Surviving What’s New ... and Thriving Too!

26th Annual Tax Practitioner and IRS Fall Seminar
November 4, 2020

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MST Program
San José State University
http://www.sjsu.edu/people/Annette.Nellen/
http://www.21stcenturytaxation.com
1 Identify due diligence considerations of COVID-19 tax legislative changes

2 Explain the policy considerations of these legislative changes for lessons learned and the relevance to future tax reform activity

3 Understand how changes in how we live and do business affect tax practice and tax systems
Due Diligence Considerations of COVID-19 Tax Changes
The Changes – Lots of Them!

- Federally-declared disaster March 13, 2020
  - IRC §7508A triggered
  - IRS series of extensions culminating in Notice 2020-23
    - Also Notices 2020-35 and 2020-39 (QOZ changes)
- Families First Coronavirus Response Act (FFCRA) [P.L. 116-127 (H.R. 6201, 3/18/20)]
  - New refundable paid leave payroll and self-employment tax credits tied to labor law changes for required sick and family leave for employers with under 500 employees
  - Generally effective 4/1/20.
  - Many tax changes including 2020 Recovery Credit for individuals, changes to Tax Cuts & Jobs Act requiring amended returns and new calculations and planning + payroll tax credits and deferral provisions
  - New/expanded SBA Paycheck Protection Program (PPP) including loan forgiveness with application period opening April 3 (April 10 for self-employed and independent contractors) + EIDL
- Various Administrative Branch provisions for donating leave, leave banks and employee payroll tax deferral
- And waiting for more legislation and more IRS and Dept. of Labor and SBA guidance.
FFCRA Paid Leave and Credits

• Employers, including household employers:
  • Eligible employer? Generally < 500 employees
  • Employee eligible for up to 2 weeks sick leave?
    • Met one of six reasons?
  • Employee eligible for up to 10 weeks family leave?
    • Worked for employer for at least 30 days?
    • Caring for a son or daughter because their school or place of care of the closed, or their childcare provider is unavailable, due to COVID–19 precautions?
    • “Certain health plan expenses” also count towards credit.

• Properly computed and claimed?

• Self-employed also eligible based on 2020 earnings
  • No double benefit if also claimed as employee.
New W-2 Reporting Requirement for 2020 Related to Paid Leave Rules


• Issued per
  • FFCRA Secs. 7002(g) and 7004(e) – IRS shall prescribe guidance as necessary to carry out purposes of Secs. 7002 and 7004 of FFCRA on the sick and family leave for self-employed against SE tax.
  • FFCRA provisions that self-employed are limited to $2,000 (or up to $5,110 sick leave credit for reasons 1, 2, 3) or $10,000 for family leave so must reduce any paid leave from an employer to be sure don’t exceed the maximums available to an employee.

• IRS solution:
  1. Employers must separately state total amount of qualified sick leave wages paid for reasons (1), (2), or (3) of Sec. 5102(a) of FFCRA, qualified sick leave wages paid pursuant to reasons (4), (5), and (6) of Sec. 5102(a), and qualified family leave wages paid per Sec. 3102(b) of FFCRA. Employers must separately state each of these wage amounts either on Form W-2, Box 14 or on a separate statement.
  2. Self-employed claiming FFCRA credits against SE tax must attach new Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals, and reduce (but not below zero) any qualified sick leave or qualified family leave equivalent credits by amount of these qualified leave wages.
Documentation Required Per IRS FAQs

• FAQ 4 – Employer must retain records and documentation supporting each employee’s leave to support the credit claim + must retain Forms 941 and 7200 and any other filings requesting the credit.

• FAQs 44 – 46 – How employer substantiates it is eligible for tax credits for qualified leave wages
  • Lots of details required in writing and documentation!
  • See next slides – lots needed!


• Also see DOL FAQs 15 & 16 + DOL Final Rule Sec. 826.100
  • https://www.dol.gov/agencies/whd/pandemic/ffcra-questions
44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee’s name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person’s name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee’s inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

Also DOL FAQ 15 & 16: https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#15
45. What additional records should an Eligible Employer maintain to substantiate eligibility for the sick leave or family leave credit?

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if, in addition to the information set forth in FAQ 44 ("What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?") , the employer creates and maintains records that include the following information:

1. Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 ("Determining the Amount of Allocable Qualified Health Plan Expenses") for methods to compute this allocation.
3. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
4. Copies of the completed Forms 941, Employer’s Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer’s entitlement to the credit claimed on Form 941).

46. How long should an Eligible Employer maintain records to substantiate eligibility for the sick leave or family leave credit?

An Eligible Employer should keep all records of employment taxes for at least 4 years after the date the tax becomes due or is paid, whichever comes later. These should be available for IRS review.
Reminders for FFCRA credits ...

