

March 19, 2020

Due Date to Make Certain Federal Tax Payments Extended to July 15, 2020

Individuals and Corporations Can Postpone Certain Income Tax Payments (up to a Cap) Until July 15, 2020; the Due Date to File Tax Returns Has Not Changed (Yet)

SUMMARY

On March 18, 2020, the IRS issued guidance allowing individuals and C corporations to postpone until July 15, 2020 certain tax payments that were otherwise due April 15, 2020. Individuals may postpone up to \$1,000,000 (regardless of filing status) of income tax payments due with respect to 2019 and estimated tax payments due with respect to the first quarter of 2020. C corporations may postpone up to \$10,000,000 of such tax payments. The IRS will not charge interest or penalties with respect to the postponed tax payments. The due date to file Federal tax returns and information returns remains April 15, 2020, but legislators are seeking to extend that due date as well. Many states intend to follow the extended deadlines set by the IRS, and some have already extended their deadlines.

IRS NOTICE 2020-17

Following the emergency declaration issued by President Trump on March 13, 2020 in response to the ongoing Coronavirus (COVID-19) pandemic, on March 18, 2020, the U.S. Treasury Department and the Internal Revenue Service issued guidance (Notice 2020-17) allowing certain taxpayers to postpone until July 15, 2020 certain income tax payments that are otherwise due on April 15, 2020, without being subject to interest or penalties for late payment.

The relief provided by Notice 2020-17 applies to any taxpayer with a Federal income tax payment that is due by April 15, 2020 ("Affected Taxpayers"). According to the IRS guidance, the due date for making

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Federal income tax payments due April 15, 2020—up to the Applicable Threshold (described below)—is postponed to July 15, 2020.

The Applicable Threshold is (i) \$10,000,000 for each consolidated group (as defined in IRC § 1.1502-1) or each C corporation that does not join in filing a consolidated return, and (ii) \$1,000,000 for all other Affected Taxpayers, regardless of filing status (i.e., a married couple filing a joint return is allowed to postpone up to \$1,000,000 of Federal income tax, not \$2,000,000).

The relief provided by Notice 2020-17 applies only to the following types of income taxes:

- Federal income tax payments (including tax payments on self-employment income) that are due by April 15, 2020, with respect to the taxpayer's 2019 taxable year ("2019 Tax Payments"); and
- Federal estimated income tax payments (including estimated tax payments on self-employment income) that are due by April 15, 2020, with respect to the taxpayer's 2020 taxable year ("2020 Tax Payments").

The Applicable Threshold applies to the aggregate of the taxpayer's 2019 Tax Payments and 2020 Tax Payments. For example, an individual taxpayer who owes \$900,000 of Federal income tax with respect to its 2019 tax year and is also required to make \$300,000 of estimated tax payment with respect to its Federal income earned during the first quarter of 2020 may postpone payment of \$1,000,000 until July 15, 2020, but is required to make payment of the excess amount above the Applicable Threshold (in this example, \$200,000) by April 15, 2020.

Taxpayers that postpone tax payments pursuant to the IRS guidance (up to the Applicable Threshold) will not be subject to interest or failure-to-pay penalty with respect to the period between April 15, 2020 and July 15, 2020. Such relief will not apply to amounts that are in excess of the Applicable Threshold (and are thus required to be paid by April 15, 2020) or to tax payments paid after the extended due date of July 15, 2020. However, the IRS guidance clarifies that taxpayers that will become subject to penalties despite the relief granted by Notice 2020-17 may seek 'reasonable cause' relief to the failure-to-pay penalty (pursuant to IRC § 6651) or seek a waiver to the penalty (pursuant to IRC § 6654) in case of failure by an individual or certain trusts and estates to pay estimated income tax (such relief with respect to estimated tax payments is not available to corporations or tax-exempt organizations). Treasury Regulations and IRS internal guidance provide that undue hardship may, in certain circumstances, support relief from the failure-to-pay penalty.¹

It is important to note that Notice 2020-17 does not provide an extension for the filing of any federal tax return or information return. Therefore, individuals and C corporations that choose to postpone tax payments pursuant to Notice 2020-17 are still required to file their 2019 tax returns (and estimated tax forms for the first quarter of 2020) by the April 15, 2020 due date. According to the U.S. Treasury Secretary, the due date for filing the return was not postponed because many taxpayers will receive a refund, which will provide them additional liquidity.² However, there are voices in Washington that are calling for the U.S.

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Treasury to provide additional relief by postponing the *filing* due date until July 15, 2020, such that the filing of tax returns and payment of tax would be due by the same extended date.³ This requested relief is also included in legislation proposed today by a group of Republican senators to be included in the congressional response to the economic impact of COVID-19.⁴ Such legislative proposal would also allow all individuals to postpone estimated tax payments due from the date of enactment until October 15, 2020 (with no cap on the amount of tax payments postponed).

Finally, the IRS established a special section on its website to provide information to taxpayers and businesses affected by COVID-19. For more information see <https://www.irs.gov/coronavirus>.

STATES FOLLOW

States are following the lead of the IRS and are extending the due date to pay certain state taxes. Some states have also extended the due date to file tax returns (a relief that has not yet been granted for Federal tax returns).

Many states, including Connecticut and Massachusetts, declared that they intend to follow the extended deadlines set by the IRS. Other states have already published extended due dates. For example, California has postponed until July 15, 2020 the filing and payment deadlines for all individuals and business entities for 2019 tax returns, 2019 tax return payments, estimated payments for the first and second quarters of 2020, LLC taxes and fees for 2020, and non-wage withholding payments for 2020.⁵

Notably, at this time, New York has not extended the deadline to file personal or other tax returns.

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ENDNOTES

- ¹ See Treas. Reg. § 301.6651-1(c)(1) and Internal Revenue Manual § 20.1.1.3.3.3(3).
- ² According to the U.S. Treasury Department, the guidance in Notice 2020-17 will result in about \$300 billion of additional liquidity in the economy in the near future. See U.S. Department of the Treasury, *Treasury and IRS Issue Guidance on Deferring Tax Payments Due to COVID-19 Outbreak* (March 18, 2020), available at <https://home.treasury.gov/news/press-releases/sm948>.
- ³ See letter of Ways and Means Committee Chairman Richard E. Neal (D-MA) to U.S. Treasury Secretary (March 19, 2020), available at <https://waysandmeans.house.gov/media-center/press-releases/chairman-neal-calls-irs-extend-federal-tax-filing-deadline>.
- ⁴ The “Coronavirus Aid, Relief, and Economic Security Act” or “CARES Act” (proposed March 19, 2020), available at <https://www.finance.senate.gov/chairmans-news/senators-recommend-tax-policies-for-phase-3-coronavirus-response>.
- ⁵ See State of California, Franchise Tax Board, COVID-19 Extensions to file and pay (last updated: 03/18/2020), at <https://www.ftb.ca.gov/about-ftb/newsroom/covid-19/extensions-to-file-pay.html>.

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