

K&L Gates LLP

FFCRA AND CARES Act - Tax Provisions - Summary Guide - Updated as of October 8, 2020

The following chart outlines the tax provisions contained in the Families First Coronavirus Response Act (“FFCRA”), the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), the [Paycheck Protection Program Flexibility Act of 2020 \(“PPFPA”\)](#) and certain related notices and FAQs issued by the Internal Revenue Service (the “IRS”). The applicable guidance is loosely separated into relief for businesses and relief for individuals, recognizing that some provisions affect both individuals and businesses, and a [comparison of the affiliation & aggregation rules](#) chart for the Paycheck Protection Program and the Employee Retention Credit. Although detailed, this chart is not a substitute for legal and tax analysis. Additional information on COVID-19-related legislation and tax guidance can be found here: [Responding to COVID-19](#). References to the “Code” or “I.R.C.” throughout are to the Internal Revenue Code of 1986, as amended.

TABLE OF CONTENTS

(CTRL + click to follow links)

RELIEF FOR BUSINESSES

1. Paid Sick Leave Requirement
2. Tax Credits for Paid Sick Leave
3. Tax Credit for Paid Family Leave
4. Wages paid under Act, not wages for 3111 purposes
5. Paycheck Protection Program and related PPP Loan Forgiveness
6. Emergency EIDL Grants
7. Employee Retention Credit for Employers Subject to Closure Due to COVID-19
8. Delay of Payment of Employer Payroll Taxes
9. Code Section 6411 Timely Filed - Special Rules for Claiming Quick Refunds for Net Operating Loss Deductions and Prior Year Minimum Tax Liability of Corporations Refund Claims (AMT)
10. Net Operating Loss Modifications: Five Year Carryback of NOLS for 2018, 2019 and 2020
11. Net Operating Loss Modifications: Suspension of 80 percent Limit for 2018-2020
12. Net Operating Loss Modifications: NOL Technical Correction for fiscal year filers with an NOL arising in the 2017/2018 straddle year
13. Net Operating Loss Modifications: REIT Carryback Limitations
14. Net Operating Loss Modifications: Modified 80 percent Limit Calculation for 2021+
15. Net Operating Loss Modifications: Interactions with Section 965 Transition Years
16. Modification of Loss Limitations for Non-Corporate Taxpayers
17. Modification of Prior Year Alternative Minimum Tax Credit
18. Modification of Business Interest Limitation
19. Modification of Qualified Improvement Property
20. Excise Tax Exemption for Alcohol used in Production of Hand Sanitizer
21. Increase FMLA Limitation
22. Emergency Paid Sick Leave
23. Advanced Refunds of Payroll Credit for Paid Sick Leave and Paid Family Leave
24. Single Employer Plan Funding Rule Changes
25. Application of Co-Op and Small Employer Charity Pension Rules to Charitable Employers Whose Primary Exempt Purpose is to Provide Services to Mothers and Children
26. Suspension of Certain Aviation Excise Taxes
27. Effective Date for Employment Tax Credits Under the FFCRA

28. Penalty Relief for Failure to Deposit Employment Taxes (Qualified Leave and Retention Wages)

RELIEF FOR INDIVIDUALS

1. Tax Credits for Certain Self-Employed Individuals
2. Tax Credit for Self-Employed Family Leave
3. 2020 Individual Recovery Rebates
4. Temporary Suspension of Retirement Plan Early Withdrawal Penalty
5. Temporary Required Minimum Distribution (“RMD”) Waiver
6. Partial Above the Line Charitable Deduction
7. Modified Charitable Contribution Limits for Individuals
8. Exclusion of Certain Employer Student Loan Payments from Income
9. Ability of HDHPs to offer telehealth services with no deductible
10. Use of HSA Accounts to pay for Certain OTC Medication
11. Postponement of Generation-Skipping Transfer Tax Filing and Payment Deadlines
12. Postponement of April 15th Filing Deadlines
13. Further Expansion of Postponement Federal Tax Filing Deadlines
14. Allowance for HDHPs to Provide COVID-19 Benefits with \$0 Deductible
15. Exclusion from Substantial Presence Test
16. Foreign Earned Income Exclusion