• While the question of whether an employee is entitled to paid leave under FFCRA (or other laws) is a labor law determination/issue, the FFCRA leave ties closely to tax credits claimed.

• Be sure client has reviewed the rules to know they are properly paying sick or family leave per FFCRA reasons to get the tax credits. If paying for some other reason, FFCRA paid leave credits not available.

• Documentation very important – see IRS and DOL rules.
  
  • Note: Reasons for family leave may have changed for employee when child’s school closed for summer break. Be sure documentation covers any new reason once school is closed for break.
CARES Act Due Diligence Considerations

- Paycheck Protection Program loans
  - Client needs to get documentation and forms to request forgiveness.
  - Sec. 1106 of CARES Act – forgiven loan not included in gross income
    - Per IRC §1402, also excluded from SE tax.
  - California AB 1577 (Chapter 39 (9/9/20)
    - PPP loan forgiveness is not treated as taxable, effective immediately
      - [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1577](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1577)
  - Notice 2020-32 – no deduction allowed for amount paid with forgiven loan proceeds per IRC §265(a)(1) and §1.265-1
    - Query: What if expenses and loan forgiveness occur in different tax years?
• **2020 Recovery Rebates (Economic Impact Payments)**
  • Did client receive proper amount?
  • Ask clients now for Notice 1444 they rec’d about their EIP.
  • Line 30 on 2020 Form 1040 – wait for instructions.
  • If rec’d too much, no requirement to pay back.
  • Not taxable for federal or CA purposes (really like a tax credit).
  • Open issue: Receipt be deceased individual; see FAQs and future guidance.

• **Unemployment Compensation**
  • Taxable federal; not taxable in California.
  • Receipt by self-employed individuals
    • IRS: Per Rev Rul 91-19, IRS likely to find subject to SE tax. Watch for guidance.
CARES Act Due Diligence Considerations

• Special Rules for Use of Retirement Funds
  • Tax-favored withdrawals from retirement plans
    • Early withdrawal 10% penalty (§72(t)) waived for “any coronavirus-related distributions.” [note the “s” for plural]
    • Not to exceed $100,000 in aggregate.
    • Made on or after 1/1/20 and before 12/31/20
    • These distributions may be repaid during 3-year period beginning on day after date the distribution was received.
    • Guidance on terminology, reporting and treatment of recontributions – Notice 2020-50 (19 single-spaced pages!)
      • Plan must report the COVID distribution on Form 1099-R even if a recontribution is made in the same year
      • Individual reports recontribution on Form 8915-E
      • Numerous rules and examples
  • Loans from qualified plans
    • Increases allowable loan amounts that will not be treated as distributions made in 180-day period starting on 3/27/20 (enactment date; 9/22/20).
    • §72(p)(2)(A) – substitute $100,000 for $50,000.
    • Possible 1-year delay of repayment

• Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts for 2020
  • Notice 2020-51 (6/23/20) - Had until 8/31/20 to return RMD if desired.
CARES Act Due Diligence Considerations

• Allowance of Partial above the Line Deduction for Charitable Contributions
  • Adds §62(a)(22) - “CHARITABLE CONTRIBUTIONS.—In the case of taxable years beginning in 2020, the amount (not to exceed $300) of qualified charitable contributions made by an eligible individual during the taxable year.”
    • So, just applicable for $300 for 2020.
    • For non-itemizer.
    • Cash only.
    • Not to a donor-advised fund or §509(a)(3) org

• Modification of Limitations on Charitable Contributions During 2020
  • Amendments to §170 for 2020 to remove AGI limits for cash charitable contributions.
  • Taxpayer must elect this application.
  • N/A for donations to §509(a)(3) organization or new or existing donor-advised fund.
  • Election applies at partner or shareholder level (not by partnership or S corp)
  • Corporations – limit changed to 25% of taxable income rather than 10%
  • Modify limit on contribution of food inventory for 2020 from 15% limit to 25% limit.
CARES Act Due Diligence Considerations

• **Delay of Payment of Employer Payroll Taxes**
  - Only employer 6.2% OASDI, not Medicare tax
  - Defer *deposit* with 50% due 12/31/21 and 50% due 12/31/22
    - Cautions: Cash management needed. WHO will remind employer of these future payments? Consider addressing in 2020 engagement letter.
    - Planning: If employer has NOL for 2020, might not want to defer in order to maximize NOL for 5-year carryback.

