Where Do We Start?

Let's start the class.

I wish you good luck.
Elephant in the Room – Covid 19

- Tax changes related to the government’s ongoing response to the coronavirus:
  - Further Consolidated Appropriations Act, 2020
    - Setting Every Community Up for Retirement Enhancement (SECURE) Act
    - Taxpayer Certainty and Disaster Tax Relief Act of 2019
  - Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
- Tax changes related to annual adjustments in tax rules and thresholds
Further Consolidated Appropriations Act, 2020

• HR 1865
• Signed on December 20, 2019
• Two separate pieces of legislation
Maybe......

ISRP – INDIVIDUAL SHARED RESPONSIBILITY PAYMENT

SUPREME COURT – NOT TILL 2021

PROTECTIVE CLAIM
THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

- Employer Credit for Sick and Family Leave
  - Required paid leave for employees unable to work due to COVID-19
  - Credit available to employers/self-employed persons
  - Immediate access to funds via reduction of payroll tax deposits
  - Excess credit received by requesting an advance from IRS

- Eligible Employers
  - Paid qualified wages
  - Paid 4/1/2020 thru 12/31/2020
  - Employers with fewer than 500 employees
PAID SICK LEAVE CREDIT/PAID FAMILY LEAVE CREDIT

- Figure 16.1

- Why is employee unable to work?
- How much is the credit?
EMERGENCY PAID SICK LEAVE ACT

- Private employer <500 employees
- Provide 80 hours of paid sick time for 6 reason related to COVID-19:
  1. Employee is subject to a federal, state, or local quarantine or isolation order
  2. A health provider advised the employee to self-quarantine
  3. Employee is experiencing symptoms of COVID-19 and is seeking a diagnosis.
  4. The employee is caring for an individual described in categories 1 or 2.
  5. The employee is caring for a son or daughter whose school or place of care is closed, or the childcare provider is unavailable
  6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
EMERGENCY PAID SICK LEAVE ACT

- Limits apply:
  - Categories 1, 2 & 3
    - $511/day
    - Not more than $5,110/employee
  - Categories 4 & 5
    - 2/3 of regular pay
    - Not more than $2,000/employee
EMERGENCY PAID SICK LEAVE ACT

- Special rules for part-time employees
- Leave available immediately
- Calculated on employee’s regular compensation
- Employee must submit acceptable documentation
PAYROLL CREDIT FOR REQUIRED PAID SICK LEAVE

- Limited to 10 days over the aggregate number of days included for all preceding calendar quarters
- Limited to certain employment taxes
- Excess is refundable
- Increased by employer’s qualified healthcare expenses
- Cannot claim the credit for wages used to claim a credit under I.R.C. § 45S (Employer Credit for Paid Family and Medical Leave)
CREDIT FOR SICK LEAVE FOR SELF-EMPLOYED

- An eligible self-employed person:
  - Regularly carries on a trade or business (IRC § 1402)
  - Entitled to paid leave under the Act if individual was an employee
  - 100% credit for categories 1, 2 and 3
  - 67% credit for categories 4, 5 and 6
EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

- Fewer than 500 employees

- Need related to public health emergency
  - Unable to work or telework to be able to care for their child under 18 because school/childcare provider closed due to COVID-19

- Employee employed at 30 days
  - Included provision for laid off workers who were rehired
EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

- First 10 days may be unpaid (can use PTO, vacation, sick leave)
- After 10 days employer required to pay
  - Not less than 2/3 of regular pay x number of hours employee would have normally worked
  - Limited to $200/day
  - Maximum $10,000/employee
PAYROLL CREDIT FOR PAID FAMILY LEAVE

- 100% refundable
- Credit increased by employer’s qualified health plan expenses
- No double credit allowed
- Similar refundable credits for self-employment
CLAIMING THE CREDIT

- Retain payroll taxes in the amount of the qualified payments
- If tax deposits are insufficient to cover the credit, file Form 7200
- Self-employed taxpayers cannot claim an advanced credit

- Example 16.1
Read the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1**

**Answer these questions for this quarter.**

1. Number of employees who received wages, tips, or other compensation for the pay period including: June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4)...