COMPARISON OF THE AFFILIATION & AGGREGATION RULES

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Paid Sick Leave Requirement	FFCRA Section 5102 29 U.S.C. § 2611 29 U.S.C. § 2612 IRS Notice 2020-21 IRS Tax Credits for Required Paid Leave FAQs	Employers must provide paid sick time to employees who are unable to work (or telework) due to the effects of COVID-19. This requirement allows paid sick time provided by this section to be used before other paid leave that may be available to an employee, regardless of whether full-time or part-time (i.e., qualified leave under the FFCRA is in addition to employees’ preexisting leave entitlements). Paid sick time does not carry over from one year to the next. Employers cannot require an employee to find a replacement to cover hours an employee is using paid sick time. Employees who are unable to work for reasons described in (1), (2), or (3) in the next column:	An employee is entitled to paid sick leave if the employee: <ol style="list-style-type: none"> (1) is subject to a governmental quarantine or isolation order; (2) has been advised by a health care provider to self-quarantine; (3) is experiencing symptoms of COVID-19 and seeking a medical diagnosis; (4) is caring for an individual who is subject to governmental quarantine, isolation order or self-quarantine; 	Date Relief Granted: April 1, 2020 (See IRS Notice 2020-21) Relief Expiration Date: December 31, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>COVID-19-Related Tax Credits: Determining the Amount of the Tax Credit for Qualified Sick Leave Wages FAQs</p> <p>COVID-19-Related Tax Credits: Determining the Amount of the Tax Credit for Qualified Family Leave Wages FAQs</p> <p>COVID-19-Related Tax Credits: Determining the Amount of Allocable Qualified Health Plan Expenses FAQs</p>	<ul style="list-style-type: none"> • Full-time employees are entitled to 80 hours of paid sick time, which is available immediately for use. • Part-time employees are entitled to such paid sick time for the average number of hours the part-time employee works during an average two-week period. • Compensation for paid sick leave may not exceed \$511 per day, or \$5,110 in the aggregate. See limitations under “Emergency Paid Sick Leave” below. <p>Employees who take paid sick leave to care for another individual or child described in (4), (5), or (6) in the next column:</p> <ul style="list-style-type: none"> • Full-time employees are entitled to 80 hours of paid sick time at 2/3 the employee’s regular rate of pay. • Part-time employees are entitled to such paid sick time for the average number of hours the part-time employee works during an average two-week period. • Compensation for paid sick leave may not exceed \$200 per day, or \$2,000 in the aggregate. See limitations under “Emergency Paid Sick Leave” below. 	<p>(5) is caring for the employee’s child because the child’s school or child care provider is closed; or</p> <p>(6) is experiencing a substantially similar circumstance related to COVID-19 as specified by the Department of Health and Human Services, in consultation with the Department of Labor.</p> <p>An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from this paid sick time.</p>	
Tax Credits for Paid Sick Leave	<p>FFCRA Section 7001</p> <p>FFCRA Section 7005</p> <p>CARES Act Section 2301</p>	<p>Employers may take a credit against the employer share of FICA and Medicare taxes of 100 percent of an amount equal to the qualified sick leave wages paid by the employer each calendar quarter, subject to specified limitations. Wages are capped at 10 days per employee. If the employee is individually unable to work, compensation for paid sick leave may not exceed \$511 per day, or \$5,110 in the aggregate. If the employee is unable to work because the employee is caring for another individual or child, compensation for paid sick leave may not exceed</p>	<p>Eligible employers that are entitled to claim the refundable tax credits are businesses and tax-exempt organizations that (1) have fewer than 500 employees, and (2) are required under the FFCRA to pay “qualified sick leave wages.”</p> <p>“Qualified sick leave wages” are wages and compensation (and any qualified health plan expenses) an employer is required to be pay to an employee who is unable to work or telework because of either the employee’s personal health status (i.e., the employee is under COVID-19 quarantine, self-quarantine or has COVID-19</p>	<p>Date Relief Granted: April 1, 2020 (See IRS Notice 2020-21)</p> <p>Relief Expiration Date: December 31, 2020</p>

