bill on them next year. It would also be unworkable to implement a system where employees make this decision. Therefore, many of our members will likely decline to implement deferral, choosing instead to continue to withhold and remit to the government the payroll taxes required by law.

The letter concludes by asking the Administration and Congress to take action on this matter:

> We hope Congress and the Administration come together on a path that supports workers instead of burdening hardworking Americans with a large tax bill next year.

SECTION: 3201
IRS WARNS EMPLOYERS NOT TO FILE FORM 941-X TO CHANGE SECOND QUARTER FORMS 941 UNTIL REVISED VERSION ISSUED IN LATE SEPTEMBER

Citation: "Information about filing Form 941-X for 2020 2nd Quarter," IRS website, 8/17/20

With the major revisions made to Form 941, the IRS is in the process of revising Form 941-X for making corrections to the quarterly federal tax return. While the IRS has issued a draft of the Form 941-X on July 27, 2020,[20] until such time as that form is released in final form the IRS has provided special instructions to be used in filing for adjustments prior to that date on the IRS website.[21]

The website notes that the revised Form 941-X is expected to be released in final form in late September. The new form allows for corrections to be made to the new lines found on the Form 941 that was released for filings for the second quarter of 2020 to take into account the various payroll tax credits and the deferral of old age, survivor

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[20] Draft Form 941-X, *Adjutsed Employer's QUARTERLY Federal Tax Return or Claim for Refund*, Draft as of July 27, 2020, https://www.irs.gov/pub/irs-dft/f941x--dft.pdf (retrieved August 21, 2020)

[21] "Information about filing Form 941-X for 2020 2nd Quarter," IRS website, August 17, 2020 https://www.irs.gov/forms-pubs/information-about-filing-form-941-x-for-2020-2nd-quarter (retrieved August 21, 2020)

and disability employer taxes found in provisions of the Families First Coronavirus Protection Act (FFCPA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES).

For those looking to file the adjustments prior to the release of the revised Form 941-X, the website provides the following instructions:

- If adjusting 1Q 2020 or earlier, you may use the existing Form 941-X.
- If adjusting 2Q (or later) and not making any increase or decrease to the employer share of social security tax or any of the new COVID-related lines that were added to the Q2 Form 941, we strongly recommend that you not use the existing Form 941-X but rather wait for the new Form 941-X revision to be released.
- If adjusting 2Q (or later) and making any increase or decrease to the employer share of social security tax or any of the new COVID-related lines, do not use the existing Form 941-X; instead, wait for the new Form 941-X revision.
- Do not send a Form 941 with "Amended" (or similar notation) written on it in an attempt to adjust any quarter.
- If you have already done either of the prior two procedures, you'll need to wait for correspondence from the IRS to find out if your return was processable or had to be rejected. Given the backlog of paper forms and correspondence due to COVID-19, the IRS states it is unable to approximate how long that may be.

Basically, the IRS believes it's a *really bad idea* to file an adjustment for a second quarter Form 941 before the new Form 941-X is released. However, if the employer is not changing any of the items affected by the FFCRA or CARES Acts, the IRS stops short of absolutely telling employers not to use the current version of Form 941-X (though presumably things may not go well if the employer does that—but you have been warned).

The IRS uses stronger language for any changes that impact the FFCRA or CARES Act revised lines on the second quarter Form 941-X, as well as *ever* attempting to revise a quarterly filing by simply writing "Amended" or something similar on a Form 941. The IRS clearly states not to take those actions, going well beyond simply strongly advising against taking the actions.

If an employer either has already taken one of those actions or does so in the future the IRS warns the employer:

- There is no option but to wait and see how this turns out;
- It is possible that the IRS may either be able to process the form or it may reject the filing; and
- Due to the backlog at the IRS, you may have a long wait before finding out if your request will be processed or not.

So, basically, employers should take this away from the guidance:

- If you are revising the first quarter 2020 or earlier, you can file using either form (so no need to wait for the revised form to be issued—just use the old version).
- If you are revising the second quarter of 2020, just wait for the revised Form 941-X to be issued.

