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A. General Relief

FILING AND PAYMENT DELAY

The Internal Revenue Service (IRS) has acted to extend the deadlines for filing income tax returns and payments due April 15 until July 15.

IRS first acted on March 18 to delay income tax payments, but not the filing deadline. After numerous complaints, it acted again on March 20 to delay return filing to July 15 as well.

[Notice 2020-18](https://www.irs.gov/pub/irs-drop/n-20-18.pdf)

(<https://www.irs.gov/pub/irs-drop/n-20-18.pdf>)

The new Notice also clarifies and expands the earlier extension of the payment deadline. For example, the original payment relief applied only to individual income tax payments less than \$1 million, and corporate payments less than \$10 million. Those limits have been eliminated.

According to IRS, the filing date for any federal income tax return due April 15, 2020, is automatically extended to July 15, 2020, and any payments due with such returns are also delayed until July 15. In addition, the April 15 deadline for 2019 contributions to IRA's and Health Savings Accounts is also extended to July 15.

However, it is only April 15 deadlines that are extended. For example, the June 15 deadline for filing second quarter estimated tax returns, and paying the tax is not extended. Nor are corporate income tax return due dates that fall on other than April 15.

The filing extension notwithstanding, the Administration and tax professionals have urged taxpayers due a refund to file their returns and receive their refunds.

Most states with an income tax have also conformed to the July 15 IRS deadline, but a few have not yet done so, or have conflicting dates. Worldwide ERC® members will need to determine whether their own state has changed its due dates.

Also, the due dates for employment tax returns are not extended by the IRS Notice. However, as discussed below, new relief legislation provides a delay in paying the employer portion of employment taxes.

Early versions of the gigantic relief act passed March 27 contained a delay until October 15, but that provision did not survive in the final legislation.

B. Business Relief

1. SMALL BUSINESS LOANS

The Coronavirus Aid, Relief, and Economic Security Act (CARES) provides up to \$349 billion in new loans to small business to help retain employees and cover operating expenses (the Paycheck Protection Program). The loans are administered by the Small Business Administration (SBA), and available through a network of lenders already in place through the SBA. In a release on March 31, Treasury and the SBA said loans would be available beginning April 3, with an application form available [here](#).

(<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>)

SBA expects the loans to be approved within one day of application.

All businesses, including non-profits, sole proprietors, the self-employed, and independent contractors are eligible, so long as they have 500 or fewer employees (with certain exceptions under existing SBA rules providing larger size standards for different industries, such as hospitality). The maximum loan is \$10 million, or 2.5 times monthly payroll costs. Payroll costs are defined as all payments defined as wages under the Internal Revenue Code, which would include taxable relocation payments.

Importantly, the loan is forgiven if the business uses the proceeds for payroll costs and other business operating expenses, which includes health care benefits, during the eight weeks following the loan origination. Loan payments are also deferred for six months. The program is retroactive to February 15, 2020, so employers can rehire laid off employees using the loan proceeds. The loans will bear interest at 0.5%, and guaranteed by the SBA with no collateral, no personal guarantees, and no borrower or lender fees.



Important Consideration:

Worldwide ERC® members must be aware that recipients of these loans will be ineligible for the Employee Retention Tax Credit or the postponement of the employer portion of employment taxes, described below.

2. EMPLOYEE RETENTION TAX CREDIT (ERTC)

The CARES Act includes a provision that gives qualifying businesses a refundable tax credit for 50% of wages paid up to \$10,000 for each employee. Eligible wages are those paid after March 12, 2020, and before January 1, 2021.

Wages include all wages subject to reporting on the Form W-2, including relocation benefits, and also employer provided health care. The provisions are explained in an [IRS release March 31](#). (<https://www.irs.gov/newsroom/irs-employee-retention-credit-available-for-many-businesses-financially-impacted-by-covid-19>).