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Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>I.R.C. § 45S</p> <p>I.R.C. § 106(a)</p> <p>I.R.C. § 3111(a), (e) and (f)</p> <p>I.R.C. § 3121(a)</p> <p>I.R.C. § 3221(a)</p> <p>I.R.C. § 3231(e)</p> <p>31 U.S.C. § 1324</p> <p>IRS Notice 2020-21</p> <p>IRS Notice 2020-22</p> <p>IRS Notice 2020-54</p> <p>T.D. 9904, Recapture of Excess Employment Tax Credits under the Families First Act and the CARES Act</p> <p>COVID-19-Related Tax Credits: General Information FAQs</p>	<p>\$200 per day, or \$2,000 in the aggregate. See limitations under “Paid Sick Leave Requirement” discussed above.</p> <p>Employers may elect not to have this section apply. The credit does not apply to the government of the United States, any State or political subdivision thereof, or any agency or instrumentality. Credits are limited to the employer’s share of Social Security tax (6.2 percent) imposed on those wages, increased by the employer’s allocable cost of maintaining eligible group health plan insurance coverage for the employee during the sick leave period, and reduced by credits allowed by Code Sections 3111(e) and (f) for such quarter.</p> <p>The tax credits allowed for paid sick leave are increased by the amount of tax imposed by the Medicare Tax (1.45 percent) (Code Section 3111(b)) on paid sick leave wages. See FFCRA Section 7005.</p> <p>Ordinarily, employers will report their total qualified sick and family leave wages and the related credits for each quarter on its quarterly federal employment tax returns (generally, Form 941). The amount of qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer’s share of Medicare tax on the qualified leave wages) in excess of the social security tax the Eligible Employer owes for the quarter is refundable. Excess credits over the employment taxes owed by employers are refundable under Code Sections 6402 and 6413, and the manner of refund is the same as the credit provisions under 31 U.S.C. § 1324. However, a refund, credit, or an advance of any portion of this credit in excess of the amount the employer is entitled to is an erroneous refund, and shall be treated as an underpayment of taxes under which the IRS is authorized to seek repayment. However, see also “Advanced Refunds of Payroll Credit for Paid Sick Leave and Paid Family Leave” in the discussion below.</p> <p>See also “Penalty Relief for Failure to Deposit Employment Taxes (Qualified Leave and Retention Wages)” in the discussion below.</p>	<p>symptoms and is seeking medical diagnosis) or the employee’s need to care for others (i.e., the employee is carrying for someone with COVID-19 or for a child whose school or place of care is closed or child care provider is unavailable).</p> <p>Increases for group health plan coverage are limited to amounts excludable from employee’s income under Code Section 106(a).</p> <p>Credits will increase employer gross income by the amount of the credit. Any wages taken into account in determining this credit will not be taken into account for purposes of determining the credit allowed under Code Section 45S for paid family and medical leave (effectively denying a double benefit).</p> <p>Any wages taken into account in determining this credit will reduce the available credit amount that may be taken against wages paid for purposes of the Employee Retention Credit under the CARES Act Section 2301. See limitations under “Employee Retention Credit for Employers Subject to Closure Due to COVID-19”.</p> <p>Employers are required to report the amount of qualified sick leave wages paid to employees either on Form W-2, Box 14 or on a separate statement. Self-employed individuals claiming qualified sick leave equivalent credits must then report these qualified sick leave wage amounts on Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals.</p>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	COVID-19-Related Tax Credits: Determining the Amount of the Tax Credit for Qualified Sick Leave Wages FAQs COVID-19-Related Tax Credits: Determining the Amount of Allocable Qualified Health Plan Expenses FAQs COVID-19-Related Tax Credits: How to Claim the Credits FAQs COVID-19-Related Tax Credits: Special Issues for Employers FAQs COVID Tax Tip 2020-63 IRS Publication 5419: New			

