



UPDATE 2 | COVID-19 Federal and California Tax Extensions

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REMEMBER TO PAY YOUR PROPERTY TAXES BY APRIL 10

Our March 30, 2020 eAlert gave an update on COVID-19-related extensions for filing and paying federal and California taxes. We noted in that eAlert that relief was expanding and evolving on an almost hourly basis, and it continues to do so. Here is a second update on developments as of this morning. (Also, remember that Friday, April 10, is the deadline for the second installment of property taxes in California. That deadline still applies – more on that below).

Federal

- Our prior eAlert mentioned that the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act allows employers to defer the deposit of the employer’s share of Old Age, Survivor’s, and Disability Insurance (“OASDI”, a/k/a Social Security) taxes for the period beginning March 27, 2020 through the end of 2020, with such taxes to be paid over the next two years (half by the end of 2021, and the rest by the end of 2022). The CARES Act provides similar relief for self-employment taxes. However, the employer relief does not apply if the employer has a Small Business Administration (SBA) paycheck protection program (“PPP”) loan forgiven. As it is possible for an employer to be approved for a PPP loan well after the 2020 quarterly due dates for the employer’s share of the OASDI taxes (and as it is possible that the employer will not know whether the PPP loan will be forgiven at that time), tax practitioners have asked whether the employer is then immediately liable for the Social Security and self-employment taxes as well as penalties and interest on a retroactive basis. The Treasury has not yet provided answers to this question on its website’s CARES Act guidance section, and until we get better guidance from the Treasury, employers should proceed with caution in deferring payment of their share of OASDI taxes if they contemplate a PPP loan forgiveness.
- In Notice 2020-22 (March 31), the IRS said that it will waive penalties for failure to deposit the following taxes: **(1)** taxes for employers required to pay qualified sick leave wages and qualified family leave wages mandated by the Families First Coronavirus Response Act (“FFCRA”) and qualified health plan expenses allocable to these

wages; and **(2)** employment taxes (including OASDI, Medicare, and OASDI/Medicare/income taxes withheld from employees) for certain employers subject to a full or partial closure order because of the COVID-19 outbreak or experiencing a statutorily-specified decline in business under the CARES Act. Essentially, the penalties are waived to the extent the taxes do not exceed the anticipated employer credits for qualified sick leave wages and qualified family leave wages under the FFCRA and qualified retention wages under the CARES Act. In other words, eligible employers need not face the cash crunch of depositing these taxes and then having to wait for the corresponding credit attributable to the underlying wages. (See Notice 2020-22 and the Treasury website's CARES Act guidance section for more information on these complicated provisions.)

California

- **Broader sales and use tax relief.** Governor Gavin Newsom has issued two new orders that broadly expand sales and use tax relief for businesses. These orders go further than Governor Newsom's March 12 Executive Order (N-25-20) that extended sales and use tax filing deadlines to May 11, 2020 but still required taxpayers to request an extension and show cause to the California Department of Tax and Fee Administration ("CDTFA").

Under Governor Newsom's March 30 Executive Order (N-40-20), businesses that owe California less than \$1 million in quarterly sales and use tax now have until July 31, 2020 to file returns and pay taxes for the first quarter of 2020. This extension applies to first quarter sales and use tax returns and payments normally due April 30, 2020, and to second quarter pre-payments due in May and June. Under the most recent executive order, an eligible business need not request an extension or show cause in order to obtain the July 31 extension.

Governor Newsom also announced on April 2 that small California businesses can take one year to gradually remit up to \$50,000 in sales tax collections without penalties or interest. Businesses must timely file their returns to be eligible, whereupon they can enter into payment plans with the CDTFA that spread the tax liability over 12 months.

See the CDTFA's website at COVID-19 State of Emergency and News Release 20-06 (March 31, 2020) for more information.

- **Alcohol license renewals and other relief.** Governor Newsom's Executive Order (N-25-20) also provides authority to the Department of Alcoholic Beverage Control ("ABC") Director to suspend the deadlines for renewing licenses and license renewal penalty fees for up to 60 days. Pursuant to that authority, the ABC on April 1 announced a 30-day grace period. Retailers and wholesalers should check the ABC's website for updates on this and other COVID-19-related relief from the ABC.
- **Franchise Tax Board broadens relief for certain tax deadlines, but also cautions about Form 593 withholding forms.** The Franchise Tax Board ("FTB"), in addition to extending most deadlines to July 15, 2020 for most income, franchise, and withholding tax returns and payments (see our prior eAlert), has granted extensions to July 15, 2020 for the following where the statute of limitations would have otherwise expired between March 12 and July 15, 2020: **(1)** filing a refund claim; **(2)** filing a protest of an FTB notice of assessment; **(3)** filing an appeal with the Office of Tax Appeals challenging an FTB determination; and **(4)** the FTB's issuing notices of proposed assessment. See FTB Legal Notice 2020-02 (March 30, 2020) for more information. The FTB has also posted a new COVID-19 frequently asked questions page on its website which addresses all the foregoing deadline extensions and which the FTB probably will update regularly as new issues arise.

However, the FTB also updated its website FAQs to provide that the extended tax deadlines do not apply to Form 593 real estate withholding returns. Therefore, for any real estate sale, the seller still must submit Form 593 to escrow before closing and the escrow company must forward the Form 593 and payment via Form 593-V by the 20th day of the month following the closing. (See the FTB's online Form 593 instructions and Form 593 booklet for more information.) One problem with the FTB's approach is that some exemptions

from or reductions in withholding require FTB pre-approval which may not be forthcoming during the COVID-19 pandemic. Perhaps the FTB may provide some sort of post-closing relief in these situations.

- **Local business tax relief.** The San Francisco Treasurer and Tax Collector announced April 1 that it is deferring business taxes and license fees because of COVID-19 for corporate income, individual income, and excise tax purposes. Affected business can access the agency's website at COVID-19 Response - Deferral of Business Taxes and License Fees for more information. We will send out updated eAlerts if and as other localities announce similar relief.
- **Property taxes.** Per our prior eAlert, county tax collectors have basically thrown up their hands and stated that they have no power to extend the April 10, 2020 payment deadline for property taxes. At least two counties – Los Angeles and San Francisco – have officially so confirmed this on their websites, saying that property owners can apply for penalty relief after the deadline. A broad front of business and taxpayer groups have urged Governor Newsom to extend property tax deadlines in an April 3 letter; but cities and other local governments have pushed back in their own letter to the Governor, arguing that they need the funds and in any case the money is theirs and not the state's. Governor Newsom, for now, has tended to take the governments' side, and the California legislature is in recess until at least April 13, which is after the April 10 payment deadline. The best advice we can give is for California property owners to pay property taxes on time if at all possible, and not rely on the discretion of the local county tax collectors after the deadline. Also mail in your payment well before the deadline (always good practice, virus or not.)

Stay tuned for updates on these issues. Legal, taxpayer, and business groups continue to urge federal, state, and local agencies to grant broader tax relief as the COVID-19 pandemic and related economic dislocation drags on. (See, for example, the ABA Tax Section's April 3 letter to IRS Commissioner Charles Rettig.) Nossaman attorneys can assist you with regard to these developments, and we have capable tax and beverage alcohol practitioners who are here to help your businesses through these unprecedented times.