


MEMORANDUM

TO: OUR CLIENTS AND PROFESSIONAL COLLEAGUES
FROM: EUGENE GORRIN, ESQ. 
RE: COVID-19 POSTPONEMENT OF TAX DEADLINES
DATE: APRIL 23, 2020

As our community works to overcome the damage inflicted by the COVID-19 pandemic, I'm writing to make you aware of relief provided by the IRS, under which most federal tax filing and payment deadlines have been postponed. The postponements are automatic, so taxpayers do not have to file for an extension to take advantage of them. A summary of these tax deadline-related relief measures follows. For the complete list, please see the last section of this Memorandum starting on page 6.

Postponements of Deadlines for Individuals

For all individuals, the deadline for filing the following returns and making the following payments and contributions has been extended to July 15, 2020:

- Forms 1040, 1040-SR, 1040-NR, and other variations of Form 1040;
- Gift and generation-skipping transfer tax payments and returns;
- First and second quarter 2020 estimated tax payments (which would have been due on April 15 and June 15 respectively); and
- Contributions to 2019 individual retirement accounts (IRA), health savings accounts (HSA), and Archer MSA accounts.

The postponements apply not only to individuals who reside in the U.S., but also to those subject to U.S. tax obligations who live and work abroad.

There is no limit on the amount of your tax payment that may be postponed. In addition, the period beginning on April 15, 2020, and ending on July 15, 2020, is disregarded in calculating any interest, penalty, or addition to tax for failure to file the income tax returns or to pay any income taxes due. Interest, penalties, and additions to tax with respect to such postponed filings and payments will begin to accrue on July 16, 2020.

Partnerships, S Corps, C Corps, Estates, Trusts, and Exempt Organizations

Notices 2020-18, 2020-20 and 2020-23 automatically postpone various tax filing and payment deadlines that previously fell on or after April 1, 2020 and before July 15, 2020, until July 15, 2020. These postponements apply to trusts, estates, partnerships, tax-exempt organizations, private foundations, associations, companies, and corporations. Among the more common types of returns for which the deadline is extended are Forms 706, 990, 1041, 1065, 1120, and 1120-S. Due dates for making excise tax payments and certain excise tax returns are also extended to July 15, 2020.

There is no limit on the amount of the tax payments that may be postponed. In addition, the period beginning on April 15, 2020, and ending on July 15, 2020, is disregarded in calculating any interest, penalty, or addition to tax for failure to file income tax returns or to pay

any income taxes due. Interest, penalties, and additions to tax with respect to such postponed filings and payments will begin to accrue on July 16, 2020.

Extension of Time to Pay Employment Taxes

Under the CARES Act (\$2 trillion economic relief package enacted in late March 2020) and IRS Notice 2020, a business can delay payment of applicable employment taxes for the period beginning on March 27, 2020 and ending before January 1, 2021 (i.e., the payroll tax deferral period). Generally, under this provision, an employer will be treated as having timely made all deposits of applicable employment taxes that would otherwise be required during the payroll tax deferral period if all such deposits are made not later than the "applicable date," which is defined as -

- (1) December 31, 2021, with respect to 50% of the amounts due; and
- (2) December 31, 2022, with respect to the remaining amounts.

In addition, for self-employed taxpayers, the payment for 50% of the self-employment taxes for the payroll tax deferral period is not due before the applicable date. For purposes of applying the penalty for underpayment of estimated income taxes to any tax year which includes any part of the payroll tax deferral period, 50% of the self-employment taxes for the payroll tax deferral period will not be treated as taxes to which that penalty applies.

Caution: The deadline for filing Form 941, Employer's Quarterly Federal Tax Return, has not been postponed by the CARES Act by any IRS guidance.

Postponement of Certain Time-Sensitive Actions

Notice 2020-23 also gives you until July 15, 2020 to perform certain time-sensitive actions that are due to be performed on or after April 1, 2020 and before July 15, 2020. This relief includes the time for filing all petitions with the Tax Court, or for review of a decision rendered by the Tax Court, filing a claim for credit or refund of any tax, and bringing suit upon a claim for credit or refund of any tax. Relief is not provided for the time period for filing a petition with the Tax Court, or for filing a claim or bringing a suit for credit or refund, if that period expired before April 1, 2020.

Deadline Extended for Filing Net Operating Loss Carrybacks

Notice 2020-26 allows taxpayers to take advantage of amendments made to the net operating loss ("NOL") provisions by the CARES Act. Specifically, Notice 2020-26 extends the deadline for filing an application for a tentative carryback adjustment with respect to the carryback of an NOL that arose in any tax year that began during calendar year 2018 and that ended on or before June 30, 2019.