SECTION: 6001
CHAIR OF WAYS AND MEANS REQUESTS IRS CEASE SENDING NOTICES OF PAYMENTS DUE UNTIL MAIL BACKLOG IS RESOLVED

Citation: Ways and Means Committee Chair Rep. Richard Neal (D-MA), Letter to IRS Commissioner Charles Rettig Dated August 19, 2020, 8/19/20

The IRS's backlog in processing some mailed in payments is something most tax professionals have dealt with in recent weeks. Now the Chairman of the House Ways and Means Committee, Representative Richard Neal (D-MA), has called on the IRS to halt sending out notices demanding payment until the backlog is cleared by the agency.[22] And, a day later, the agency announced it would temporarily pause the sending of follow-up notices.[23]

Letter from Representative Neal

The letter notes:

> IRS officials reported that, due to office closures, the IRS has accumulated a staggering backlog of unopened mail. At one point this summer, the IRS had approximately 12 million pieces of unopened correspondence in its inventory. Despite this unprocessed mail, the IRS reportedly has been sending notices to taxpayers whose correspondence and payments remain unopened. Therefore, many of

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[22] Ways and Means Committee Chair Rep. Richard Neal (D-MA), Letter to IRS Commissioner Charles Rettig Dated August 19, 2020, https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/2020.08.19%20Letter%20to%20IRS%20re%20Notices.pdf (retrieved August 20, 2020)

[23] "IRS temporarily stops mailing notices to taxpayers with balances due," IRS website, August 21, 2020 https://www.irs.gov/newsroom/irs-temporarily-stops-mailing-notices-to-taxpayers-with-balances-due (retrieved August 21, 2020)

> the taxpayers receiving these notices already have made the payments that the IRS seeks.

The letter goes on to note that taxpayers are put under stress when receiving such letters and have no real way to respond and stop future notices:

> These notices impose unnecessary stress on taxpayers who, upon receipt, must contact the IRS for assistance. This is particularly troubling at a time when the IRS is telling taxpayers who need to call the agency "to expect long waits due to limited staffing." Taxpayers reaching out for assistance on the telephone must hope someone can answer their call and that all payments they have made have been opened, processed, and indicated on their account. Certainly, any additional correspondence generated by these notices can prove difficult for the IRS to handle and cause significant delays for taxpayers seeking fair resolution. For many Americans, this is an additional burden that they simply do not have the capacity to address during this crisis.

The Chairman requests that the IRS pause sending notices regarding such payments at this time and consider establishing a portal where taxpayers could respond to indicate they have mailed in payments since March:

> In light of these concerns, I respectfully request that the IRS temporarily pause sending notices to taxpayers who might be impacted by the correspondence backlog. During this time, I ask the IRS to consider establishing a portal through which taxpayers can alert the IRS that they have mailed payments since the beginning of March. Such portal could assist the IRS in preventing additional incorrect notices from being sent to taxpayers who have already mailed payments.

The letter asks the IRS to not resume sending such notices until the backlog is resolved:

> The IRS should not resume sending notices to taxpayers until the backlog has been reduced to pre-pandemic levels and taxpayer accounts have been updated. At such time, the IRS should carefully review any notices before sending to ensure that they are correct and timely and that taxpayers are in no way being penalized for the delay.

The Chair takes issue with a limitation of relief noted in last week's IRS announcement of a waiver for dishonored check penalties for taxpayers that have checks dishonored by the IRS when presented for payment months later:

> Last week, the IRS acknowledged that it was providing administrative relief from "bad check penalties . . . in certain circumstances due to delays in IRS processing." However, the IRS warned that "interest and other civil penalties may still apply," which I believe is insufficient.

The letter notes that this is the second time the IRS has sent out incorrect notices in recent months, apparently referring to the IRS mailing out notices that had been generated but not mailed during the agency's shutdown following the declaration of a

national emergency related to COVID-19. Many of those notices showed a due date for response or payment that was earlier than the date the notice was mailed.

