

# COVID-19 FEDERAL, STATE AND LOCAL TAX EMPLOYER RELIEF EFFORTS UPDATE

*Hodgson Russ State & Local Tax Alert*  
March 21, 2020

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The unprecedented COVID-19 pandemic has triggered a wide variety of relief efforts from the Federal, state, and local governments. This update will provide insight into several of these relief efforts, and discuss the effect they might have on employers coping with the impact of the Coronavirus on their business operations.

## **FEDERAL TAX UPDATES**

- Employer Tax Credits

On March 18, 2020, President Trump signed into law H.R. 6201, titled the “Families First Coronavirus Response Act” (“FFCRA”). We issued an **alert** earlier this week on the federal and state legislation enacted to address paid sick time and other leave related to COVID-19. The FFCRA provides a variety of employer tax credits, as laid out below, to help mitigate the cost of FFCRA’s mandated paid sick and family leave.

The FFCRA is partially composed of the Emergency Family and Medical Leave Expansion Act (“EFMLEA”) and the Emergency Paid Sick Leave Act (“EPSLA”). The EFMLEA requires employers with fewer than 500 employees to provide both paid and unpaid public health emergency leave to certain employees through December 31, 2020. For employers who pay family leave wages under the EFMLEA and are not receiving the credit for paid family and medical leave in Code Section 45S, a separate provision allows a 100 percent credit against the employer’s share of FICA and Medicare (“Payroll Taxes”) for each affected employee, limited to \$200 per day, or a total of \$10,000 per employee. The credit is refundable if it exceeds the amount the employer owes in Payroll Taxes.

The EPSLA requires that private employers with fewer than 500 employees and public employers of any size provide 80 hours of paid sick time to full-time employees who are unable to work (or telework) for specified virus-related reasons. (The number of EPSLA hours offered to part-time employees must be equal to the average hours worked over a 2-week period.) For employers who pay sick leave wages under the EPSLA and are not receiving the credit for paid family and medical leave in Code Section 45S, a credit against the employer’s obligation for Payroll Taxes can be claimed on a quarterly basis, equal to 100 percent of the amount of sick leave wages

## **Attorneys**

Paul Baldwin Jr.  
Katherine Cauley  
Thomas Collura  
Paul Comeau  
William Comiskey  
Arielle Doolittle  
Christopher Doyle  
Catherine Eberl  
Joseph Endres  
Debra Herman  
Daniel Kelly  
Joshua Lawrence  
Timothy Noonan  
Elizabeth Pascal  
K. Craig Reilly  
Emma Savino  
Andrew Wright

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paid. An employee who takes sick leave to attend to his or her own health must be compensated at his or her regular rate, up to a maximum of \$511 per day (\$5,110 total). Employees caring for another individual must receive two-thirds of their regular rate, up to a maximum of \$200 per day (\$2,000 total). The credit is refundable if it exceeds the amount the employer owes in Payroll Taxes.

For purposes of determining the Payroll Tax credit, the employer's cost of providing health care coverage to affected employees taking EFMLEA and EPSLA leave is included, provided such employer contributions were otherwise excludable from the employee's gross income for federal income tax purposes. Employers are permitted to allocate such "qualified health plan expenses" on a pro rata basis for applicable periods of health coverage.

Finally, employers must increase their gross income for the taxable year by the amount of payroll credit received, thereby erasing the employer's deduction to the extent of Payroll Taxes credited. These credits are only available to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury which is during the 15-day period beginning on the date of the enactment of the Act (March 18, 2020), and ending on December 31, 2020.

- [Tax Credits for Self-Employed Taxpayers](#)

In addition to credits provided to certain employers, the FFCRA also provides for similar refundable credits against the self-employment tax. Specifically, the FFCRA covers 100% of a self-employed individual's sick-leave equivalent amount, or 67% of the individual's sick-leave equivalent amount if they are taking leave to support sick family members or to care for children who have a closed school for up to 10 days. The sick-leave equivalent amount is the lesser of average daily self-employment income, or either (1) \$511/day to care for the self-employed individual or (2) \$200/day to care for a sick family member or child following a school closing, paid under the EPSLA. Self-employed individuals can also receive a credit for as many as 50 days multiplied by the lesser of \$200 or 67% of their average self-employment income paid under the EFMLEA.

- [Extension of Tax Payment and Filing Deadlines](#)

The IRS initially released Notice 2020-17, which allows all individual and other non-corporate tax filers to defer up to \$1 million of federal income tax (including self-employment tax) payments due on April 15, 2020, until July 15, 2020, without penalties or interest. The guidance also allowed corporate taxpayers a similar deferment of up to \$10 million of federal income tax payments that would be due on April 15, 2020, until July 15, 2020, without penalties or interest. Crucially, this guidance has recently been amended.

