Early IRS and Congressional Tax Relief Addressing the Coronavirus

Dear Client:

Right now your highest priority is the health of those you love and yourself.

But if you have time to read about some non-medical but important matters related to the health crisis, here is a summary of IRS action already taken and federal tax legislation already enacted to ease tax compliance burdens and economic pain caused by COVID-19 (commonly referred to as Coronavirus). We will be sending you summaries of additional developments as they take place.

Filing and payment deadlines deferred. After briefly offering more limited relief, the IRS almost immediately pivoted to a policy that provides the following to all taxpayers-meaning all individuals, trusts, estates, partnerships, associations, companies or corporations regardless of whether or how much they are affected by COVID-19:

(1) If the taxpayer had a Federal income tax return due or a Federal income tax payment due on April 15, 2020, the due date for filing and paying is automatically postponed to July 15, 2020 regardless of the size of the payment owed.
(2) The taxpayer doesn't have to file Form 4868 (automatic extensions for individuals) or Form 7004 (certain other automatic extensions) to get the extension.
(3) The relief is for (A) Federal *income* tax payments (including of tax on self-employment income) and Federal *income* tax returns due on April 15, 2020 for the person's 2019 tax year, and (B) Federal *estimated income* tax payments (including of tax on self-employment income) due on April 15, 2020 for the person's 2020 tax year.
(4) No extension is provided for the payment or deposit of any other type of Federal tax (e.g. estate or gift taxes) or the filing of any Federal information return.
(5) As a result of the postponement from April 15, 2020, to July 15, 2020, that period is

disregarded in the calculation of any interest, penalty, or addition to tax for failure to file the postponed income tax returns or pay the postponed income taxes. Interest, penalties and additions to tax will begin to accrue again on July 16, 2020.

Favorable treatment for COVID-19 payments from Health Savings Plans. Health savings accounts (HSAs) have both advantages and disadvantages relative to Flexible Spending Accounts as a way to pay for health expenses with untaxed dollars. One disadvantage is that an eligible beneficiary of an HSA must be covered by a high deductible health plan (HDHP) and thus may not be reimbursed for medical expenses until those expenses exceed the required deductible levels. But IRS has announced that payments under an HDHP that are made to test for or treat COVID-19 don't affect the status of the plan as an HDHP (and don't cause a tax for the account holder) even if the HDHP deductible hasn't been met. Vaccinations continue to be treated as preventative measures that can be paid for without regard to the deductible amount.

Tax credits and a tax exemption to lessen burden of COVID-19 business mandates. On March 18, President Trump signed into law the Families First Coronavirus Response Act (the Act or FFCRA) which provided relief, much of which is to be delivered by businesses. To ease the compliance burden of the businesses, the Act also includes the four tax credits and one tax exemption discussed below.

Payroll tax credit for required paid sick leave (the payroll sick leave credit). The Emergency Paid Sick Leave Act (EPSLA) division of the Act generally requires private employers with fewer than 500 employees to provide 80 hours of paid sick time to employees who are unable to work for virus-related reasons (with an administrative exemption for less-than-50-employee businesses that the leave mandate puts in jeopardy). The pay is up to $511 per day with a $5,110 overall limit for an employee directly affected by the virus and up to $200 per day with a $2,000 overall limit for an employee that is a caregiver.

The tax credit corresponding with the EPSLA mandate is a credit against the employer's 6.2% portion of the Social Security (OASDI) payroll tax (or against the Railroad Retirement tax). The credit amount generally tracks the $511/$5,110 and $200/$2,000 per-employee limits described above. And the IRS will soon issue guidance as to the right of an employer (1) to not deposit payroll taxes in the amount of the required paid sick leave payments and (2) apply to receive any amount in excess of the required payments as a payment to the employer. The credit can be increased by (1) the amount of certain expenses in connection with a qualified health plan if the expenses are excludible from employee income and (2) the employer's share of the payroll Medicare hospital tax imposed on any payments required under the EPSLA. Credit amounts earned in excess of the employer's 6.2% Social Security (OASDI) tax (or in excess of the Railroad Retirement tax) are refundable. The credit is electable and includes provisions that prevent double tax benefits (for example, using the same wages to get the benefit of the credit and of the current law employer credit for paid family and medical leave). The credit applies to wages paid in a period (1) beginning on April 1 and (2) ending on December 31, 2020.