2. Wages, tips, and other compensation...

3. Federal income tax withheld from wages, tips, and other compensation...

4. If no wages, tips, and other compensation are subject to social security or Medicare tax... Check and go to line 6.

<table>
<thead>
<tr>
<th>S</th>
<th>Taxable social security wages</th>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>5a</td>
<td>Qualified sick leave wages</td>
<td>-</td>
<td>0.060</td>
</tr>
<tr>
<td>5b</td>
<td>Qualified family leave wages</td>
<td>-</td>
<td>0.124</td>
</tr>
<tr>
<td>5c</td>
<td>Taxable social security tips</td>
<td>-</td>
<td>0.029</td>
</tr>
<tr>
<td>5d</td>
<td>Taxable Medicare wages &amp; tips.</td>
<td>-</td>
<td>0.050</td>
</tr>
<tr>
<td>5e</td>
<td>Taxable wages &amp; tips subject to Additional Medicare Tax withholding</td>
<td>-</td>
<td>0.009</td>
</tr>
</tbody>
</table>

5. Total social security and Medicare taxes. Add Column 2 from lines 5a, 5b, 5c, 5d, and 5e...

6. Section 3121(j) Notice and Demand—Tax due on unreported tips (see instructions)...

7. Total taxes before adjustments. Add lines 3, 5e, and 5f...

8. Current quarter’s adjustment for fractions of cents...

9. Current quarter’s adjustment for sick pay...

10. Current quarter’s adjustments for tips and group-term life insurance...

11. Total taxes after adjustments. Combine lines 6 through 10...

11a. Qualified small business payroll tax credit for increasing research activities. Attach Form 8974...

11b. Nonrefundable portion of credit for qualified sick and family leave wages from Worksheet 1...

11c. Nonrefundable portion of employer retention credit from Worksheet 1...

**You MUST** complete all three pages of Form 941 and sign it. For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher.
## Part 1: Answer these questions for this quarter. (continued)

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>11d Total nonrefundable credits. Add lines 11a, 11b, and 11c</td>
<td></td>
</tr>
<tr>
<td>12 Total taxes after adjustments and nonrefundable credits. Subtract line 11d from line 10</td>
<td></td>
</tr>
<tr>
<td>13a Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, or 944-X (SP) filed in the current quarter</td>
<td></td>
</tr>
<tr>
<td>13b Deferred amount of the employer share of social security tax</td>
<td></td>
</tr>
<tr>
<td>13c Refundable portion of credit for qualified sick and family leave wages from Worksheet 1</td>
<td></td>
</tr>
<tr>
<td>13d Refundable portion of employee retention credit from Worksheet 1</td>
<td></td>
</tr>
<tr>
<td>13e Total deposits, deferrals, and refundable credits. Add lines 13a, 13b, 13c, and 13d</td>
<td></td>
</tr>
<tr>
<td>13f Total advances received from filing Form(s) 7200 for the quarter</td>
<td></td>
</tr>
<tr>
<td>13g Total deposits, deferrals, and refundable credits less advances. Subtract line 13f from line 13e</td>
<td></td>
</tr>
<tr>
<td>14 Balance due. If line 12 is more than line 13g, enter the difference and see instructions</td>
<td></td>
</tr>
<tr>
<td>15 Overpayment. If line 13g is more than line 12, enter the difference</td>
<td></td>
</tr>
</tbody>
</table>

Check one: □ Apply to next return. □ Send a refund.
<table>
<thead>
<tr>
<th>Part 3: Tell us about your business. If a question does NOT apply to your business, leave it blank.</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 If your business has closed or you stopped paying wages .................................................. 17</td>
</tr>
<tr>
<td>enter the final date you paid wages / / ; also attach a statement to your return. See instructions.</td>
</tr>
<tr>
<td>18 If you're a seasonal employer and you don't have to file a return for every quarter of the year 18</td>
</tr>
<tr>
<td>19 Qualified health plan expenses allocable to qualified sick leave wages ................................ 19</td>
</tr>
<tr>
<td>20 Qualified health plan expenses allocable to qualified family leave wages ............................... 20</td>
</tr>
<tr>
<td>21 Qualified wages for the employee retention credit ................................................................. 21</td>
</tr>
<tr>
<td>22 Qualified health plan expenses allocable to wages reported on line 21 .................................. 22</td>
</tr>
<tr>
<td>23 Credit from Form 5884-C, line 11, for this quarter ................................................................. 23</td>
</tr>
<tr>
<td>24 Qualified wages paid March 13 through March 31, 2020, for the employee retention credit (use 24</td>
</tr>
<tr>
<td>this line only for the second quarter filing of Form 941) .........................................................</td>
</tr>
<tr>
<td>25 Qualified health plan expenses allocable to wages reported on line 24 (use this line only for 25</td>
</tr>
<tr>
<td>the second quarter filing of Form 941) .......................................................................................</td>
</tr>
</tbody>
</table>
Worksheet 1. Credit for Qualified Sick and Family Leave Wages and the Employee Retention Credit

Determine how you will complete this worksheet
If you paid both qualified sick and family leave wages and qualified wages for purposes of the employee retention credit this quarter, complete Step 1, Step 2, and Step 3. If you paid qualified sick and family leave wages this quarter but you didn’t pay any qualified wages for purposes of the employee retention credit this quarter, complete Step 1 and Step 2. If you paid qualified wages for purposes of the employee retention credit this quarter but you didn’t pay any qualified sick and family leave wages this quarter, complete Step 1 and Step 3.

