



Update on COVID-19 Federal and California Tax Extensions

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A flurry of activity during the past 2 weeks – at federal, state and local levels – gave tax filing and payment relief to taxpayers because of the COVID-19 pandemic, which exploded in the U.S. in the middle of March, disrupting April tax filing and payment deadlines. Guidance is evolving and often unclear, but here is a summary of federal and California extended deadlines as of March 30, 2020:

Federal

References: IRS Notice 2020-18; IRS Notice 2020-20; IRS website “Filing and Payment Deadlines Questions and Answers” (updated daily); H.R. 748, Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. *Note:* IRS Notice 2020-18 supersedes IRS Notice 2020-17.

- **Any income, gift, or generation-skipping tax return otherwise due April 15, 2020, and any tax payment with such return, are now due July 15, 2020.** You do not need to request an extension from the IRS; you do not need to show that you were sick, quarantined, or otherwise directly affected by COVID-19; and there is no limit to the amount of payment you can defer. Eligible taxpayers include **(a)** individuals filing income tax returns for 2019 (Form 1040), **(b)** “C” corporations filing income tax returns for 2019 or “C” corporations using a fiscal year that already obtained an extension to April 15, 2020 (Form 1120), **(c)** trusts and estates filing income tax returns for 2019 (Form 1041); **(d)** individuals filing their first quarterly payment of estimated income tax for 2020 (Form 1040-ES); **(e)** trusts and estates filing their first quarterly payment of estimated income tax for 2020 (Form 1041-ES); and **(f)** individuals filing gift and generation-skipping tax returns (Form 709).
- **Other tax returns and payments are unaffected (for now).** The relief above applies only to *income, gift, and generation-skipping* tax returns and payments otherwise due *April 15, 2020*. Anything else is unaffected (for now) and current deadlines apply. These deadlines vary with the taxpayer and type of return. It is difficult to list all these possible returns and payments, but here are some: **(a)** individual, trust, and estate quarterly estimated tax payments (Forms 1040-ES and 1041-ES) for 2020 due after April 15, 2020; **(b)** Form 706 estate returns (as opposed to *income* tax returns of an estate); **(c)** Form 990 series returns by exempt organizations; **(d)** Form 940 and 941 payroll tax returns and deposits (but see below regarding payroll tax relief under the CARES Act); **(e)**

Form 1099 series information returns; **(f)** W-2 Forms; **(g)** Form 1120 returns for fiscal-year C corporations not otherwise on extension to April 15, 2020; **(h)** corporation estimated taxes; **(i)** Form 1065 partnership returns; **(j)** Form 1120S “S” corporation returns; and **(k)** amended tax returns seeking a refund. However, nothing in the COVID-19 relief prevents otherwise eligible taxpayers from obtaining any available extension.

- **Certain payroll taxes.** The 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 with the March 27 enactment date through the end of 2020, with such taxes to be paid in over the next 2 years (half by the end of 2021, the rest by the end of 2022). In general, OASDI taxes are withheld from an employee’s wages at a 6.2% rate, and the employer also pays such taxes at a 6.2% rate, up to a wage ceiling per employee per year. The CARES Act relief does not apply to the portion of OASDI taxes withheld from an employee’s wages, nor does it apply to Medicare taxes withheld from wages or paid by the employer (generally at a 1.45% rate for employer and employee, with no wage cap).
- **Many deadlines tied to an April 15, 2020 filing date have been extended to July 15, 2020 as well.** These deadlines include, for example, making a contribution to an IRA, 401k, HSA, or Archer MSA for 2019. See the IRS website, “Filing and Payment Deadlines Questions and Answers,” for more details.
- **But not all deadlines tied to an April 15, 2020 filing date have necessarily been extended to July 15, 2020.** Some elections (for example, to roll over gain from a sale of section 1045 small business stock to other small business stock) must be made on the Form 1040 for the relevant calendar year, in some cases *with* extension and in some cases *without* extension. Caution dictates that any such election be made on a Form 1040 filed by the regular due date (*i.e.*, April 15, 2020, or if the applicable election so permits, October 15, 2020 with a formal extension using Form 4868), rather than having to explain to the IRS or appellate body why it was proper or reasonable to rely on the COVID-19 extended filing date of July 15, 2020.

California

References. Franchise Tax Board (“**FTB**”) website at COVID-19 Extensions to file and pay; Employment Development Department (“**EDD**”) website at Coronavirus 2019 (COVID-19); California Department of Tax and Fee Administration (“**CDTFA**”) website at COVID-19 State of Emergency; and California Association of County Treasurers and Tax Collectors COVID-19 Statement. For updates on other states, see the Foundation of Tax Administrators website which cross-references to websites for other state tax agencies; the Tax Foundation’s Tracking State Legislative Responses to COVID-19 website; and the American Institute of CPA’s exhaustive and constantly-updated State Tax Filing Guidance for Coronavirus Pandemic.

- **Franchise Tax Board.** The FTB so far is the only California tax agency that has provided “blanket” relief for filing returns and paying taxes within its purview (income taxes, franchise taxes, LLC annual fees, and withholding taxes outside of the employment context). Basically, the FTB’s deadline extensions are at least as generous, and often more generous, than those offered by the federal government. *Do not assume that federal deadlines apply for state purposes as well.* Taxpayers should refer to the FTB’s exhaustive chart at COVID-19 Extensions to file and pay.
- **Employment Development Department.** The EDD is not at this time granting any “blanket” relief for taxes and return within its purview (employee income tax withholding, and state payroll taxes). Employers may request a 60-day extension to file payroll tax returns and pay related taxes, so long as the EDD receives a written request for extension within 60 days from the original delinquent date of the payment or return. See the EDD website at Coronavirus 2019 (COVID-19) for more details.
- **California Department of Tax and Fee Administration.** Like the EDD, the CDTFA is not at this time granting any “blanket” amnesty for taxes and return within its purview (sales, use, fuel, and similar excise taxes). Businesses may request relief on a case-by-case basis at the CDTFA’s website at COVID-19 State of Emergency.
- **Property taxes.** Only the California legislature by statute can extend due dates for property taxes (April 10 and December 10). County tax collectors have indicated, however, that they may waive penalties and interest for late payments upon application and on a case-by-case basis. For more information see the California Association of

County Treasurers and Tax Collectors COVID-19 Statement. County tax collectors have also posted statements to this effect – for example, Los Angeles County.

Federal, state and local governments are amending and expanding their COVID-19 filing and payment extensions on an almost hourly basis. Taxpayers, professionals and industry groups have urged the IRS to expand relief to include more approaching deadlines and more types of taxes including payroll taxes, excise taxes, and estate taxes (see, for example, the AICPA's March 25 press release). Please contact us with any requests for updates; questions regarding filing or payment deadlines; or how to apply for relief.