On March 20, 2020, the IRS released Notice 2020-18, which automatically extends the due date for filing tax returns and making tax payments from April 15 to July 15. This new guidance also removes the cap on the amount of tax payment that can be postponed, as discussed above, so that an unlimited amount of tax may be deferred during the extension period.

- [The Coronavirus Aid, Relief, and Economic Security Act](#)

On March 19, 2020, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was introduced by the Senate. Although not currently law, the CARES Act contains a variety of tax changes that employers should be cognizant of if the Act is finalized in its current form. A full list of the relevant provisions can be found [here](#).

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While we will not provide a full description of the relevant portions of this Act until finalized, note that the current version of the act contains a five-year carryback for net operating losses, a temporary increase in the amount of interest expense that business may deduct (from 30% to 50%) for tax years 2019 and 2020, and various other important changes.

We will continue to monitor the CARES Act, and will provide an update if the Act becomes law.

### STATE AND LOCAL TAX UPDATES

The guidance and instructions from state and local tax authorities are changing rapidly. Many have announced extensions to the otherwise-applicable deadlines for filing various tax returns and/or submitting tax payments. Others have hinted at the possibility of an extension to some or perhaps all returns at a later time, and still a small number have issued no guidance at all. And changes are coming frequently and sometimes too late to provide a meaningful benefit.

- New York State Income and Franchise Taxes – *updated March 29*

After having numerous public but non-official statements that New York State was extending filing deadlines, on Saturday, March 28<sup>th</sup> and Sunday, March 29<sup>th</sup> the Governor and Tax Department (respectively) followed-through with the needed official declarations.

Governor Cuomo issued Executive order 202.12 Saturday night suspending a particular provision of the Tax Law, thereby allowing the Tax Commissioner to, when a disaster emergency has been declared, disregard certain statutory deadlines. Sunday, the Department of Taxation and Finance notified many interested parties, including Hodgson Russ, that it had issued Notice N-20-2 extending certain filing and payment dates for individual, fiduciary and corporate tax returns. The notice is here, and it provides:

- 2019 returns due on April 15, 2020, and related payments of tax or installments of tax, including installments of estimated taxes for the 2020 tax year, will not be subject to any failure to file, failure to pay, late payment, or underpayment penalties, or interest if filed and paid by July 15, 2020.
- Taxpayers may request an automatic extension to file their 2019 returns if they cannot file by July 15 (they will still need to pay taxes by July 15).
- Interest and penalties for the specially-treated tax filings and payments will not start running until July 16.
- Income tax withheld by employers still must be remitted timely using Form NYS-1, Return of Tax Withheld.
- New York State Sales Tax - *updated March 23*

The Tax Department has issued new guidance confirming that relief may be available for some sales tax filers affected by COVID-19. Its “response to novel coronavirus (COVID-19)” webpage [here](#) states: “Sales tax payments and returns were due March 20, 2020; however, penalty and interest may be waived for quarterly and annual filers who were unable to file or pay on time due to COVID-19” and then directs the taxpayers to [this page](#) to request penalty and interest relief.

Relief is not automatic when a request is filed. The Tax Department is making case-by-case determinations on whether to grant penalty and interest relief and the relief can be requested either in advance (now) or upon receipt of a penalty notice. In [Notice N-20-1](#), the Department lists circumstances that could qualify for this relief, such as those who missed deadlines

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because: (1) “key employees were treated or suspected to have COVID-19, (2) records needed “are not available due to the outbreak,” (3) “closure orders or similar business disruptions directly resulting from the outbreak,” and/or (4) the taxpayer’s “tax practitioners were unable to complete work to meet tax filing, payment, and other deadlines on behalf of their clients due to the outbreak.”

- Other State Tax Jurisdictions

Open-ended and late guidance issued by New York State underscores the necessity of tracking developments in this space. The American Institute of Certified Public Accountants has compiled a **spreadsheet** tracking state tax filing guidance relative to COVID-19. This and other similar frequently updated references from reliable sources like the AICPA are probably the best tool for employers to reference at this time. Ultimately, barring the requisite legislative changes or issuance of guidance from state or local tax authorities, employers should assume that the “old rules” are still in effect and proceed accordingly.

- New York City Taxes

In a Finance Memorandum dated March 19, New York City announced that it will waive penalties for New York City-administered business and excise taxes due between March 16, 2020, and April 25, 2020. A copy of the Memorandum can be found [here](#).

It is worth noting: (1) Whether returns and payments statutorily due on March 15 will receive the relief provided for in the Memorandum is unclear. Returns statutorily due March 15, 2020 became due on March 16 because March 15 fell on a Sunday. So calendar year General Corporation Tax, Banking Corporation Tax and Unincorporated Business Tax taxpayers may not benefit from this. (2) There is no waiver for interest and New York City’s current interest rate is a whopping 9%. (3) Penalty abatement requests may be made with late-filed returns or separately, but presumably not upon audit. and (4) The Memorandum is silent regarding whether elections that are required to be made on a “timely-filed” return will be accepted on a late return covered by the new policy; a prudent approach would be to assume that a timely return will need to be filed to avail oneself of such elections.