Step 1. Determine the employer share of social security tax this quarter after it is reduced by any credit claimed on Form 8974 and any credit to be claimed on Form 5884-C

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1a</td>
<td>Enter the amount of social security tax from Form 941, Part 1, line 5a, column 2</td>
</tr>
<tr>
<td>1b</td>
<td>Enter the amount of social security tax from Form 941, Part 1, line 5b, column 2</td>
</tr>
<tr>
<td>1c</td>
<td>Add lines 1a and 1b</td>
</tr>
<tr>
<td>1d</td>
<td>Multiply line 1c by 50% (0.50)</td>
</tr>
<tr>
<td>1e</td>
<td>If you’re a third-party payer of sick pay that isn’t an agent and you’re claiming credits for amounts paid to your employees, enter the employer share of social security tax included on Form 941, Part 1, line 8 (enter as a positive number)</td>
</tr>
<tr>
<td>1f</td>
<td>Subtract line 1e from line 1d</td>
</tr>
<tr>
<td>1g</td>
<td>If you received a Section 3121(e) Notice and Demand during the quarter, enter the amount of the employer share of social security tax from the notice</td>
</tr>
<tr>
<td>1h</td>
<td>Employer share of social security tax. Add lines 1f and 1g</td>
</tr>
<tr>
<td>1i</td>
<td>Enter the amount from Form 941, Part 1, line 11a (credit from Form 8974)</td>
</tr>
<tr>
<td>1j</td>
<td>Enter the amount to be claimed on Form 5884-C, line 11, for this quarter</td>
</tr>
<tr>
<td>1k</td>
<td>Total nonrefundable credits already used against the employer share of social security tax. Add lines 1i and 1j</td>
</tr>
<tr>
<td></td>
<td>Employer share of social security tax remaining. Subtract line 1k from line 1h</td>
</tr>
</tbody>
</table>

Step 2. Figure the sick and family leave credit
### Step 2. Figure the sick and family leave credit

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 2a | Qualified sick leave wages reported on Form 941, Part 1, line 5a(i), column 1
| 2a(i) | Qualified sick leave wages included on Form 941, Part 1, line 5c, but not included on Form 941, Part 1, line 5a(i), column 1, because the wages reported on that line were limited by the social security wage base
| 2a(ii) | Total qualified sick leave wages. Add lines 2a and 2a(i)
| 2b | Qualified health plan expenses allocable to qualified sick leave wages (Form 941, Part 3, line 19)
| 2c | Employer share of Medicare tax on qualified sick leave wages. Multiply line 2a(i) by 1.45% (0.0145)
| 2d | Credit for qualified sick leave wages. Add lines 2a(ii), 2b, and 2c
| 2e | Qualified family leave wages reported on Form 941, Part 1, line 5a(ii), column 1
| 2e(i) | Qualified family leave wages included on Form 941, Part 1, line 5c, but not included on Form 941, Part 1, line 5a(ii), column 1, because the wages reported on that line were limited by the social security wage base
| 2e(ii) | Total qualified family leave wages. Add lines 2e and 2e(i)
| 2f | Qualified health plan expenses allocable to qualified family leave wages (Form 941, Part 3, line 20)
| 2g | Employer share of Medicare tax on qualified family leave wages. Multiply line 2e(ii) by 1.45% (0.0145)
| 2h | Credit for qualified family leave wages. Add lines 2e(ii), 2f, and 2g
| 2i | Credit for qualified sick and family leave wages. Add lines 2d and 2h
| 2j | Nonrefundable portion of credit for qualified sick and family leave wages. Enter the smaller of line 2j or line 2i. Enter this amount on Form 941, Part 1, line 11b
<p>| 2k | Refundable portion of credit for qualified sick and family leave wages. Subtract line 2j from line 2i and enter this amount on Form 941, Part 1, line 13c |</p>
<table>
<thead>
<tr>
<th>Step 3.</th>
<th>Figure the employee retention credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>3a</td>
<td>Qualified wages (excluding qualified health plan expenses) for the employee retention credit (Form 941, Part 3, line 21)</td>
</tr>
<tr>
<td>3b</td>
<td>Qualified health plan expenses allocable to qualified wages for the employee retention credit (Form 941, Part 3, line 22)</td>
</tr>
<tr>
<td>3c</td>
<td>Qualified wages (excluding qualified health plan expenses) paid March 13, 2020, through March 31, 2020, for the employee retention credit (Form 941, Part 3, line 24). Enter an amount here only for the second quarter Form 941.</td>
</tr>
<tr>
<td>3d</td>
<td>Qualified health plan expenses allocable to qualified wages paid March 13, 2020, through March 31, 2020, for the employee retention credit (Form 941, Part 3, line 25). Enter an amount here only for the second quarter Form 941.</td>
</tr>
<tr>
<td>3e</td>
<td>Add lines 3a, 3b, 3c, and 3d</td>
</tr>
<tr>
<td>3f</td>
<td><strong>Retention credit.</strong> Multiply line 3e by 50% (0.50)</td>
</tr>
<tr>
<td>3g</td>
<td>Enter the amount of the employer share of social security tax from Step 1, line 1</td>
</tr>
<tr>
<td>3h</td>
<td>Enter the amount of the nonrefundable portion of the credit for qualified sick and family leave wages from Step 2, line 2</td>
</tr>
<tr>
<td>3i</td>
<td>Subtract line 3h from line 3g</td>
</tr>
<tr>
<td>3j</td>
<td><strong>Nonrefundable portion of employee retention credit.</strong> Enter the smaller of line 3f or line 3i. Enter this amount on Form 941, Part 1, line 11c.</td>
</tr>
<tr>
<td>3k</td>
<td><strong>Refundable portion of employee retention credit.</strong> Subtract line 3j from line 3f and enter this amount on Form 941, Part 1, line 13d.</td>
</tr>
</tbody>
</table>