IRS Response

A day after Representative Neal sent his letter, the IRS addressed this issue, posting an announcement regarding a delay in the sending of notices due to the mail handling issues. The agency announcement provides:

> The IRS has suspended the mailing of three notices – the CP501, the CP503 and the CP504 – that go to taxpayers who have a balance due on their taxes. Although the IRS continues to make significant reductions in the backlog of unopened mail that developed while most IRS operations were closed due to COVID-19, this temporary adjustment to processing is intended to lessen any possible confusion that might be associated with delays in processing correspondence received from taxpayers.
>
> The IRS is taking the step to avoid confusion for taxpayers who previously received a balance due notice (CP14) and mailed a payment to the IRS; however, that payment may still be unopened. The CP501, the CP503 and the CP504 are follow-up notices are typically automatically sent to taxpayers who do not respond to the CP14. These automatic follow-up notices will be temporarily stopped until the backlog of mail is reduced. The IRS will continue to assess the mail inventory to determine the appropriate time to resume the follow-up notices.

Note that the IRS does suggest that taxpayers should respond (apparently by mail since the agency continues to suggest not calling the agency) to a CP14 balance due notice.

> However, taxpayers who have received but not yet responded to a CP14 balance due notice are encouraged to promptly respond.

However, the announced delay in sending follow-up notices doesn't mean taxpayers and advisers won't continue to see follow-up notices for a while. The agency warns.

> As the IRS works to stop these mailings at our processing centers, some taxpayers and tax professionals may still receive these notices during the next few weeks due to delivery of existing mailings.

The agency reminds taxpayers to attempt to ensure these checks will process when the IRS finally gets them processed, but also notes their previous announcement to waive fees normally imposed on dishonored checks:

> In addition, the IRS has previously announced that these payments in the unopened mail will be posted and credited on the date the IRS received them – rather than the date the agency opened and processed them. The IRS reminds taxpayers in this situation they should not cancel their checks and should ensure funds continue to be available so the IRS can process them to avoid potential penalties and interest. To provide fair and equitable treatment, the IRS is also providing relief

> from bad check penalties for dishonored checks the agency received between March 1 and July 15 due to delays in this IRS processing.

The IRS also asks taxpayers to delay calling the agency regarding pending unprocessed payments, stating that "[d]ue to high call volumes, the IRS suggests waiting to contact the agency about any unprocessed paper payments still pending."

Finally, the IRS closes out by suggesting taxpayers looking into using alternative electronic payment methods, asking taxpayers to visit https://irs.gov/payments to look into other payment options that will avoid the mail processing backlog.

SECTION: 6011
IRS NOW ACCEPTING ELECTRONICALLY FILED INDIVIDUAL AMENDED RETURNS FOR 2019 TAX YEAR

Citation: "Now available: IRS Form 1040-X electronic filing," IR-2020-182, 8/17/20

After announcing earlier in the year a plan to begin accepting a limited number of amended returns electronically later in the summer,[24] the IRS has now announced the beginning of this program.[25]

The program initially will only allow the electronic filing of the following amended forms for tax year 2019:

- Form 1040 and
- Form 1040-SR.

The news release notes that taxpayers may still file these returns on paper, using the Where's My Amended Return?[26] online tool to check the status of either type of return.

The IRS notes the following advantages for filing amended returns electronically:

> Currently, taxpayers must mail a completed Form 1040-X to the IRS for processing. The new electronic option allows the IRS to receive

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[24] Ed Zollars, CPA, "Forms 1040-X for 2019 Will Be Available for Electronic Filing Later in the Summer of 2020," *Current Federal Tax Developments* website, May 28, 2020, https://www.currentfederaltaxdevelopments.com/blog/2020/5/28/njscarmoal24kg613zo6ltsrgwlqvm (retrieved August 18, 2020)

[25] "Now available: IRS Form 1040-X electronic filing," IR-2020-182, August 17, 2020 https://www.irs.gov/newsroom/now-available-irs-form-1040-x-electronic-filing (retrieved August 18, 2020)

[26] https://www.irs.gov/filing/wheres-my-amended-return (retrieved August 18, 2020)

> amended returns faster while minimizing errors normally associated with manually completing the form.
>
> Since the tax-filing software allows users to input their data in a question-answer format, it simplifies the process for them. It also makes it easier for IRS employees to answer taxpayer questions since the data is entered electronically and submitted to the agency almost simultaneously.
>
> "Adding the 1040-X to the e-filing portfolio provides a better experience for the taxpayer, all around. It makes submitting an amended return easier and it allows our employees to process it in a more efficient way," said Ken Corbin, the IRS Wage and Investment commissioner and head of the division responsible for processing these returns.