• **Self-Employed – can defer the 6.2% OASDI portion of 15.3% SE tax**
  - New Part III on 2020 From 1040 Schedule SE
  - Observation: Draft forms at 8/10/20 (w/o instructions) seem to indicate that even if self-employed person defers ½ of the 6.2% tax, still get deduction for AGI of ½ of *total* SE tax.
  - Watch for instructions and any new forms, such as Form 7202, *Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals*, to know for sure.
  - Generally, no deduction unless have paid the tax.
  - §164(f) **DEDUCTION FOR ONE-HALF OF SELF-EMPLOYMENT TAXES**
    - (1) **IN GENERAL** In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to *one-half of the taxes imposed by section 1401* (other than the taxes imposed by section 1401(b)(2)) for such taxable year.
      - Observation: Perhaps is correct to get 50% of entire SE tax as the entire amount is *imposed* by §1401, just that CARES Act allows for deferral of 6.2% portion of that tax.
CARES Act Due Diligence Considerations

• Modifications for Net Operating Losses
  • 80% limit on use of NOL won’t apply until tyba 12/31/20
  • 2018, 2019 and 2020: 5 year carryback allowed
  • Caution: Consider all changes including receipt of amended K-1 if have 2018 or 2019 NOL.
  • Planning: maximizing 2020 NOL?

• Modification of Limitation on Losses for Taxpayers Other Than Corporations (§461(l))
  • Delay TCJA effective date until tyba 12/31/20!
  • Technical corrections made. See track changes of §461(l) after CARES Act [https://www.sjsu.edu/people/annette.nellen/461_l_TrackChanges]
CARES Act Due Diligence Considerations

- TCJA Technical Corrections for Qualified Improvement Property
  - 15-year life effective as if in TCJA
    - Now eligible for bonus depreciation
    - Also has different ADS life
  - Rev. Proc. 2020-25 – how to address this change
  - §168(e)(6) [adds “made by the taxpayer”]
    - “any improvement made by the taxpayer to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed in service”
      - So can’t be used property.
    - Excludes improvements for
      - Enlarging a building
      - Any elevator or escalator
      - Internal structural framework of a building.
  - Adds at §168(g)(3)(B) that class life is 20 years.
Deferral of Employee OASDI – 8/8/20 Presidential Memo and Notice 2020-65

• Cautions for employers who are doing this:
  • Employer is ultimately liable.
  • Do employees understand they will pay the deferral in January through April 2021?
  • What is employer plan if employee leaves before May 2021?
  • If unable to cover via final paycheck, employer payment of employee tax is income. Will need to gross up to cover payroll taxes on that.
Reminders on Ways Employer Can Help Employees

• Disaster relief payments under IRC §139 (because of March 13 Presidential declaration of disaster)
  • There are no regs. But see:
    • JCT explanation of change made by 109-7 (4/15/05) - [https://www.jct.gov/publications.html?func=startdown&id=2023](https://www.jct.gov/publications.html?func=startdown&id=2023)
  • Possible items that may fall under this income exclusion rule: Technology for home use (work or family needs), resources for school-age children of employees (tech and software for learning), household supplies to help with the pandemic and shelter-in-place orders.
    • But NOT wages.
  • California conforms; but subject to UI, ETT and SDI
    • [https://www.edd.ca.gov/pdf_pub_ctr/de231sed.pdf](https://www.edd.ca.gov/pdf_pub_ctr/de231sed.pdf)

• CARES Act modification to §127(c)(1) exclusion for educational assistance programs
  • 2020 – can be used to pay employees student loan principal and interest (up to $5,250); effective for payments after 3/27/20
    • Must have §127 plan

• Employer leave-based donation program for COVID-19 relief
  • Notice 2020-46

• Leave Sharing Plans
FAQ Reminders

• Lots of FAQs but they are not binding on IRS or taxpayers:
  • IRS statement usually at start of an FAQ page:
    • *This FAQ is not included in the Internal Revenue Bulletin, and therefore may not be relied upon as legal authority. This means that the information cannot be used to support a legal argument in a court case.*
    • IRS Chief Counsel Michael Desmond stated it is unlikely that all FAQs would be turned into binding guidance.
  • SBA FAQs on PPP statement:
    • 1This document does not carry the force and effect of law independent of the statute and regulations on which it is based.
Identify Cautions to Exercise

• Many of the changes are non-tax provisions.
  • Avoid unauthorized practice of law with clients, such as determining if employer must pay sick or family leave to an employee.
  • For your own firm application, consult attorney and remember that just like the tax law, most laws have special rules and planning considerations.

• New recordkeeping and documentation requirements and tracking of actions and dates.
  • Example: If self-employed deferring 6.2% OASDI, keep records of how much deferred and when due.
    • Engagement letter: Possible reminder to track on own?

• Cash flow and management changes due to COVID-19 changes from Congress, IRS and states.
  • Likely need a new due date calendar and reminder system!

• Lots of detailed and often complex rules.

• FAQs continue to change and are not binding
  • Copy any you use.

• And others – keep a list.

• Remind clients to be extra careful to avoid increased number of scams such as on Economic Impact Payments, fake charities to help COVID-19 victims, and others
Sheltering In Place and Nexus for Workers and Employers

• Example: Employee usually works in employer’s office in Michigan and lives in Ohio. Is able to work remotely during pandemic. Does employer now have nexus in Ohio?