**Caution:** Only complete lines 3c and 3d for your second quarter 2020 Form 941.
Form 7200
Advance Payment of Employer Credits Due to COVID-19

Go to www.irs.gov/Form7200 for instructions and the latest information.

Name (not your trade name) | Employer identification number (EIN)
--- | ---

Trade name (if any) | Applicable calendar quarter (check one)
--- | ---

Number, street, and apt. or suite no. If a P.O. box, see instructions.

City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)

Foreign country name | Foreign province/county | Foreign postal code
--- | --- | ---

Does a third-party payer file your employment tax return? (See instructions.) If “Yes,” enter its name. Third-party payer’s EIN (if applicable)

Tip: File Form 7200 if you can’t reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don’t reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return.

You can’t request an advance payment of the credit for sick and family leave for self-employed individuals.

Part I: Tell Us About Your Employment Tax Return

A Check the box to indicate which employment tax return form you file (or will file for 2020):

(1) □ 941, 941-PR, or 941-SS  
(2) □ 943 or 943-PR  
(3) □ 944 or 944(SP)  
(4) □ CT-1

B Is this a new business started on or after January 1, 2020? □ Yes □ No

If “Yes,” skip line C unless you’ve already filed Form 941, Form 941-PR, or Form 941-SS for at least one quarter of 2020.

C Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions.

D Enter the total number of employees you have. See instructions.

Part II: Enter Your Credits and Advance Requested

1 Total employee retention credit for the quarter. See instructions

2 Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions

3 Total qualified family leave wages eligible for the credit and paid this quarter. See instructions

4 Add lines 1, 2, and 3

5 Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter

6 Total advanced credits requested on previous filings of this form for this quarter

7 Add lines 5 and 6

8 Advance requested. Subtract line 7 from line 4. If zero or less, don’t file this form.
W-2 REPORTING

Report qualified sick leave wages and qualified family leave wages on either:

- W-2, box 14 OR
- On a separate statement
- Must also include on W-2 boxes 1, 3 (up to the social security wage base) and 5

Self-employed claim qualified equivalent

- Report on Form 7202 (only Draft available as of 9/2/2020)
- Attach to Form 1040
# Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals

**Part I** Credit for Sick Leave for Certain Self-Employed Individuals

1. Number of days you were unable to perform services as a self-employed individual because of certain coronavirus-related care you required. See instructions.  
2. Number of days you were unable to perform services as a self-employed individual because of certain coronavirus-related care you provided to another. (Do not include days you included in line 1.) See instructions.  
3. If you are filing a fiscal year return, see instructions; otherwise enter 10.  
4. Subtract line 3 from line 3.  
5. Enter the smaller of line 2 or line 5.  
6. Enter the smaller of line 2 or line 5.  
8. Divide line 7 by 260 (round to nearest whole number).  
9. Enter the smaller of line 8 or $511.  
10. Multiply line 4 by line 9.  
11. Multiply line 6 by 67% (0.67).  
12. Enter the smaller of line 11 or $200.  
13. Multiply line 6 by line 12.  
15. Amount of emergency paid sick leave subject to the $511 per day limit you received from an employer (see instructions).  
16. Amount of emergency paid sick leave subject to the $200 per day limit you received from an employer (see instructions).  
17. If line 15 and line 16 are both zero, skip to line 24 and enter the amount from line 14.  
18. Enter the smaller of line 17 or $2,000.  
19. Subtract line 18 from line 17.  
20. Add lines 10, 15, and 18.  
21. Enter the smaller of line 20 or $5,110.  
22. Subtract line 21 from line 20.  
23. Add line 19 and line 22.  
24. Subtract line 23 from line 14. If zero or less, enter 0. Enter here and include on Schedule 3 (Form 1040), line 12b.