It also has provided a [detailed set of FAQs](#) about the credit. (<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>)

Businesses qualifying for the credit are those whose business is partially or fully suspended by government order during the calendar quarter, or those whose gross receipts are less than 50% of those in the comparable quarter of 2019.

The amount of the credit differs based on the size of the employer. For employers with 100 employees or fewer on average in 2019, the credit is based on

wages paid to all employees, regardless of whether they worked or not. If the employer has more than 100 employees, then the credit is allowed only for wages paid to employees who did not work during the calendar quarter.

Employers can get the credit in advance by immediately reducing their required deposits of payroll taxes already withheld from employee wages. They will report the amount of qualified wages on their next quarterly employment tax return, Form 941. If their required deposits are not enough to cover the allowable credit, IRS is providing a [new Form 7200](#) the employer can submit to receive an advance payment of the credit.

(<https://www.irs.gov/pub/irs-pdf/f7200.pdf>)

IRS also released a Notice on March 31, 2020, providing relief from any penalty for failing to deposit employment taxes, including withheld taxes, if the employer is entitled to the new refundable tax credits under the CARES Act. [Notice 2020-22](#)

(<https://www.irs.gov/pub/irs-drop/n-20-22.pdf>)

Section 6656 imposes a penalty for failure to deposit. However, IRS will waive all penalties for failure to deposit withheld taxes, allowing such amounts to be used to pay current wages.



Important Consideration:

This credit is not available to employers who receive a Paycheck Protection loan from the Small Business Administration.

3. DELAY OF PAYROLL TAXES

The CARES Act also has a provision under which employers may delay paying the employer share of 2020 Social Security Taxes. Half the 2020 taxes will be due by December 31, 2021, and the other half by December 31, 2022. Note: This relief apparently does not extend to Medicare and Unemployment taxes. As yet, IRS has issued no guidance relating to this provision, but section 2302(d)(2) of the CARES Act defines the deferral period as beginning on the date of enactment, which would presumably cover employment taxes due for the first quarter of 2020.



Important Consideration:

Like the Employee Retention Tax Credit, the employment tax deferral is not available to employers who receive Paycheck Protection loans from the Small Business Administration.

4. EXAMPLES OF DECISION MAKING UNDER PARTS 1-3 ABOVE

Worldwide ERC® members contemplating Paycheck Protection loans may be assisted by the following examples of the interaction between such loans and ERTC and payroll delay benefits.

Example 1:

Employer has 50 employees with average wages of \$20,000. Borrowing under the Paycheck Protection program is limited to 2.5 times the monthly payroll of \$83,333, or \$208,333, which can eventually be entirely forgiven. However, under the ERTC the employer would be entitled to a refundable credit of \$250,000 (50% of wages up to \$10,000 per employee). Further, employer will benefit from the payroll tax delay.

Example 2:

Employer has the same 50 employees, but average salary is \$80,000. The allowable loan amount is now \$833,333 (2.5 times monthly payroll of \$333,333), all of which is entirely forgiven if there are no layoffs. The ERTC remains \$250,000. Although the employer will have to continue paying the employer share of payroll taxes (no delay), the large loan increase likely will offset loss of that benefit.

5. REFUNDABLE PAYROLL TAX CREDIT FOR SICK AND FAMILY LEAVE

Coronavirus relief legislation passed prior to the CARES Act, the Families First Coronavirus Response Act, requires employers with less than 500 employees to provide 80 hours of paid sick leave under some circumstances. It also includes a payroll tax credit for 100% of the benefits paid. The IRS has provided a

[detailed set of FAQs](#) concerning the calculation and recovery of the credit which also explain the paid sick leave requirements in some detail.

(<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>)

Eligible employees are those who have been employed for at least 30 days. Both full-time and part-time workers are covered.

The conditions that qualify for paid leave are as follows:

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 healthcare provider to self-quarantine due to Covid-19 concerns.
3. The employee is experiencing symptoms of Covid-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in (1) above, or who has been advised as in (2).
5. The employee is caring for a child of the employee if the school or place of care of the child has been closed, or the child care provider is not available, because of 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 Secretaries of Treasury and Labor.