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	Employer Tax Credits COVID Tax Tip 2020-67 IR-2020-169			
Tax Credit for Paid Family Leave	FFCRA Section 7003 FFCRA Section 7001 & 7005 CARES Act Section 2301 I.R.C. § 3111(a), (e) and (f) I.R.C. § 3121(a) I.R.C. § 3221(a) I.R.C. § 3231(e) I.R.C. § 6402(a) I.R.C. § 6413(b) 31 U.S.C. § 1324 IRS Notice 2020-21 IRS Notice 2020-22	<p>Employers may take a credit against the employer share of FICA and Medicare taxes of 100 percent of an amount equal to the qualified family leave wages paid by the employer each calendar quarter, subject to specified limitations. The amount of qualified family leave wages that may be taken into account for each employee is limited to \$200 per day and \$10,000 for all calendar quarters. See also “Increase FMLA Limitation” below.</p> <p>Employers may elect not to have this section apply. The credit does not apply to the government of the United States, any State or political subdivision thereof, or any agency or instrumentality. Credits are limited to the employer’s share of Social Security tax (6.2 percent) imposed on those wages, increased by the employer’s allocable cost of maintaining eligible group health plan insurance coverage for the employee during the sick leave period, and reduced by credits allowed by Code Sections 3111(e), 3111(f) and FFCRA Section 7001.</p> <p>The tax credits allowed for paid family leave are increased by the amount of tax imposed by the Medicare Tax (1.45 percent) (Code Section 3111(b)) on paid family leave wages. See FFCRA Section 7005.</p> <p>Ordinarily, employers will report their total qualified sick and family leave wages and the related credits for each quarter on its quarterly federal employment tax returns (generally, Form 941). The amount of qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer’s share of Medicare tax on the qualified leave wages) in excess of the social security tax the Eligible Employer owes for the quarter is refundable. Excess credits over the employment taxes owed by employers are refundable under Code Sections 6402 and 6413, and the manner of refund is the same as the credit provisions</p>	<p>Eligible employers that are entitled to claim the refundable tax credits are businesses and tax-exempt organizations that (1) have fewer than 500 employees, and (2) are required under the FFCRA to pay “qualified family leave wages.”</p> <p>“Qualified family leave wages” are wages and compensation (and any qualified health plan expenses) an employer is required to pay to an employee who is unable to telework because the employee is caring for a child whose school or place of care is closed or child care provider is unavailable due to COVID-19-related reasons.</p> <p>Increases for group health plan coverage are limited to amounts excludable from employee’s income under Code Section 106(a).</p> <p>Credits will increase employer gross income by the amount of the credit. Any wages taken into account in determining this credit will not be taken into account for purposes of determining the credit allowed under Code Section 45S for paid family and medical leave (effectively denying a double benefit).</p> <p>Any wages taken into account in determining this credit will reduce the available credit amount that may be taken against wages paid for purposes of the Employee Retention Credit under the CARES Act Section 2301. See limitations under “Employee Retention Credit for Employers Subject to Closure Due to COVID-19” in the discussion below.</p> <p>Employers are required to report the amount of qualified family leave wages paid to employees either on Form W-2, Box 14 or on a separate statement. In labeling this amount, the employer must</p>	<p>Date Relief Granted: April 1, 2020 (See IRS Notice 2020-21)</p> <p>Relief Expiration Date: December 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	IRS Notice 2020-54 T.D. 9904, Recapture of Excess Employment Tax Credits under the Families First Act and the CARES Act COVID-19-Related Tax Credits: General Information FAQs COVID-19-Related Tax Credits: Determining the Amount of the Tax Credit for Qualified Family Leave Wages FAQs COVID-19-Related Tax Credits: Determining the Amount of Allocable Qualified Health Plan Expenses FAQs COVID-19-Related Tax	<p>under 31 U.S.C. § 1324. However, a refund, credit, or an advance of any portion of this credit in excess of the amount the employer is entitled is an erroneous refund, and shall be treated as an underpayment of taxes under which the IRS is authorized to seek repayment. However, see also “Advanced Refunds of Payroll Credit for Paid Sick Leave and Paid Family Leave” in the discussion below.</p> <p>See also “Penalty Relief for Failure to Deposit Employment Taxes (Qualified Leave and Retention Wages)” in the discussion below.</p>	<p>use the following or similar language: “emergency family leave wages.” If a separate statement is provided, it must be included with the Form W-2 sent to the employee.</p>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	Credits: How to Claim the Credits FAQs COVID-19-Related Tax Credits: Special Issues for Employers FAQs COVID Tax Tip 2020-63 IRS Publication 5419: New Employer Tax Credits COVID Tax Tip 2020-67 IR-2020-169			