**Part II** Credit for Family Leave for Certain Self-Employed Individuals

25. Number of days you were unable to perform services as a self-employed individual because of certain coronavirus-related care you provided to a son or daughter under the age of 18. (Do not enter more than 50 days.) See instructions.  
27. Divide line 26 by 260 (round to nearest whole number).  
28. Multiply line 27 by 67% (0.67).  
29. Enter the smaller of line 28 or $200.  
30. Multiply line 29 by line 29.  
31. Amount of emergency family leave wages you received from an employer (see instructions).  
32. If line 31 is zero, skip to line 35 and enter the amount from line 35.  
33. Add line 30 and line 31.  
34. Enter the smaller of line 32 or $10,000.  
35. Subtract line 33 from line 32.  
36. Subtract line 34 from line 32. If zero or less, enter 0. Enter here and include on Schedule 3 (Form 1040), line 12b.
DOL EXEMPTION

- Employers with fewer than 50 employees are exempt from providing:
  - Paid sick leave due to child’s school or daycare unavailability or closure
  - Expanded family and medical leave due to child’s school or daycare unavailability or closure

- If the provision would result in:
  - Business expenses exceeding revenue
  - Substantial risk to the financial or operational health of business because of specialized skills, knowledge or responsibilities
  - Insufficient workers available to replace employee needing leave

- Exemption only applies to Category 5 - lack of childcare
LEAVE-BASED DONATION PROGRAMS

- Employee forgoes sick/vacation/personal leave;
- Employer uses those funds to make a charitable donation to qualified organization
  - Wages not included in compensation or gross income
  - Do not include wages forgone on W-2
  - Employee forgoing wages not allowed a charitable deduction
EMPLOYEE RETENTION CREDIT

- Eligible employer can claim credit against federal employment taxes
- 50% of qualified wages for each employee in each calendar quarter
- No more than $10,000 per employee
- Applies to wages paid March 12, 2020 and before January 1, 2021

Eligible Employer
- Trade or business in 2020
- Any calendar quarter partial or complete suspension of business by governmental authority because of COVID-19
- Reduced Gross Receipts Test
EMPLOYEE RETENTION CREDIT

- Qualified Wages
  - Example 16.2 - More than 100 Employees
  - Example 16.3 - Less than 100 Employees

- Credit not available to businesses that:
  - Received a business interruption loan
  - Hires employer’s children
  - Claims the work opportunity credit
EMPLOYEE RETENTION CREDIT

- Claiming the Credit
  - Report total qualified wages on Form 941 (or equivalent form)
  - Use federal employment taxes to fund the credit
  - Use Form 7200 to request advance not funded by federal employment tax deposits

- IRS will not honor Form 7200 for a quarter after Form 941 has already been processed for that quarter

- Erroneous refunds will be treated as underpayments subject to penalties and interest
New COVID-19 Employer Tax Credits

The Employee Retention Credit

The Employee Retention Credit is designed to encourage employers to keep employees on their payroll. The refundable tax credit is 50% of up to $10,000 in qualified wages paid to an employee by an eligible employer experiencing economic hardship related to COVID-19. This credit is for wages paid from 3/13/2020 through 12/31/2020.

The credit is generally available to all employers regardless of size, including tax-exempt organizations.

Federal, state and local governments and their agencies or instrumentalities are not eligible.

Businesses that receive a Small Business Interruption Loan under the Paycheck Protection Program are not eligible.

Eligible employers must fall into one of two categories:

1. The employer’s business is fully or partially suspended by government order due to COVID-19 during the calendar quarter.
2. The employer has a significant decline in gross receipts. This begins with the first quarter in 2020 when an employer’s gross receipts are below 50% of the same quarter in 2019.

Qualified wages paid by an eligible employer from 03/13/2020 through 12/31/2020 include related qualified health plan expenses and vary based on the average number of a business’ employees in 2019.

100 or fewer employees
If the employer averaged 100 or fewer full-time employees in 2019, the credit is based on qualified wages paid to all employees, whether they worked or not. Even if the employees worked full time and were paid for full-time work, the employer still receives the credit.

More than 100 employees
If the employer averaged more than 100 full-time employees in 2019, then the credit is allowed only for qualified wages paid to employees for time they’re not providing services during the calendar quarter.