For the first two weeks, paid sick leave is required at 100% of salary, capped at \$511 per day, for absence under the first three conditions, and at 2/3 of pay, capped at \$200 per day, for the other three conditions. Part-time employees are entitled to an equivalent amount calculated based on their weekly hours of work.

For an additional 10 weeks, an employee meeting any of the six conditions is entitled to 2/3 paid family sick leave, again capped at \$200 per day.

Special provisions provide “salary” computation rules for hourly employees, who are also covered if they meet the conditions above.

As noted, the law does not apply to companies with over 500 employees, which generally are already required to or do provide paid sick leave. It also contains a provision under which companies with less than 50 employees may be exempted from the 10-week (but not the two week) requirement under Department of Labor regulations (to be published) if the requirement “would jeopardize the viability of the business as a going concern.” The law applies to all employers, whether corporate or not.

Employers with over 25 employees are also required to restore employees who have to take emergency leave to their prior position, or an equivalent position with the employer, when they return from leave.

Employers with fewer than 25 employees are exempted from this requirement if the position no longer exists due to changes in the employer’s economic or operating condition, so long as the employer makes “reasonable efforts” to restore the employee to an equivalent position and, if none is available, for one year makes reasonable efforts to contact the employee if such a position does become available.

The new requirements are effective 15 days after enactment. Consequently, paid leave will be required by early in April.

Companies required to provide the relief are compensated for any relief provided through a 100% refundable tax credit for the sick and family leave pay against employment taxes. There may be a cash flow issue for some as the credit is not realized until employment taxes are due, while the leave payments are made on the regular salary schedule. However, the 90-day payment delay for federal income taxes announced March 18 may help to offset some cash flow issues, even though employment taxes themselves are not eligible for the delay. An innovative provision allows the self-employed access to the employment tax credits as well.

Among the many unanswered questions are whether employees of businesses that either voluntarily shut down due to Covid-19 concerns, or are ordered to do

so by a government, qualify for leave. It is likely the answer is “no.”



Important Consideration:

The payroll credit for sick and family leave interacts with the Employee Retention Tax Credit. Both are advance payroll tax credits, but with different qualifications and calculations. Although both would be available to an employer who qualifies, according to the IRS, the computations may be formidable. IRS guidance as to that aspect of coronavirus relief is in Q&A 18 in its FAQ's referenced above. A business may receive both credits, but not for the same wages.

6. USE OF NET OPERATING LOSSES

Section 2303 of the CARES Act modifies or removes various limitations on the use of a company's net operating losses. Currently, such losses are subject to a net income limitation, and cannot be carried back to reduce tax in any prior year. Under CARES, any loss from 2018-2020 can be carried back five years to produce a refund in those years. In addition, the taxable income limitation is removed so that the loss can fully offset income. Many Worldwide ERC® member companies whose operations are impacted in the current economic circumstances will be able to take advantage of this provision.

Moreover, section 2304 of the Act allows businesses other than corporations to use net operating losses in the same way as corporations.

C. Individual Relief

1. RECOVERY REBATES (ECONOMIC IMPACT PAYMENTS) FOR INDIVIDUALS

The CARES Act includes one-time relief payments to every American with a Social Security number. However, limitations on who can qualify may in some cases affect recently relocated employees.

The relief payments are \$1,200 per adult (\$2,400 for married couples), plus \$500 for every child under the age of 17. However, full payments are limited to individuals with adjusted gross income less than \$75,000 and married couples with adjusted gross income less than \$150,000. The payments then phase out to zero over income levels up to \$99,000 and \$198,000.

The program will be administered by the Internal Revenue Service. Income levels of all taxpayers will be determined based on 2019 adjusted gross income for those who have filed 2019 returns, and 2018 adjusted gross income for those who have not. For those who do not file returns, IRS will rely on Social Security records. IRS had at first said it would require those individuals to file a short form of tax return to receive the benefits, but it reversed course on April 1, 2020, according to a statement from the Treasury Secretary.