• Examples: Worker must shelter in place in a state where they don’t normally work, or medical professional working in a different state. Do they now owe taxes there?

• Answer: It depends. Check pre-pandemic rules and see if state has provided any relief, and if yes, for how long.
  • AICPA State Tax Chart Resource (lots of info):
    • https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/coronavirus-state-filing-relief.pdf
    • https://www.wsj.com/articles/remote-working-from-a-different-state-beware-of-a-tax-surprise-11590744601
  • AICPA Recommendations for Administrative, Filing and Payment Relief for State and Local Taxes during the Coronavirus Pandemic, 4/20/20
    • 11 recommendations for states
      • https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/coronavirus-aicpa-list-of-recommendations-for-state-societies.pdf
COVID-19 Tax Change Resources
Coronavirus Tax Relief and Economic Impact Payments

https://www.irs.gov/coronavirus

We are offering tax help for taxpayers, businesses, tax-exempt organizations and others – including health plans – affected by coronavirus (COVID-19).

Economic Impact Payments

We will start sending payments to most Americans in April.

- Do not call
- Most people won’t need to take any action
- Check back often for updates

What you need to know about payments

Latest Updates on Coronavirus Tax Relief

IRS mission-critical functions continue

While we continue to process electronic returns and issue refunds, some IRS services are limited. Get up-to-date status on affected IRS operations and services.

Tax deadline changed

The deadlines to FILE and PAY federal income taxes are extended to July 15, 2020.
Coronavirus and Economic Impact Payments: Resources and Guidance


Get the latest information and guidance on coronavirus (COVID-19) tax relief and economic impact payments, organized by type for quick reference by the media and tax professionals.

- News Releases
- Tax Tips
- Statements
- Frequently Asked Questions
- Fact Sheets
- Partner Materials/Public Service Announcements
- YouTube Videos
- Guidance
- Ready-to-Use Articles

Topics in the News
- Coronavirus Tax Relief
- Economic Impact Payments
- News Releases
- Multimedia Center
- Tax Relief in Disaster Situations
- Tax Reform
- Taxpayer First Act
- Tax Scams/Consumer Alerts
- The Tax Gap
- Fact Sheets
- IRS Tax Tips
- e-News Subscriptions
- IRS Guidance

Best site to get access to all IRS info
More Resources

• Gov’t agency websites


• Professional organizations you and clients belong to

• Companies and non-profits offering assistance

• Others
<table>
<thead>
<tr>
<th>Provision</th>
<th>Source**</th>
<th>Effective Dates</th>
<th>How to Claim</th>
<th>PPP Connection</th>
<th>Interaction with Other Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid leave credits for employers with &lt; 500 employees and for self-employed</td>
<td>FFRCA (PL 116-127; 3/18/20); Sections 7001-7005</td>
<td>For required paid leave taken starting 4/1/20 and ending on 12/31/20.</td>
<td>Fully refundable. Apply against payroll taxes owed; Form 7200 for refundable credit greater than payroll taxes owed.</td>
<td>Ok to also receive PPP loan, but qualified leave wages not eligible as a “payroll cost” for loan forgiveness.</td>
<td>Employer increases gross income by amount of credit. Wages for credit can’t be used for §45S credit.</td>
</tr>
<tr>
<td>Employee retention credit for employers of any size; not for self-employed</td>
<td>CARES (PL 116-136, 3/27/20), Section 2301</td>
<td>Wages paid after 3/12/20 and before 1/1/21</td>
<td>Not available if receive PPP loan.</td>
<td>N/A for wages used for paid leave credits. Related party limit (§51(i)(1)) Reduce wage deduction by credit (§280C(a)) Wages for credit can’t be used for §45S credit.</td>
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</tr>
<tr>
<td>Delay payment of employer and self-employed OASDI 6.2 tax; no employer size limit</td>
<td>CARES (PL 116-136, 3/27/20), Section 2302</td>
<td>For applicable employment taxes for period beginning 3/27/20 and ending 12/31/20</td>
<td>Cannot claim with PPP but can defer until date PPP loan forgiven with taxes after that point not deifiable.</td>
<td>**Changed retroactively by HR 7010 (P.L. 116-142; 6/5/20) so can also defer. Note that the deferred tax is not a “payroll cost” for PPP loan purposes so the employer OASDI is not forgivable.</td>
<td>**Changed retroactively by HR 7010 (P.L. 116-142; 6/5/20) so can also defer. Note that the deferred tax is not a “payroll cost” for PPP loan purposes so the employer OASDI is not forgivable.</td>
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**These provisions are only in the Public Law, no changes made to the Internal Revenue Code.