An employer cannot use the same wages for the Employee Retention Credit and the credits for paid sick and family leave.
CARES ACT – DEFERRAL OF PAYROLL TAXES, RRTA TAX AND SECA

- Temporary deferment of payment of the employer's portion of social security or RRTA payroll taxes (6.2%) which apply through December 31, 2020

- Employer defers by reducing the required deposits or payments for the calendar quarter, typically 941 filers.
  - Deferral period from March 27 through December 31, 2020
  - Applicable to Annual filers (943, 944, and Form CT-1)
  - Applicable to Self-Employed
CARES ACT – DEFERRAL OF PAYROLL TAXES

- Example 16.4 – Partial payment
- Example 16.5 – Overpayment
DEFERRING PAYROLL TAX OBLIGATIONS

- Notice 2020-65
  - Defer employee’s portion of FICA
  - No requirement that employers participate
  - No ability for employees to opt in or out, except at the mercy of employer
  - Amounts deferred must be repaid from January 1 through April 30 or next year
  - Employers and employees remain on the hook for the payments (employers may make arrangements to collect if they can't withhold)
  - Limited to $4,000 biweekly
  - No guarantee of forgiveness
  - Deferral not subject to penalties and interest
CARES ACT – MODIFICATIONS FOR NET OPERATING LOSSES

- Removal of the taxable income limitation for all NOLs arising in tax years 2018, 2019 and 2020 for all businesses, including farming. The NOL can offset 100% of taxable income.

- Modified the carry back from two years to five years.

- Taxpayers can elect out of the 5-year carryback and carry the loss forward.

- Election is irrevocable
ADDRESSING THE CHANGES TO NOLS

- Requesting the Carryback
  - Date became effective July 15, 2020
  - Corporations use IRS Form 1139
  - Individuals, estates and trusts use IRS Form 1045
  - After July 15, 2020, an amended return is used.

- Waiving the Carryback
  - Attach an election statement for the first taxable year ending after March 27, 2020 and separate statements for 2018 and 2019.
CREDIT FOR PRIOR-YEAR MINIMUM TAX LIABILITY OF CORPORATIONS

- Tax year beginning after 2017 and before 2020 a corporation’s minimum tax credit is allowable and refundable.

- Amount equal to 50% (100% for a tax year beginning in 2019) of the excess (if any) of the minimum tax credit for the tax year over the amount of the credit allowable for the year against regular tax liability.

- The full amount of the minimum tax credit is allowed in tax years beginning before 2020.

- Corporation may elect instead to treat its minimum tax credit as fully refundable for its first tax year beginning in 2018.

- File application prior to December 31, 2020.
Business interest is increased from 30% percent to 50% of taxable income for tax years 2019 and 2020.

Limitation generally does not apply to certain small businesses with gross receipts less than $26,000,000.

Special rules for partnerships and partners for tax years beginning in 2019
  - First 50% of partner’s allocable share of excess business interest not limited
  - Remaining 50% subject to limitation
  - Partner may elect out of EBIE rule
Clarification of 2018 TCJA

- Any improvement made by the taxpayer
  - to an interior portion of a building
  - nonresidential real property
  - placed in service by the taxpayer after the date such building was first placed in service by any taxpayer.
- Does not include any improvement for which the expenditure is attributable to:
  - the enlargement of the building,
  - any elevator or escalator,
  - internal structural framework of the building
CARES ACT – QUALIFIED IMPROVEMENT PROPERTY

- Only applies if the qualified improvement property is made by the taxpayer
<table>
<thead>
<tr>
<th>HSA Limits</th>
<th>2020</th>
<th>2021</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HSA contribution limit</strong></td>
<td>Self-only: $3,550</td>
<td>Self-only: $3,600</td>
<td>Self-only: +$50</td>
</tr>
<tr>
<td></td>
<td>Family: $7,100</td>
<td>Family: $7,200</td>
<td>Family: +$100</td>
</tr>
<tr>
<td><strong>HSA catch-up contributions</strong></td>
<td>$1,000</td>
<td>$1,000</td>
<td>No change</td>
</tr>
<tr>
<td><strong>HDHP minimum deductibles</strong></td>
<td>Self-only: $1,400</td>
<td>Self-only: $1,400</td>
<td>No Change</td>
</tr>
<tr>
<td></td>
<td>Family: $2,800</td>
<td>Family: $2,800</td>
<td>No Change</td>
</tr>
<tr>
<td><strong>HDHP maximum out-of-pocket amounts</strong></td>
<td>Self-only: $6,900</td>
<td>Self-only: $7,000</td>
<td>Self-only: +$100</td>
</tr>
<tr>
<td></td>
<td>Family: $13,800</td>
<td>Family: $14,000</td>
<td>Family: +$200</td>
</tr>
</tbody>
</table>
HEALTH PLANS - HSAs

- Qualified medical expenses now include over-the-counter medicines, drugs, and menstrual care products, and reimbursement for those expenses.

- Annual limit with self-only coverage under a high-deductible health plan (HDHP) is $3,600.

- Annual limit with family coverage under a HDHP is $7,200.

- For calendar year 2021, a HDHP deductible cannot be less than $1,400 for self-only coverage or $2,800 for family coverage.