IRS will have to do a massive reprogramming of its systems to identify taxpayers eligible for payments, and the payment amounts. Payments will be sent directly to bank accounts if taxpayers have opted for direct deposit of refunds. Otherwise, payments will be mailed to the taxpayer's last known address. This may affect some transferees for whom IRS has an old address. Although an exact time frame for the beginning of payments is unknown, [IRS on March 30](#) said that it expected relief payments to begin within three weeks.

(<https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know>)

EFFECT ON TRANSFEREES:

In the case of recent transferees, the method for calculating eligibility may affect the receipt of benefits.

A transferee's adjusted gross income for the year of the relocation generally will be much higher than normal due to the addition of taxable relocation benefits. With moving expenses no longer excludable until 2026 under the Tax Cuts and Jobs Act of 2017, and multiple other costs, including gross-up costs, also included in the transferee's income, it is very likely that many 2018 or 2019 transferees who would otherwise have been entitled to a 2019 payment may not get one, or will have it reduced. For example, a 2019 transferee with adjusted gross income without relocation of \$70,000 who also received \$30,000 of

taxable relocation benefits will not qualify for a 2019 payment.

However, the legislation includes provisions that mitigate this concern for 2018 and 2019 transferees. The statute will also affect some of those who move in 2020.

The relief payments are technically an advance of a credit against 2020 taxes. That is, the \$1,200 is actually a credit against taxes owed for 2020, but sent out in advance. Under sections 2201(a) and 2201(e)(1) of the bill, the allowable credit for 2020 is based on 2020 income. The credit is reduced for that year by any amounts of advance refunds paid in 2019, "but not below zero," according to the statute. The credit in 2020 is calculated eventually based on 2020 income, and any previous advance payments are taken into account at that time so that the credit is either reduced or increased. Transferees who received no payment in 2019 because relocation benefits were added to income in either 2018 or 2019 (whichever year is used to determine their advance payment) will be eligible to receive the amount in 2020 as a credit against 2020 tax, so long as their 2020 income is below the qualifying thresholds. However, 2020 transferees may be entitled to no credit if their 2020 income with relocation benefits exceeded the thresholds, although they may have received advance payments in 2019.

Consequently, the system will operate somewhat arbitrarily and confusingly for employees who are relocated in 2018 through 2020, and will present a challenge for relocation departments.

EXAMPLES:

1. Employee is relocated in 2018, and relocation benefits increase income beyond the threshold for receipt of an advance payment. If the employee has not yet filed a 2019 return with income reduced to normal levels, eligibility for a relief payment will be based on 2018 income, and no payment will be received in 2019. However, employee will eventually receive the full benefit as a credit against 2020 taxes so long as 2020 income is below the threshold.
2. Employee in example (1) files his or her 2019 return. Advance payment will be received

based on 2019 income, which does not include relocation benefits, and the allowable credit for 2020 will be reduced (but not below zero) by the payment.

3. Employee is relocated in 2019, and relocation benefits increase income for that year beyond the threshold for receipt of an advance payment. If the employee files the 2019 return prior to calculation of the relief payments, no advance payment will be received in 2019, but full credit will be allowed against 2020 tax if income in that year is below the threshold.
4. Employee in example (3) does not file the 2019 return, taking advantage of the IRS filing extension allowing filing by July 15. Employee will receive an advance payment in 2019 based on 2018 income (before the relocation). Credit in 2020 will be reduced to account for advance payment (but not below zero). However, if employee is entitled to a 2019 tax refund delaying filing will also delay receipt of the 2019 refund.
5. Employee is relocated in 2020, and relocation benefits increase income beyond the threshold for receipt of an advance payment. But employee will still receive advance payment in 2019 based either on 2018 or 2019 income (depending on whether employee has or has not filed 2019 return prior to IRS calculation of payment). In 2020 employee will not be eligible for a credit against his or her 2020 tax.