Documentation needed for each provision; see IRS guidance including FAQs and form instructions.
<table>
<thead>
<tr>
<th>Provision</th>
<th>Does Payroll Rule Apply to Household Employees?</th>
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<tbody>
<tr>
<td>Paid leave credits for employers with &lt; 500 employees and for self-employed</td>
<td>Applies to employer is considered employer under Fair Labor Standards Act (FLSA). Example: full-time nanny working in your home as they are economically dependent on employer. Also may apply to employer who files Schedule H (1040) for the worker. Not required is worker is self-employed or working for an agency/employer. DOL FAQ 89 - <a href="https://www.dol.gov/agencies/whd/pandemic/ffcra-questions">https://www.dol.gov/agencies/whd/pandemic/ffcra-questions</a></td>
</tr>
<tr>
<td># FT employees relevant to know what are “qualified wages” for the employer.</td>
<td></td>
</tr>
<tr>
<td>Delay payment of employer and self-employed OASDI 6.2 tax</td>
<td>Appears to apply as the CARES Act doesn’t limit this to an employer in a trade or business. Watch for clarification from IRS. Draft 2020 Schedule 3, line 12e, “Deferral for certain Schedule H or SE filers (see instructions)”, seems to indicate the deferral applies to household employers. Watch for the draft instructions. <a href="https://apps.irs.gov/app/picklist/list/draftTaxForms.html?value=1040&amp;criteria=formNumber">https://apps.irs.gov/app/picklist/list/draftTaxForms.html?value=1040&amp;criteria=formNumber</a></td>
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See changes (new lines) on various parts of 2020 Form 1040 and schedules.
Policy Considerations

Lessons Learned

Relevance to Future Tax Reform Activity
Challenges of identifying and meeting goals
What is the best way to provide needed financial relief?

Data and tax law understanding overlooked
Look at how CARES Act “costs” were distributed among taxpayers. Why not try to help the economy more?

How to deal with new budget challenges?

Safety net provisions can be extended to self-employed.
Will this continue post-pandemic? Be considered in updating worker classification rules?
**Tax system challenges & opportunities**

Looking forward to improved tax systems

Points to ponder

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**CHALLENGES**

1. Most new provisions are complex – terminology, limitations, who is eligible, difficult compliance tasks, etc.
   - How to encourage use of all new rules even if they are complex, such as paid leave credits and ERC?

2. How to get signatures and forms filed when IRS is shut down?

3. How much to spend? How to use existing tax benefits (such as NOLs and credit carryovers)? How to collect delayed payments if firms go out of business?

4. How to get info and rebates to:
   - Non-filers?
   - Children of non-filers on SS and SSI?
   - The unbanked?
   - What about to the deceased?

5. Legislative intent not always clear with disagreements between Congress and IRS/Treasury (how to count full-time employees for Employee Retention Credit, are expenses paid with forgiven PPP loan deductible?, when is health insurance part of ERC, and more)?

6. How to help firms most in need get PPP? What if no banking relationship? How to avoid those not in need from claiming limited funds?

7. IRS guidance included numerous notices and over 500 non-binding FAQs. How will this affect future audits when the FAQs might no longer be posted or could have been modified?

8. When, if ever, should use of benefits come with “strings attached” requiring beneficiary to do something to help, as well as clawbacks for misuse of funds?
<table>
<thead>
<tr>
<th>Provision</th>
<th>FY2020 cost</th>
<th>2020-30 cost</th>
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<tbody>
<tr>
<td>2020 Recovery rebate</td>
<td>-268,984</td>
<td>-292,374</td>
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<tr>
<td>Retirement funds</td>
<td>144</td>
<td>-2,560</td>
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<tr>
<td>RMD waiver for 2020</td>
<td>-10,620</td>
<td>-4,538</td>
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<td>$300 charitable for AGI</td>
<td>-310</td>
<td>-1,551</td>
</tr>
<tr>
<td>Increase charitable limits</td>
<td>-1,080</td>
<td>-1,093</td>
</tr>
<tr>
<td>§127 exclusion student debt</td>
<td>-215</td>
<td>-460</td>
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<tr>
<td>Employee retention credit</td>
<td>-49,115</td>
<td>-54,572</td>
</tr>
<tr>
<td>OASDI Deferral</td>
<td>-211,071</td>
<td>-12,312</td>
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<td>NOL changes</td>
<td>-80,032</td>
<td>-25,509</td>
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<td>Corporate MTC modification</td>
<td>-3,201</td>
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<td>§461(l) modification and delay</td>
<td>-74,339</td>
<td>-135,028</td>
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<td>§163(j) modification</td>
<td>-7,173</td>
<td>-13,390</td>
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<td>QIP technical correction</td>
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<tr>
<td>Excise tax change hand sanitizer</td>
<td>&lt;-500</td>
<td>&lt;-500</td>
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<tr>
<td>Exclusion PPP loan forgiveness</td>
<td>Not included in JCT report</td>
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The **Budgetary Effects of Laws Enacted in Response to the 2020 Coronavirus Pandemic, March and April 2020**

In March and April, four laws were enacted in response to the 2020 coronavirus pandemic. In the table below, the Congressional Budget Office summarizes their estimated effects on federal spending, revenues, and the deficit. Subsequent tables provide more detail about the laws’ effects on discretionary spending, mandatory spending, revenues, and mandates. The information is drawn from CBO’s cost estimates for the four laws.