- Annual out-of-pocket expenses cannot exceed $7,000 for self-only coverage or $14,000 for family coverage.
HEALTH PLANS – CAFETERIA PLANS

- Increased flexibility for midyear elections under an I.R.C. § 125 cafeteria plan in calendar year 2020.

- Permits eligible employees who to:
  - make an election for employer-sponsored health coverage
  - revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer
  - revoke an existing election and enroll in other health coverage not sponsored by the employer.
HEALTH PLANS - FSAs

- Flexibility of grace period for unused amounts
- Increases carryover maximum from $500 to $550
- Adjusted annually for inflation
PPP LOAN EXPENSES

Notice 2020-32

- No deduction is allowed for an expense that is otherwise deductible if:
  - the payment of the expense results in forgiveness of a loan made under the PPP
  - the income associated with the forgiveness is excluded from gross income pursuant to the CARES Act.
Payments are included in the gross income

Payments to a federally recognized Indian tribe member’s business is excluded from gross income under the general welfare exclusion.

Loan proceeds to support businesses are excluded from gross income.

Forgiven portion is includable in gross income/taxable unless an exclusion in I.R.C. § 108 or other federal law applies.

If an exclusion applies, an equivalent amount of any deductions, basis, losses, or other tax attributes may have to be reduced.
What We Aren’t Sure About

• What about those expenses paid with PPP loan amounts that were forgiven?
• What about those stimulus payments paid to the deceased? If they aren’t paid back—what then?
• What about PPP loan forgiveness applications? A threshold?
CARES ACT – ECONOMIC IMPACT PAYMENTS

- EIPs are “credits against 2020 taxable income”
- AGI Phase-outs: 5% reduction over the respective filing threshold
  - Single $75,000
  - MFJ $150,000
  - HoH $112,500
- 100% Phase out
  - Single filer AGI > $99,000
  - Joint filer w/ no children AGI > $198,000
  - Head of household with one child, AGI > $146,500.
ECONOMIC IMPACT PAYMENTS

- Any Individual except:
  - a nonresident alien
  - an individual for whom another taxpayer could claim a dependency deduction
  - and an estate or trust
- IRS can determine the EIP from the 2018 return if no 2019 return filed
- If no 2018 return, the IRS can use 2019 Form SSA-1099, Social Security Benefit Statement or equivalent
- No EIP is allowed if no valid identification number
RECONCILING THE EIP ON THE 2020 TAX RETURN

- EIP payment amount less the advance refund amount is positive, difference is a refundable credit
- EIP payment amount less advance is negative, tax liability is not increased by negative amount
- EIP advance never received? Claim the EIP 2020 income tax return
- Failure to reduce the additional EIP claimed on a 2020 return by any advance refund amount is treated as a mathematical or clerical error.
- Otherwise, the advance refund amount has no effect on income tax returns filed for 2020.
- The amount is not includable in gross income; does not reduce withholding by employers on wages.
CARES ACT – CHARITABLE CONTRIBUTIONS

- Above the line deduction of $300 if not itemizing
- Non-cash property not qualified
- Temporary suspension of the 60% AGI limit for cash charitable contributions
  - In 2020 the limit is 100% of AGI.
- Corporation limit increased from 10% to 25% of taxable income.
CARES ACT – STUDENT LOAN RELIEF

- Student loan repayments made by the employer can be excluded from the employee’s income up to $5,250.
- Only if no other educational assistance was provided
- No interest deduction for employees receiving such benefit
- This amount is the same amount which can be excluded for payments made under an educational assistance program.
Higher-education institutions may use additional supplemental educational opportunity grant funds to award:
- emergency financial aid grants to support graduate and undergraduate students experiencing unexpected expenses and
- unmet financial need as the result of the COVID-19 pandemic.

Grant not includable in taxpayer’s gross income

Taxpayer cannot claim any deduction or credit for expenses paid with the grant including the:
- Tuition and fees deduction
- American opportunity credit
- Lifetime learning credit.
CARES ACT – RETIREMENT ISSUES

Coronavirus-Related Distributions

- Exception to early distribution penalties
- Penalty-free distributions up to $100,000
- Distribution included ratably over three years
- Treated as a direct rollover if recontributed to an eligible plan within 3 years
- Individual may ratably include the income over 3 years, or elect out and include the entire amount in the year of distribution.
- Recontributions must occur within 3 years from the day after receiving the funds.
CARES ACT – RETIREMENT ISSUES

- Qualified Individual
  - Diagnosed with SARS-CoV-2 or COVID-19
  - Spouse diagnosed
  - Experiences adverse financial consequences as a result of:
    - Quarantine, furlough, reduction in hours
    - Unable to work due to lack of childcare
    - Closure/reduction of business hours
    - Other factors determined by IRS
    - Reduction of pay/self-employment income
    - Spouse or household member experiencing any of the above
Distributions