What is not mentioned, but what practitioners are very aware of at this date, is that the IRS is also far behind in dealing with processing paper forms. The hope is that using this system will allow the taxpayer looking to claim a refund on an amended 2019 return to have their claim processed faster, and thus receive the refund faster as well.

The release notes that the IRS receives about 3 million Forms 1040-X each year.

Note that since only 2019 returns can be amended electronically, it is likely that a large number of amended returns filed for the remainder of the year will still need to be filed on paper. As well, it will likely take some time before all states will also accept electronically filed amended returns.

SECTION: 7508A
IRS BEGINS SENDING INTEREST CHECKS TO TAXPAYERS WHO FILED BETWEEN APRIL 15 AND JULY 15 AND RECEIVED A REFUND FOR 2019

Citation: "13.9 million Americans to receive IRS tax refund interest; taxable payments to average $18," IR-2020-183, August 18, 2020

The IRS has announced it has begun sending out interest payments to those individuals who received refunds and filed their tax returns after April 15 but before July 15.[27] The

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[27] "13.9 million Americans to receive IRS tax refund interest; taxable payments to average $18," IR-2020-183, August 18, 2020, https://www.irs.gov/newsroom/13-point-9-million-americans-to-receive-irs-tax-refund-interest-taxable-payments-to-average-18-dollars#:~:text=The%20interest%20payments%2C%20averaging%20about,issued%20separately%20from%20tax%20refunds. (retrieved August 19, 2020)

IRS had previously announced the agency would be sending such refunds in a news release issued on June 24, 2020 that was previously discussed on our website.[28]

The IRS explains in the news release why the payments are being made. The COVID-19 related delay in the due date announced by the IRS in Notice 2020-23 triggered this special interest rule:

> This provision is different from the long-standing 45-day rule, generally requiring the IRS to add interest to refunds on timely-filed refund claims issued more than 45 days after the return due date.
>
> Instead, this year's COVID-19-related July 15 due date is considered a disaster-related postponement of the filing deadline. Where a disaster-related postponement exists, the IRS is required, by law, to pay interest, calculated from the original April 15 filing deadline, as long as an individual files a 2019 federal income tax return by the postponed deadline − July 15, 2020, in this instance. This refund interest requirement only applies to individual income tax filers − businesses are not eligible.

The release states that the payments will be made to those individuals who filed a 2019 return by the revised July 15, 2020 deadline set by Notice 2020-23 that received a refund. These individuals will receive an additional payment for interest. The average payment is expected to be $18 and about 13.9 million payments will be made.

The IRS details how the payments will be made to taxpayers:

> In most cases, taxpayers who received their refund by direct deposit will have their interest payment direct deposited in the same account. About 12 million of these payments will be direct deposited.
>
> Everyone else will receive a check. A notation on the check − saying "INT Amount" − will identify it as a refund interest payment and indicate the interest amount.

The method of calculation is also explained in the news release:

> Interest is paid at the legally prescribed rate that is adjusted quarterly. The rate for the second quarter ending June 30 was 5%, compounded daily. Effective July 1, the rate for the third quarter dropped to 3%, compounded daily.
>
> Where the calculation period spans quarters, a blended rate applies, consisting of the number of days falling in each calendar quarter. No

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[28] Ed Zollars, "Interest Will Be Paid on Refunds from April 15 to July 15," *Current Federal Tax Developments* website, June 24, 2020, https://www.currentfederaltaxdevelopments.com/blog/2020/6/24/interest-will-be-paid-on-refunds-from-april-15-to-july-15 (retrieved August 19, 2020)

> interest will be added to any refund issued before the original April 15 deadline.

The IRS also reminds taxpayers that the interest is taxable, and that a Form 1099-INT will be mailed to the taxpayers where required by law:

> By law, these interest payments are taxable and taxpayers who receive them must report the interest on the 2020 federal income tax return they file next year. In January 2021, the IRS will send a Form 1099-INT to anyone who receives interest totaling at least $10.