

Current Federal Tax Developments

Week of March 23, 2020

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ACCOUNTING
CONTINUING EDUCATION

CURRENT FEDERAL TAX DEVELOPMENTS
WEEK OF MARCH 23, 2020
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SECTION: 3101

CONGRESS ENACTS SMALL EMPLOYER MANDATORY PAID SICK TIME RULES AND RELATED REFUNDABLE PAYROLL TAX CREDIT

Citation: Families First Coronavirus Response Act (HR 6201), 3/18/20

As part of the Families First Coronavirus Response Act (HR 6201),¹ employers of *less than 500 employees* face mandatory provision of sick time² and paid family leave³ but are eligible for a refundable payroll tax credit to offset the costs. The bill was signed into law by the President on March 18, 2020.

The analysis below is based on a review of the provisions written immediately after the law was enacted. Readers should confirm all details independently. As well, the Department of Labor and other agencies will be issuing guidance in the application and interpretation of these provisions. Readers need to watch for such developments as they occur.

Paid Sick Time

The conditions under which the two week paid sick leave must be paid are the following when the employee is *unable to work or telework* for any of the following:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

¹ HR 6201, Enacted March 18, 2020,
<https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>

² HR 6201, Act Section 5110(2)(b)(ii)

³ HR 6201, Act Section 3102, amending Family and Medical Leave Act of 1993, Section 110(a)(1)(B)

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(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).

(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

(6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.⁴

However, the employer of an employee who is a health care provider or an emergency responder can exclude such employees from this provision.⁵

The amount of sick pay, subject to the maximums discussed next, is set at:

- The employee's standard rate of pay (or minimum wage if greater) for leave taken due to situations (1), (2) and (3) and
- Two-thirds of that amount for leave taken due to situations (4), (5), and (6).⁶

The maximum amount of paid sick time is

- \$511 per day (\$5,110 in total) for leave paid due to situations (1), (2), and (3) and
- \$200 per day (\$2,000 in total) for leave paid due to situations (4), (5), and (6).⁷

The duration of the paid sick time is 80 hours for full-time employees and, for part-time employees, equal to the average hours that employee works over a two-week period.⁸

⁴ HR 6201, Act Section 5102(a)

⁵ HR 6201, Act Section 5102(a)

⁶ HR 6201, Act Section 5110(5)(B)

⁷ HR 6201, Act Section 5110(5)(A)(ii)(I)

⁸ HR 6201, Act Section 5102(b)(1)

An employer cannot require, as a condition of providing this paid sick time to an employee, that the employee find a replacement employee to cover his/her hours.⁹

The employer must provide this paid sick time to an employee regardless of how long the employee has been working for the employer. The employee may first use this special paid sick time before using other paid sick time available from the employer.¹⁰

An employer is required to post and keep posted in conspicuous places on the employer's premises where notices are normally placed a notice regarding this act. The Department of Labor will make a model notice available by March 26, 2020.¹¹

Employers are barred from retaliating against employees for using leave under this Act or filing a complaint or taking any action under this Act.¹²

The Act does not diminish the rights or benefits an employee may be entitled to under any

- Other state or federal law
- Collective bargaining agreement or
- Existing employer policy.¹³

Nor does the law require an employer to provide any sort of financial or other reimbursement to an employee after the employee's termination, retirement, resignation or other separation from service.¹⁴

Employers who pay such leave will be eligible for reimbursement via a credit against FICA taxes paid.¹⁵ Any credit in excess of the taxes actually paid by the employer will be refundable¹⁶

⁹ HR 6201, Act Section 5102(d)

¹⁰ HR 6201, Act Section 5102(e)

¹¹ HR 6201, Act Section 5103

¹² HR 6201, Act Section 5104

¹³ HR 6201, Act Section 5107

¹⁴ HR 6201, Act Section 5107

¹⁵ HR 6201, Act Section 7001(a),(b)

¹⁶ HR 6201, Act Section 7001(b)(4)

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The employer will also receive a credit for “qualified health care expenses” allocable to the qualified sick pay.¹⁷

A similar credit is available for self-employed individuals who personally have to take qualified sick leave, subject to the same limits.¹⁸