### ESTIMATED EFFECTS ON THE BUDGET, 2020–2030 (IN BILLIONS OF DOLLARS)

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<tr>
<td><strong>PL. 116-123</strong> March 6, 2020</td>
<td>8</td>
<td>2</td>
<td>326</td>
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<td><strong>PL. 116-127</strong> March 18, 2020</td>
<td>95</td>
<td>95</td>
<td>988</td>
<td>321</td>
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<td><strong>PL. 116-136</strong> March 27, 2020</td>
<td>94</td>
<td>94</td>
<td>408</td>
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<td><strong>PL. 116-138</strong> April 24, 2020</td>
<td>0</td>
<td>0</td>
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<td>483</td>
</tr>
</tbody>
</table>

- **Increase in Discretionary Outlays**
- **Increase in Mandatory Spending**
- **Decrease in Revenues**
- **Increase in the Deficit**

**$2.4 trillion cost over 10 years**

[https://www.cbo.gov/publication/56403](https://www.cbo.gov/publication/56403)
**Tax system challenges & opportunities**

**Looking forward to improved tax systems**

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**OPPORTUNITIES**

1. More returns and other documents can be signed and submitted electronically (outside of gov’t, this has been reality for 20+ years)!

2. There are ways to provide funds without creating new tax breaks (such as deferral of 6.2% OASDI, accelerating MTC refund to corporations). Query: What more could have been done?

3. Illustration that employee safety net benefits can also be provided to self-employed (unemployment comp, leave credits).

4. Highlights need to identify an efficient technique to get payments to millions of individuals and businesses.

5. Highlights need for plain English drafting of laws and any guidance.

6. Highlights need for efficient ways to get information to people and businesses both online and otherwise for those without access to internet.

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**Looking forward to improved tax systems**

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**Points to ponder**
Looking Forward

Suggestions for today’s and future emergencies / disasters:

• Extended due dates should add caveat that if can pay on time, do so.
• Find ways for cash and property rich taxpayers to easily help others, including the gov’t.
• Law changes – make them as simple and clear as possible. Use checklists and simple forms for compliance.
• Find ways to free up funds already in the tax system such as credit carryovers.
• Avoid distribution of funds to those not in need or who misuse them (use clawbacks for example).

Consider requiring actions for funds, such as employers offering sick leave pay.

• Be creative in providing relief including gov’t acquisition of property not needed by businesses (use to pay taxes?).
• Provide penalty relief as mistakes are inevitable.
• Gov’t should be transparent on costs, budget deficits, and needs.
• Use of 21st century technology by gov’t agencies is crucial.
• Disasters highlight inequities – start work now to address them.
• Engage in identifying and actualizing lessons learned from tough times so we can be better prepared for future disasters. Gov’t needs effective systems to help predict and plan for the future.
Looking Ahead for Tax Systems Reforms

• Significant growth in national debt.
  • Committee for a Responsible Federal Budget
    • “Debt will exceed the size of the economy this year” 4/13/20
      • Budget deficits over $3.8 trillion in 2020 and $2.1 trillion in 2021
      • Estimate that debt will grow to 117% of GDP by 2025.
    • http://www.crfb.org/blogs/new-projections-debt-will-exceed-size-economy-year
  • WSJ, “U.S. Debt Is Set to Exceed Size of the Economy Next Year, a First Since World War II,” 9/2/20

• After recovery .... Likely to see tax increases.
  • Relevant to TCJA cuts expiring after 2025
  • Relevant to tax plans of those running for office in November 2020 election
  • A new perspective on tax and spending including infrastructure spending plans.

Queries: How will these problems be addressed?
How will opportunities be pursued?
Have we learned any lessons for future emergencies / disasters?
How do & how should changes in how we live and do business affect tax practice and tax systems?
Lessons for Tax Practice

• What lessons have we learned from pandemic tax practice?
• Where to help clients make better use of technology?
• How do we plan for post-pandemic practice?
• What will continue to change?
• How do we stay current and relevant?
Looking Forward to Needed Tax System Reforms

A. Full recognition of 21st century global, digital economy

B. Administrative reforms
   • Reduce identity theft
   • Modernize compliance systems – more focus on tech and not paper.
   • IRS funding for improved audit rate and modern tech

C. Recognition of technology in tax compliance
   • Compliance system still rooted in paper
     • Gen Z is rooted in digital and smartphone.
   • Return-free system?
     • Called for in Treasury’s 1984 report
     • GAO report Alternative Filing Systems (10/96)
       • Many countries have gov’t or employer prepare return
     • Camp’s HR 1 (2014) would have prohibited it
       • “SEC. 6103. PRE-POPULATED RETURNS PROHIBITED.”
Still Needed ...