- Waiver of RMD Requirements for 2020
- Eligible distributions to beneficiaries can also be treated as coronavirus-related distributions, but they cannot be recontributed
- See 10-point list of amounts non-qualified distributions

Recontributions

- Only coronavirus-related distribution that is eligible for tax-free rollover treatment can be recontributed to an eligible retirement plan.
- Recontributions treated as a trustee-to-trustee transfer to that eligible retirement plan.
RETIREMENT PROVISIONS CONTINUED

Guidance for Employers
- 20% withholding not applicable
- Employer can rely on employee certification as to eligibility

Guidance for Individuals
- Report on 2020 Form 1040 and Form 8915-E
- If no 1040 filing requirement, file Form 8915-E alone
- Report recontributions on Form 8915-E
- Include the income over 3 years or elect out and include the entire amount in the year of distribution.
- Recontribuition must occur within 3 years from the day after receiving the funds.
Notice 2020-51 Temporary Waiver of Required Minimum Distribution

- RMD requirement does not apply to 2020
- RMDs resume in 2021
- Eligible rollover relief
  - See Example 16.6
- Extension of certain rollovers
- Plan Amendments
- IRA Contribution Deadline – after July 15, 2020 and before April 15, 2021 are deductible on 2020 return
TAX PRACTICE – DEFERRED FILING & PAYMENT DEADLINES

- April 15 deadline for filing and payment extended to July 15, 2020
- No Forms 4868 or 7004 required for July 15 extension
- Interest, penalties, and additions accrue on July 16, 2020.
- IRS required to pay interest on refunds, calculated from the original April 15 filing deadline
- Refund interest requirement applies only to individual income tax filers and not businesses
- Federal Gift Tax Returns also extended to July 15, 2020
See IRS FAQs on COVID-19 Relief for Estate and Gift Tax


FAQs list various clarifications regarding estate and gift tax relief
NOTICE 2020-22 PENALTY RELIEF FOR CERTAIN TAX DEPOSITS

Failing to deposit employment taxes relating to qualified leave wages will not result in penalty if:

- The employer paid qualified leave wages to its employees in the calendar quarter prior to the time of the required deposit
- The amount of employment taxes that the employer does not timely deposit is less than or equal to the amount of the employer’s anticipated credits for the calendar quarter as of the time of the required deposit
- The employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19
Regarding qualified retention wages, employer not subject to penalty if:

- paid qualified retention wages to its employees in the calendar quarter prior to the time of the required deposit
- Non-timely deposits, reduced by the amount of employment taxes not deposited in anticipation of the credits claimed is less than or equal to the amount of the employer’s anticipated credits for the calendar quarter as of the time of the required deposit
- the employer did not seek payment of an advance credit by filing Form 7200 with respect to the anticipated credits it relied on to reduce its deposits
NOTICE 2020-23 EXPANDED RELIEF

Automatic extension to July 15, 2020 applies to:

- Individuals, trusts, estates, corporations, and partnerships
- All petitions with the Tax Court
- A review of a decision rendered by the Tax Court
- Filing a claim for credit or refund of any tax
- Bringing suit on a claim for credit or refund of any tax
NOTICE 2020-35 ADDITIONAL DEADLINE RELIEF

- Employment taxes
- Employment benefit plans
- Exempt organizations
- Coverdell education savings accounts
OFFER IN COMPROMISE (OIC) CHANGES

- No OIC pending requests closed prior to July 15, 2020 without taxpayer consent
- Option to suspend payments until July 15, 2020
- Delinquent 2018 returns and 2019 return required filing by July 15, 2020
- 2020 revision of OIC Booklet
- Use of previous version results in delayed processing
ELECTRONIC SUBMISSIONS

- Rev Proc 2020-29 temporarily allows the electronic submission of:
  - requests for letter rulings
  - closing agreements
  - determination letters
  - certain information letters

- Also allows for:
  - determination letters issued by the IRS Large Business and International Division
  - electronic signatures
IRS EMAILED DOCUMENTS

IRS can accept images and digital signatures through 12/31/2020 including:

- Extensions of statute of limitations on assessment or collection
- Waivers of statutory notices of deficiency and consents to assessment
- Agreements to specific tax matters or tax liabilities (closing agreements)
- Any other statement or form needing the signature of a taxpayer or representative traditionally collected by IRS personnel outside of standard filing procedures
IRS EMAILED DOCUMENTS CONTINUED

- IRS Memorandum for all Services and Enforcement Employees, Control No. NHQ-01-0620-0002 (June 12, 2020)
  - provides guidance to IRS employees on instructing taxpayers in the use and transmission of emailed documents

- Memorandum for Taxpayer Advocate Service Employees, Control No. TAS-13-0420-0009 (April 13, 2020)
  - contains temporary allowance for receipt of various documents via email
Time for Questions – But are there any answers?