The paid leave rules sunset on December 31, 2020.¹⁹

Extended Family Leave

A much more narrow extended paid family leave is also part of the bill. Under Act Section 3102(a), paid leave is available for up to 10 weeks for an employee who is:

unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.²⁰

A public health emergency is defined as an emergency related to COVID-19 declared by a Federal, State or local authority.²¹

The first 10 days of such leave may consist of unpaid leave.²² However, the employee may elect to substitute any other accrued paid leave for some or all of the unpaid leave under this provision.²³

¹⁷ HR 6201, Act Section 7001(d)(2)

¹⁸ HR 6201, Act Section 7002

¹⁹ HR 6201, Act Section 5109

²⁰ HR 6201, Act Section 3102, amending Family and Medical Leave Act of 1993, Section 110(a)(2)(A)

²¹ HR 6201, Act Section 3102, amending Family and Medical Leave Act of 1993, Section 110(a)(2)(B)

²² HR 6201, Act Section 3102, amending Family and Medical Leave Act of 1993, Section 110(b)(1)(A)

²³ HR 6201, Act Section 3102, amending Family and Medical Leave Act of 1993, Section 110(b)(1)(B)

The amount paid per day is calculated on the “two-thirds” rule that applies to the less generous paid leave situations, but with the maximum total paid out now rising to \$10,000 per employee.²⁴

Again, notice provisions apply to this rule as well.²⁵ As well, health care providers and emergency responders can be excluded from this rule.²⁶

As with paid sick leave, paid family leave is also eligible for a similar payroll tax credit²⁷ which is also available to the self-employed.²⁸

SECTION: 6651 NO AUTOMATIC EXTENSION FOR RETURNS DUE ON APRIL 15, BUT TAX PAYMENTS DUE ON THAT DATE CAN BE DEFERRED 90 DAYS

Citation: Notice 2020-17, 3/18/20

Following the announcement of planned relief related to April 15 tax filings by the Treasury Secretary over a week ago, the IRS has now formally released the details of such relief in Notice 2020-17.²⁹

In the daily session discussing COVID-19 developments given each day by the Vice-President’s task force on March 17, 2020, Treasury Secretary Mnuchin announced that the government was going to allow taxpayers to defer the payment of taxes due on April 15 by 90-days, with a \$1 million cap for individuals and a \$10 million cap on such deferred payments by corporations. The Secretary did not address whether there would be any automatic extensions also granted for filing income tax returns due on that day, even though the tax potentially would not be required to be paid on that date.

²⁴ HR 6201, Act Section 3102, amending Family and Medical Leave Act of 1993, Section 110(b)(2)

²⁵ HR 6201, Act Section 3102, amending Family and Medical Leave Act of 1993, Section 110(c)

²⁶ HR 6201, Act Section 3104

²⁷ HR 6201, Act Section 7003

²⁸ HR 6201, Act Section 7004

²⁹ Notice 2020-17, March 18, 2020, <https://www.irs.gov/pub/irs-drop/n-20-17.pdf>

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The Notice now gives us many additional details on how the program works. Note that the relief is strictly limited and does not provide an automatic extension of time to file the return in question. As the Notice provides:

The relief provided in this section III is available solely with respect to Federal income tax payments (including payments of tax on self-employment income) due on April 15, 2020, in respect of an Affected Taxpayer's 2019 taxable year, and Federal estimated income tax payments (including payments of tax on self-employment income) due on April 15, 2020, for an Affected Taxpayer's 2020 taxable year. The Applicable Postponed Payment Amounts described in this section III include, in the aggregate, all payments described in the preceding sentence due on April 15, 2020 for such Affected Taxpayers.

No extension is provided in this notice for the payment or deposit of any other type of Federal tax, or for the filing of any tax return or information return.³⁰

Note that taxpayers would not be relieved from penalties and interest for, say, delaying payment of payroll tax deposits.

As well, it is important to note the coverage also does not apply to any estimated tax payments except ones due on April 15, 2020. Thus, a calendar year individual taxpayer must still pay the estimated tax payment due on June 15 by that date or face immediate accrual of underpayment of estimated income tax payments on any shortfall. Or, to put it simply, the second federal estimated tax installment for 2020 is effectively due before the first one.