D. Clarification of worker classification system
   • Revenue Act of 1978, Section 530 – Congress to study; added temp rules
   • 1982 – made permanent
   • Today – issues continue
     • But growing number of freelancers, gig workers
     • Benefits system also needs review for today’s workers (employees and contractors) with long life expectancies

E. Tax rules appropriate for growing gig economy
   • Gig broadly defined includes desire and ease of monetizing one’s assets and time/labor.
   • House Rpt 115-792, Committee on Appropriations (6/28/18)
     • Pg 17 – concern that growing gig economy will result in underpayment of SE tax; thinks IRS needs better strategy to address this.
     • 1099-K reporting (or new type of form) has too high of a filing threshold
       • California FTB estimate 70% gig workers received no information reporting form
         • https://www.ftb.ca.gov/law/meetings/09212018/3.pdf
   • Ways to simplify reporting?
   • Ways to help provide benefits?
F. Tax rules that are simpler and reflect today’s economy
   • Example of suggestions to modernize and simplify for small businesses:
     • [https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20190320-tec-small-business-modernization.pdf](https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/20190320-tec-small-business-modernization.pdf)

G. Lack of retirement savings for many individuals

H. Efforts to reduce the almost $400 billion annual tax gap.

I. Budget issues
   • Address growing levels of mandatory spending (including interest on the growing debt).
   • Fix Social Security and Medicare funding issues.
   • Fix gasoline excise tax systems to address underfunded Highway Trust Fund
     • Pre-TCJA Senate task force said a vehicle miles traveled system would take 10 years to implement. When will we start?
   • Funds needed to fix and improve infrastructure
Still Needed ...

J. Broader review of tax base for lower rates or to retain lower individual rates + review of appropriate rates for payroll taxes, regular income and capital gains rates. Also to evaluate equity, neutrality and economic growth and efficiency.

• Review list of over 100 tax expenditures [partial list on next slide]
  • GAO tips on how to do this - [https://www.gao.gov/assets/660/650371.pdf](https://www.gao.gov/assets/660/650371.pdf)
• Review effective federal tax rates for income quintiles with further breakdown of top 5%, 1% and .01%
Partial list starting at highest “cost”

Note – differences exist on what is a tax expenditure (such as item #60).