Amended Partnership Returns May Now Be Filed for 2018 and 2019

Revenue Procedure 2020-23 provides that partnerships subject to the centralized partnership audit regime can now file amended partnership returns for tax years beginning in 2018 and 2019 using a Form 1065, U.S. Return of Partnership Income (Form 1065), with the "Amended Return" box checked, and issue an amended Schedule K-1, Partner's Share of Income, Deductions, Credits, etc. (Schedule K-1), to each of its partners. Without this option to file

amended returns, partnerships that already filed their Forms 1065 for the affected years would generally be unable to take advantage of the CARES Act relief for partnerships (such as changes made to the recovery period for qualified improvement property) except by filing certain requests with the IRS that would result in the partners' only being able to receive any benefits from that relief on the current tax year's federal income tax return.

Extension of Time for Electing or Withdrawing an Election to be an Electing Real Property Trade or Business or an Electing Farm Business

Revenue Procedure 2020-22 provides an automatic extension of time to file an election to be an electing real property trade or business or to be an electing farming business for tax years 2018, 2019, or 2020. The revenue procedure also provides an opportunity to withdraw a prior election to be an electing real property trade or business or an electing farming business. By withdrawing an election within the timeframe outlined in the procedure, you will be treated as if the election was never made.

While delaying filing a return will make sense for many taxpayers who owe additional taxes, it may be less attractive for taxpayers who are expecting a refund (the IRS is expected to continue to processing returns and issuing refunds in the coming months).

Complete List

The following is the complete list of tax returns and payments for which the deadline has been postponed until July 15, 2020 (please see "Extension of Time to Pay Employment Taxes" above for information on employment taxes, which are subject to different rules allowing for longer extensions):

- Individual income tax payments and return filings on Form 1040, U.S. Individual Income Tax Return, 1040-SR, U.S. Tax Return for Seniors, 1040-NR, U.S. Nonresident Alien Income Tax Return, 1040-NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents, 1040-PR, Self-Employment Tax Return - Puerto Rico, and 1040-SS, U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico);
- Calendar year or fiscal year corporate income tax payments and return filings on Form 1120, U.S. Corporation Income Tax Return, 1120-C, U.S. Income Tax Return for Cooperative Associations, 1120-F, U.S. Income Tax Return of a Foreign Corporation, 1120-FSC, U.S. Income Tax Return of a Foreign Sales Corporation, 1120-H, U.S. Income Tax Return for Homeowners Associations, 1120-L, U.S. Life Insurance Company Income Tax Return, 1120-ND, Return for Nuclear Decommissioning Funds and Certain Related Persons, 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return, 1120-POL, U.S. Income Tax Return for Certain Political Organizations, 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts, 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies, 1120-S, U.S.

- Income Tax Return for an S Corporation, and 1120-SF, U.S. Income Tax Return for Settlement Funds (under Section 468B of the Internal Revenue Code (“Code”));
- Calendar year or fiscal year partnership return filings on Form 1065, U.S. Return of Partnership Income, and Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return;
 - Estate and trust income tax payments and return filings on Form 1041, U.S. Income Tax Return for Estates and Trusts, 1041-N, U.S. Income Tax Return for Electing Alaska Native Settlement Trusts, and 1041-QFT, U.S. Income Tax Return for Qualified Funeral Trusts;
 - Estate and generation-skipping transfer tax payments and return filings on Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return, 706-A, United States Additional Estate Tax Return, 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts, 706-GS(T), Generation-Skipping Transfer Tax Return for Terminations, 706-GS(D), Generation-Skipping Transfer Tax Return for Distributions, and 706-GS(D-1), Notification of Distribution from a Generation-Skipping Trust (including the due date for providing such form to a beneficiary);
 - Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, filed pursuant to Revenue Procedure 2017-34;
 - Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent and any supplemental Form 8971, including all requirements contained in Code Section 6035(a);

- Gift and generation-skipping transfer tax payments and return filings on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return that are due on the date an estate is required to file Form 706 or Form 706-NA;
- Estate tax payments of principal or interest due as a result of an election made under Code Sections 6166, 6161, or 6163 and annual recertification requirements under Code Section 6166;
- Exempt organization business income tax and other payments and return filings on Form 990-T, Exempt Organization Business Income Tax Return (and proxy tax under Code Section 6033(e);
- Excise tax payments on investment income and return filings on Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation, and excise tax payments and return filings on Form 4720, Return of Certain Excise Taxes under Chapters 41 and 42 of the Code; and
- Quarterly estimated income tax payments calculated on or submitted with Form 990-W, Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations, 1040-ES, Estimated Tax for Individuals, 1040-ES (NR), U.S. Estimated Tax for Nonresident Alien Individuals, 1040-ES (PR), Estimated Federal Tax on Self Employment Income and on Household Employees (Residents of Puerto Rico), 1041-ES, Estimated Income Tax for Estates and Trusts, and 1120-W, Estimated Tax for Corporations.