For 2020 transferees, an open question is whether the language noted above that the allowable credit in 2020 will be reduced by earlier advance payments, "but not below zero," means that these transferees will receive a windfall. That is, they will actually be entitled to no tax credit at all in 2020, based on their 2020 income, but will also not have to pay back the advance received in 2019. According to aides to the Republican Senate Finance Committee, that is the correct interpretation, but it remains to be seen whether eventual IRS regulations adopt a contrary position.

Finally, even though the statute mitigates the effect on transferees whose 2018 or 2019 income was artificially increased by one-time relocation benefits, it may not completely eliminate it. For example,

assume a 2019 transferee whose income without relocation benefits was \$75,000, but income with relocation benefits was \$100,000. In 2020, in which there are no includable relocation benefits, the transferee's income nevertheless increases to \$85,000 due to salary increases or other income changes. That transferee would have received a full \$1,200 rebate in 2020 absent the relocation, based on 2019 income, but received nothing. Although a tax credit is then allowable in 2020, it is reduced by 5% for every dollar of income over \$75,000, and therefore limited to \$700 (\$1,200 minus 5% of \$10,000) because of the phaseout provisions.

These issues will undoubtedly provoke questions from transferees to their relocation departments, and in some cases requests to be made whole. The examples above demonstrate that in most cases there will not actually be any financial detriment to transferees other than timing issues, but as the last example illustrates there will be some cases in which relocation may be argued to have negatively affected the amount of the relief.



Important Consideration:

Transferees who have not yet filed their 2019 return must carefully consider whether to do so quickly even though the filing deadline has been extended to July 15. If they moved in 2018, filing for 2019 will allow use of their normal adjusted gross income, rather than income inflated by 2018 relocation benefits, to be used to calculate rebate payments.

2. INCREASE AND EXTENSION OF UNEMPLOYMENT BENEFITS

The CARES Act includes several provisions that will be of assistance to employees temporarily out of work. The Department of Labor sponsors a website, [Careeronestop.org](https://www.careeronestop.org), that contains a wealth of information concerning unemployment benefits, and sources of further employment.

(<https://www.careeronestop.org/coronavirus.aspx>)

First, section 2104 of the Act increases the amount of unemployment assistance by \$600 per week over

otherwise allowable assistance for a period of up to four months.

Second, section 2107 provides an additional 13 weeks of unemployment benefits through December 31, 2020, for those whose state benefits have run out. And finally, section 2101 makes unemployment benefits available beyond those currently eligible, including the self-employed, independent contractors, and those with a limited work history.

3. RETIREMENT PLAN DISTRIBUTIONS

The CARES Act includes two relief provisions related to retirement plans, sections 2202 and 2203. .

First, under section 2202 the 10% penalty for early withdrawals from retirement plans such as 401(k)'s and IRA's would be waived for withdrawals up to \$100,000 by individuals affected by the coronavirus. The tax due to such withdrawals would be paid over three years, and recipients would also be allowed to recontribute the funds over three years without regard to contributions caps. The limit on loans from such plans would also be increased from \$50,000 to \$100,000.

This will permit employees financially impacted by the coronavirus to tap their retirement funds if needed. However, note that eligibility for hardship distributions, loans, or other premature use of a 401(k) plan generally depends on the plan requirements. Consequently, in some cases employers may have to change the plan terms in order for employees to be able to take advantage of the CARES Act provision.

Second, section 2203 would waive the required minimum distribution requirement for 2020. Generally, individuals are required to begin withdrawing funds from retirement plans, and pay tax on the withdrawals, when they reach age 72.

4. EMPLOYER PAYMENT OF STUDENT LOANS

Section 2206 of the CARES Act allows employers to make payments on student loans for employees, up to \$5,250 per year, and exclude those payments from the employees' incomes. This provision provides another means for employers to provide relief for employees financially impacted by the coronavirus.