Table 3. INCOME TAX EXPENDITURES RANKED BY TOTAL FISCAL YEAR 2020-2029 PROJECTED REVENUE EFFECT

<table>
<thead>
<tr>
<th>Provision</th>
<th>2020</th>
<th>2021</th>
<th>2020-29</th>
</tr>
</thead>
<tbody>
<tr>
<td>123</td>
<td>Exclusion of employer contributions for medical insurance premiums</td>
<td>214,420</td>
<td>227,880</td>
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<tr>
<td>60</td>
<td>Exclusion of net imputed rental income</td>
<td>125,990</td>
<td>130,430</td>
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<tr>
<td>142</td>
<td>Defined contribution employer plans</td>
<td>83,520</td>
<td>90,680</td>
</tr>
<tr>
<td>67</td>
<td>Capital gains (except agriculture, timber, iron ore, and coal)</td>
<td>104,920</td>
<td>103,790</td>
</tr>
<tr>
<td>141</td>
<td>Defined benefit employer plans</td>
<td>73,631</td>
<td>75,807</td>
</tr>
<tr>
<td>69</td>
<td>Step-up basis of capital gains at death</td>
<td>51,750</td>
<td>53,640</td>
</tr>
<tr>
<td>58</td>
<td>Deductibility of mortgage interest on owner-occupied homes</td>
<td>27,090</td>
<td>29,580</td>
</tr>
<tr>
<td>118</td>
<td>Deductibility of charitable contributions, other than education and health</td>
<td>39,540</td>
<td>42,760</td>
</tr>
<tr>
<td>59</td>
<td>Capital gains exclusion on home sales</td>
<td>45,750</td>
<td>48,040</td>
</tr>
<tr>
<td>135</td>
<td>Child credit 14/</td>
<td>75,770</td>
<td>76,530</td>
</tr>
<tr>
<td>184</td>
<td>Deductibility of nonbusiness State and local taxes other than</td>
<td>7,110</td>
<td>7,510</td>
</tr>
<tr>
<td>5</td>
<td>Reduced tax rate on active income of controlled</td>
<td>40,000</td>
<td>42,980</td>
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<tr>
<td>145</td>
<td>Self-Employed plans</td>
<td>26,580</td>
<td>29,250</td>
</tr>
<tr>
<td>66</td>
<td>Treatment of qualified dividends</td>
<td>31,530</td>
<td>32,410</td>
</tr>
<tr>
<td>150</td>
<td>Social Security benefits for retired and disabled workers and spouses</td>
<td>30,900</td>
<td>32,490</td>
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<tr>
<td>79</td>
<td>Allow 20-percent deduction to certain pass-through income</td>
<td>53,132</td>
<td>54,668</td>
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<tr>
<td>143</td>
<td>Individual Retirement Accounts</td>
<td>21,650</td>
<td>22,760</td>
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<tr>
<td>162</td>
<td>Exclusion of interest on public purpose State and local bonds</td>
<td>24,580</td>
<td>24,340</td>
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<tr>
<td>57</td>
<td>Deductibility of State and local property tax on owner-occupied homes 17/</td>
<td>6,270</td>
<td>6,650</td>
</tr>
<tr>
<td>9</td>
<td>Credit for increasing research activities</td>
<td>16,810</td>
<td>18,380</td>
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<tr>
<td>50</td>
<td>Exclusion of life insurance death benefits</td>
<td>13,760</td>
<td>14,340</td>
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<tr>
<td>96</td>
<td>Tax credits and deductions for postsecondary education expenses 7/</td>
<td>16,390</td>
<td>16,310</td>
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<tr>
<td>126</td>
<td>Deductibility of medical expenses</td>
<td>6,640</td>
<td>7,310</td>
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<tr>
<td>1</td>
<td>Exclusion of benefits and allowances to armed forces personnel</td>
<td>12,910</td>
<td>11,660</td>
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<tr>
<td>63</td>
<td>Accelerated depreciation on rental housing (normal tax method)</td>
<td>8,370</td>
<td>8,800</td>
</tr>
<tr>
<td>125</td>
<td>Medical Savings Accounts / Health Savings Accounts</td>
<td>8,510</td>
<td>9,110</td>
</tr>
<tr>
<td>130</td>
<td>Deductibility of charitable contributions (health)</td>
<td>8,080</td>
<td>8,650</td>
</tr>
<tr>
<td>158</td>
<td>Exclusion of veterans death benefits and disability compensation</td>
<td>8,340</td>
<td>9,160</td>
</tr>
<tr>
<td>124</td>
<td>Self-employed medical insurance premiums</td>
<td>7,320</td>
<td>7,780</td>
</tr>
<tr>
<td>137</td>
<td>Exclusion of workers’ compensation benefits</td>
<td>9,770</td>
<td>9,870</td>
</tr>
<tr>
<td>62</td>
<td>Credit for low-income housing investments</td>
<td>9,110</td>
<td>9,360</td>
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<tr>
<td>6</td>
<td>Deduction for foreign-derived intangible income derived from</td>
<td>8,100</td>
<td>9,890</td>
</tr>
<tr>
<td>2</td>
<td>Exclusion of income earned abroad by U.S. citizens</td>
<td>7,280</td>
<td>7,640</td>
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<tr>
<td>75</td>
<td>Expensing of certain small investments (normal tax method)</td>
<td>-710</td>
<td>-1,040</td>
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<tr>
<td>61</td>
<td>Exception from passive loss rules for $25,000 of rental loss</td>
<td>6,430</td>
<td>6,780</td>
</tr>
<tr>
<td>116</td>
<td>Exclusion of employee meals and lodging (other than meals)</td>
<td>5,640</td>
<td>5,640</td>
</tr>
</tbody>
</table>

Still Needed ...

K. Regular review of tax system in light of trends in how we live and conduct business and what other countries are doing
Possible tax changes responding to trends

Changes in technology, ways of living and doing business can affect tax bases.

<table>
<thead>
<tr>
<th>Tax</th>
<th>Trend warranting response</th>
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<tbody>
<tr>
<td>Increasing concerns about climate change</td>
<td>Many existing tax rules may help contribute to this. Tax changes may be needed to address externalities of climate change. CFTC report on effects to financial system: <a href="https://www.cftc.gov/">Managing Climate Risk in the U.S. Financial System</a>, 9/9/20 (196 pages).</td>
</tr>
<tr>
<td>Gas tax based on cents per gallon</td>
<td>More fuel-efficient cars including those that don’t use gasoline. Federal rate of 18.4 cents/gallon unchanged since 1993.</td>
</tr>
<tr>
<td>Age exemptions</td>
<td>Not all seniors need an age-based tax break today.</td>
</tr>
<tr>
<td>Cigarette taxes</td>
<td>Emergence and growth of vapor / e-cigarette products.</td>
</tr>
<tr>
<td>Sales tax on tangible personal property</td>
<td>Digitization – iTunes, e-books, streaming movies, software downloads. Increasing consumption of personal services and untaxed items (see prior slide).</td>
</tr>
</tbody>
</table>
Surviving What’s New ... and Thriving Too!