- New York State, Administrative– updated April 17

As taxpayers begin adjusting to these strange times, it seems the NYS Tax Department is trying to do the same. The Department just issued guidance in **Notice N-20-3** which temporarily allows taxpayers and their appointed representatives to use digital signatures on various tax forms. This comes on the heels of last week’s **Executor Order 202.15** from New York’s Governor Andrew Cuomo, which authorized the Department to “accept digital signatures in lieu of handwritten signatures on documents related to the determination or collection of tax liability” until May 9, 2020, but then punted to the Department to hammer out the logistics and issue appropriate guidance.

Under Notice N-20-3, digital signatures may be used on *most* but not all New York tax forms. This list includes E-File Signature Authorizations, Consents to Extend the Statute of Limitations for Assessment, Statements of Proposed Audit Changes, Consents to Field Audit Adjustments, and Requests for Conciliation Conferences, among others. While **Powers of Attorney** are the only form that Notice N-20-3 specifically excludes from the new digital signature authorization, there could be others, since this Notice doesn’t apply to the **Division of Tax Appeals and Tax Appeals Tribunal**, and it is not

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clear whether they will accept digitally-signed forms, unless they are specifically authorized to do so which did not happen in this notice.

Notice N-20-3 also specifically addresses approaches to submitting digitally-signed forms to the Department electronically, without the need to send a separate hard copy. This includes the existing methods, such as fax and secured messaging systems (*e.g.*, MoveIt and Aspera). But notably, Notice N-20-3 contemplates sending documents to the Department via e-mail and in doing so notes that the “choice to transmit documents to Tax electronically is solely that of the taxpayer.” Of course, safeguarding sensitive information will remain paramount in these situations. Presumably this also applies to the submission of other documents to the Department, meaning that auditors can accept emails from representative or taxpayers with audit-related documents as well.

Some additional take-aways and pointers on using digital signatures:

- Notice N-20-3 indicates that the Department will be accepting “digital signatures that use encryption techniques to provide proof of original and unmodified documentation on one of the following file types: tiff, jpg, jpeg, PDF, Microsoft Office suite, or Zip.”
- The digitally-signed documents must be submitted with a verification statement in the cover letter or accompanying e-mail. The suggested language in Notice N-20-3 is “The attached [name of document] includes [name of taxpayer/POA]’s valid signature and the taxpayer/POA intends to transmit the attached document to the Department of Taxation and Finance.”
- Much, but not all, of Notice N-20-3 appears to model similar guidance issued in a **memorandum** last month by the IRS for federal tax purposes.
- Nothing in this Notice addresses or changes the fact that taxpayers and representatives can still electronically submit signed documents via PDF or fax, as has always been the case. Sometimes auditors insist on having the actual original signature on a signed document, such as a Closing Agreement, but for many other documents that require signature, the Department has and presumably will continue to accept copies of signed documents as well. This Notice relates merely to “digital” signatures, which may be needed if a taxpayer or representative does not have ready access to a printer or scanner.

### OTHER UPDATES

In addition to the financial relief efforts mentioned above, government agencies, private companies and nonprofit organizations have created programs to extend support to business owners during this time.

The U.S. Small Business Administration (“SBA”) is working directly with state Governors to provide targeted, low-interest loans to small businesses and non-profits that have been severely impacted by the Coronavirus. The SBA’s Economic Injury Disaster Loan program provides small businesses with working capital loans of up to \$2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing. These loans may be used to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster’s impact. The interest rate is 3.75% for small businesses and 2.75% for non-profits. Guidance as to whether the business is “small” is provided **here** but the size standards are generally based on the average annual receipts and/or the number of employees.

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Local governments have also taken action to help businesses. The NYC Small Business Services, for example, is offering businesses with fewer than five employees grants to cover 40% of payroll costs for two months to help retain employees. Businesses with fewer than 100 employees who have seen sales decreases of 25% or more will be eligible for zero-interest loans of up to \$75,000 to help mitigate losses in profits.

Further, private and nonprofit companies, such as Amazon and the James Beard Foundation, have announced programs to provide grants to businesses in certain sectors and/or of certain sizes.

The tax professionals at Hodgson Russ LLP will continue to monitor this relief and publish updates as information becomes available. Please contact one of the tax attorneys at Hodgson Russ LLP if you would like to discuss how the tax payment deferral may impact your tax situation.

**All our attorneys are currently working remotely and can respond to any questions or concerns you have whenever you need us. We are here to support you during this challenging time!**

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