The notice, not surprisingly, defines "Affected Taxpayer" very broadly.

The Secretary has determined that any person with a Federal income tax payment due April 15, 2020, is affected by the COVID-19 emergency for purposes of the relief described in this section III (Affected Taxpayer).³¹

The specifics on the maximum tax due for which relief will be granted is outlined in the Notice as follows:

For an Affected Taxpayer, the due date for making Federal income tax payments due April 15, 2020, in an aggregate amount up to the Applicable Postponed Payment Amount, is postponed to July 15, 2020. The Applicable Postponed Payment Amount is up to

³⁰ Notice 2020-17, pp. 2-3

³¹ Notice 2020-18, p. 2

\$10,000,000 for each consolidated group (as defined in §1.1502-1) or for each C corporation that does not join in filing a consolidated return. For all other Affected Taxpayers, the Applicable Postponed Payment Amount is up to \$1,000,000 regardless of filing status. For example, the Applicable Postponed Payment Amount is the same for a single individual and for married individuals filing a joint return. In both instances the Applicable Postponed Payment Amount is up to \$1,000,000.³²

The result of this relief is to suspend the calculation of penalties and interest on qualified payments from April 15, 2020 to July 15, 2020. The Notice indicates:

As a result of the postponement of the due date for making Federal income tax payments up to the Applicable Postponed Payment Amount 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 pay the Federal income taxes postponed by this notice. Interest, penalties, and additions to tax with respect to such postponed Federal income tax payments will begin to accrue on July 16, 2020. In addition, interest, penalties and additions to tax will accrue, without any suspension or deferral, on the amount of any Federal income tax payments in excess of the Applicable Postponed Payment Amount due but not paid by an Affected Taxpayer on April 15, 2020.³³

Finally, the Notice reminds taxpayers that reasonable cause relief may still be available for some (but not all) penalties not covered by this Notice:

Affected Taxpayers subject to penalties or additions to tax despite the relief granted by this section III may seek reasonable cause relief under section 6651 for a failure to pay tax or seek a waiver to a penalty under section 6654 for a failure by an individual or certain trusts and estates to pay estimated income tax, as applicable. Similar relief with respect to estimated tax payments is not available for corporate taxpayers or tax-exempt organizations under section 6655.³⁴

³² Notice 2020-17, p. 2

³³ Notice 2020-17, p. 3

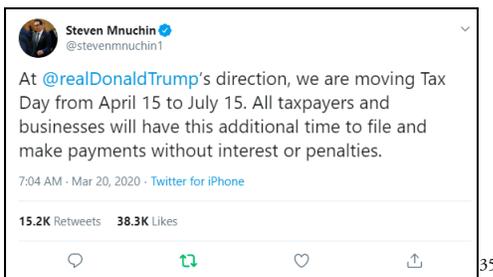
³⁴ Notice 2020-17, p. 3

SECTION: 7508A

DUE DATE PUSHED BACK TO JULY 15 FOR INCOME TAX RETURNS DUE ON APRIL 15

Citation: Notice 2020-18, 3/20/2020

In the morning of March 20, 2020, the US Treasury Secretary announced that, in addition to the 90 day deferral of payments announced in Notice 2020-17 earlier in the week, the actual due date for tax returns would be pushed back from April 15 to July 15. He did so in the following post to Twitter:



The post, being subject to Twitter’s limit on the size of messages, does not go into any significant detail on various issues that would arise from such a delay.

In the early evening Eastern time on March 20, the IRS issued Notice 2020-18³⁶ providing the official guidance on the new due date. The notice restates and expands upon relief granted in Notice 2020-17.