Income tax sick leave credit for the self-employed (self-employed sick leave credit). The Act provides a refundable *income* tax credit (including against the taxes on self-employment income and net investment income) for sick leave to a self-employed person by treating the self-employed person both as an employer and an employee for credit purposes. Thus, with some limits, the self-employed person is eligible for a sick leave credit to the extent that an employer would earn the payroll sick leave credit if the self-employed person were an employee. Accordingly, the self-employed person can receive an income tax credit with a maximum value of $5,110 or $2,000 as per the payroll sick leave credit. However, those amounts are decreased to the extent that the self-employed person has insufficient self-employment income determined under a formula or to the extent that the self-employed person has received paid sick leave from an employer under the Act. The credit applies to a period (1) beginning on April 1 and (2) ending on December 31, 2020.

Payroll tax credit for required paid family leave (the payroll family leave credit). The Emergency Family and Medical Leave Expansion Act (EFMLEA) division of the Act requires employers with fewer than 500 employees to provide both paid and unpaid leave (with an administrative exemption for less-than-50-employee businesses that the leave mandate puts in jeopardy). The leave generally is available when an employee must take off to care for the employee's child under age 18 because of a COVID-19 emergency *declared by a federal, state, or local authority* that either (1) closes a school or child care place or (2) makes a childcare provider unavailable. Generally, the first 10 days of leave can be unpaid and then paid leave is required, pegged to the employee's pay rate and pay hours. However, the paid leave can't exceed $200 per day and $10,000 in the aggregate per employee.

The tax credit corresponding with the EFMLEA mandate is a credit against the employer's 6.2% portion of the Social Security (OASDI) payroll tax (or against the Railroad Retirement tax). The credit generally tracks the $200/$10,000 per employee limits described above. And the IRS will soon issue guidance as to the right of an employer (1) to not deposit payroll taxes in the amount of the required family leave payments and (2) apply to receive any amount in excess of the required payments as a payment to the employer. The other important rules for the credit, including its effective period, are the same as those described above for the payroll sick leave credit.

Income tax credit family leave credit for the self-employed (self-employed family leave credit). The Act provides to the self-employed a refundable *income* tax credit (including against the taxes on self-employment income and net investment income) for family leave similar to the self-employed sick leave credit discussed above. Thus, a self-employed person is treated as both an employer and an employee for purposes of the credit and is eligible for the credit to the extent that an employer would earn the payroll family leave credit if the self-employed person were an employee. Accordingly, the self-employed person can receive an income tax credit with a maximum value of $10,000 as per the payroll family leave credit. However, under rules similar to those for the self-employed sick leave credit, that amount is decreased to the extent that the self-employed person has insufficient self-employment income determined under a formula or to the extent that the self-employed person has received paid family leave from an employer under the Act. The credit applies to a period (1) beginning on April 1 and (2) ending on December 31, 2020.

Exemption for employer's portion of any Social Security (OASDI) payroll tax or railroad retirement tax arising from required payments. Wages paid as required sick leave payments because of EPSLA or as required family leave payments under EFMLEA aren't considered wages for purposes of the employer's 6.2% portion of the Social Security (OASDI) payroll tax or for purposes of the Railroad Retirement tax.

IRS information site. Ongoing information on the IRS and tax legislation response to COVID-19 can be found at https://www.irs.gov/coronavirus.

We will be pleased to hear from you at any time with questions about the above information or any other matters, related to COVID-19 or not.

We wish all of you the very best in a difficult time,

Hardison, Englert, Rader & Co., PC