The ruling repeats the same definition of “Affected Taxpayer” as was found in Notice 2020-17:

The Secretary of the Treasury has determined that any person with a Federal income tax payment or a Federal income tax return due April 15, 2020, is affected by the COVID-19 emergency for purposes of the relief described in this section III (Affected Taxpayer). The term “person” includes an individual, a trust, estate, partnership,

³⁵ <https://twitter.com/stevenmnuchin1/status/1241002750483324930?s=20>, March 20, 2020

³⁶ Notice 2020-18, March 20, 2020, <https://www.irs.gov/pub/irs-drop/n-20-18.pdf>, retrieved March 20, 2020

association, company or corporation, as provided in section 7701(a)(1) of the Code.³⁷

The notice indicates that the relief is granted regardless of the amount of payment due, a change from Notice 2020-17. It now reads:

For an Affected Taxpayer, the due date for filing Federal income tax returns and making Federal income tax payments due April 15, 2020, is automatically postponed to July 15, 2020. Affected Taxpayers do not have to file Forms 4868 or 7004. There is no limitation on the amount of the payment that may be postponed.³⁸

One key question some will wonder about is whether a taxpayer who ends up unable to file on July 15 will be able to file for an extension of time to file on that delayed due date, or will that be too late? Reg. §301.7508A-1(f) Example 4 may give the answer, presuming the IRS decides to make use of §7508A's time sensitive act relief options for this relief.

The example reads:

EXAMPLE 4.

(i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, "U.S. Individual Income Tax Return," for the 2008 taxable year and are required to file a Schedule H, "Household Employment Taxes." The joint return is due on April 15, 2009. H and W's principal residence is in County M in State Q.

(ii) On April 2, 2009, a severe ice storm strikes County M. On April 5, 2009, certain counties in State Q (including County M) are determined to be disaster areas within the meaning of section 1033(h)(3) that are eligible for assistance by the Federal government under the Stafford Act. Also on April 5, 2009, the IRS determines that County M in State Q is a covered disaster area and publishes guidance announcing that the time period for affected taxpayers to file returns, pay taxes, and perform other time-sensitive acts falling on or after April 2, 2009, and on or before June 2, 2009, has been postponed to June 2, 2009.

(iii) Because H and W's principal residence is in County M, H and W are affected taxpayers. April 15, 2009, the due date for the filing of H and W's 2008 Form 1040 and Schedule H, falls within the postponement period described in the IRS published guidance. Thus, H and W's return will be timely if filed on or before June 2, 2009. If H and W request an extension of time to file under section 6081 on or before June 2, 2009, the extension is deemed to have been filed by April 15, 2009. Thus, H and W's return will be timely if filed on or before October 15, 2009.

(iv) April 15, 2009, is also the due date for the payment due on the return. This date falls within the postponement period described in the IRS published guidance. Thus, the payment of tax due with the return will be timely if paid on or before June 2, 2009 the last day

³⁷ Notice 2020-18, p. 2

³⁸ Notice 2020-18, p. 2

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of the postponement period. If H and W fail to pay the tax due on the 2008 Form 1040 by June 2, 2009, and do not receive an extension of time to pay under section 6161, H and W will be subject to failure to pay penalties and accrual of interest beginning on June 3, 2009.

In the example, using the actual 2020 dates, a Form 4868 filed on July 15 will be deemed to have been filed on April 15, with a six-month extension of time to file running from the *deemed* filing date, not the actual filing date. Thus, the return would be due on October 15.

But we should remember that IRC §7508A allows the IRS to pick and choose what gets delayed. The fact that “no Form 4868 has to be filed” certainly suggests that we are delaying when an extension must be requested to be able to file in October, but some may not find that as clear as they would like. Hopefully the IRS explicitly provides absolute clarity on this in information they will likely post on Monday.

The ruling provides the following specific relief, limited to income tax and self-employment tax matters:

The relief provided in this section III is available solely with respect to Federal income tax payments (including payments of tax on self-employment income) and Federal income tax returns due on April 15, 2020, in respect of an Affected Taxpayer’s 2019 taxable year, and Federal estimated income tax payments (including payments of tax on self-employment income) due on April 15, 2020, for an Affected Taxpayer’s 2020 taxable year.

No extension is provided in this notice for the payment or deposit of any other type of Federal tax, or for the filing of any Federal information return.³⁹

The specific nature of relief granted is outlined as follows in the Notice:

As a result of the postponement of the due date for filing Federal income tax returns and making Federal income 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 the Federal income tax returns or to pay the Federal income taxes postponed by this notice. Interest, penalties, and additions to tax with respect to such postponed Federal income tax filings and payments will begin to accrue on July 16, 2020.⁴⁰

³⁹ Notice 2020-18, pp. 2-3

⁴⁰ Notice 2020-18, p. 3