Wages paid under Act, not wages for 3111 purposes	FFCRA Section 7005 FFCRA Sections 7001 and 7003 I.R.C. § 1324 I.R.C. § 3111(a), (b), (e), and (f) I.R.C. § 3221(a)	<p>Wages required to be paid to employees under the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act shall not be considered wages for purposes of the Federal Insurance Contributions Act ("FICA") and Railroad Retirement Tax Act ("RRTA").</p> <p>The tax credits allowed for paid sick leave (FFCRA Section 7001) and paid family leave (FFCRA Section 7003) are increased by the amount of tax imposed by the Medicare Tax (1.45 percent) (Code Section 3111(b)) on paid sick leave wages and paid family leave wages.</p> <p>Note that employers may elect not to have FFCRA Sections 7001 or 7003 apply. As stated earlier, these credits are limited to the employer's share of FICA and Medicare taxes imposed on those wages, and are increased by the employer's allocable cost of maintaining eligible group health plan insurance coverage for the employee during the sick leave</p>	For denial of double benefit with respect to the credit increase, see FFCRA Sections 7001 and 7003 above.	Date Relief Granted: April 1, 2020 (See IRS Notice 2020-21) Relief Expiration Date: December 31, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>IRS Notice 2020-21</p> <p>IRS Tax Credits for Required Paid Leave FAQs</p>	<p>and/or family leave period, and reduced by credits allowed by Code Sections 3111(e) and (f). For Section 7003, the credit is also reduced by FFCRA Section 7001.</p> <p>Excess credits over the employment taxes owed by employers are refundable under Code Sections 6402 and 6413(b), and the manner of refund is the same as the credit provisions under 31 U.S.C. § 1324.</p>		
Paycheck Protection Program and related PPP Loan Forgiveness	<p>CARES Act Section 1102</p> <p>CARES Act Sec. 1106 and related IFRs</p> <p>PPPHCE Act Sec. 101(a) (April 24, 2020), P.L. 116-139.</p> <p>15 U.S.C. 636(a) Small Business Act Sec. 7(a)</p> <p>IRC §61(a)(11) explicitly inapplicable.</p> <p>Treasury / SBA FAQs</p> <p>SBA Website: "Frequently Asked Questions Regarding Participation of Faith-Based Organizations in</p>	<p>The CARES Act Paycheck Protection Program ("PPP") provides federal guarantees for certain small businesses and nonprofits that take out loans for the purpose of paying (1) payroll costs, (2) employee health care costs, (3) employee salaries, commissions, etc., (4) mortgage interest, (5) rent, (6) utilities, and/or (7) interest on debts incurred prior to the covered period of February 15, 2020, through August 8, 2020. Details on eligibility for the program are further described here: [Nonprofit FAQ] and PPP Guide. The Interim Final Rules adopt the same standard as the PPP Loan forgiveness and require that seventy-five percent of the loan proceeds be used for payroll expenses even if the borrower does not seek loan forgiveness [Nonprofit FAQ] and PPP Guide. On August 4, 2020 the SBA and the Treasury issued a set of FAQs specifically designed to help loan recipients calculate the forgiveness amount. As of August 11, 2020, the loan forgiveness FAQ also discusses the effects of EIDL grants on PPP Loan Forgiveness amounts, which we have previously noted in the EIDL section of this Guide.</p> <p>Although amounts paid to independent contractors or sole proprietors do not count as payroll costs, independent contractors and sole proprietorships may apply for their own PPP Loans and PPP Loan forgiveness if they meet the eligibility requirements.</p> <p>"Payroll costs" do <u>not</u> include individual compensation in excess of an annualized salary of \$100,000 (prorated for the covered period), taxes imposed by or withheld under FICA, income tax withholding, or the Railroad Retirement Tax Act, compensation for nonresident employee, or qualified sick or family leave for which a credit is allowed under FFCRA Sections 7001 or 7003.</p> <p>Loans made under the PPP will be eligible for forgiveness in an amount equal to payroll costs incurred and payments made during the covered</p>	<p>Applicants for PPP Loans must certify that the loan is necessary to support the applicant's ongoing operation regardless of whether the applicant intends to later seek loan forgiveness. SBA guidance suggests that public companies with substantial market value and access to capital markets will be unlikely to be able to make this certification in good faith. Private companies with access to capital are similarly unlikely to be able to make the certification in good faith. The SBA intends to review loans in excess of \$2M prior to granting loan forgiveness. Loans in which the original principal amount was over \$2M CANNOT be paid down to below \$2M to avoid review.</p> <p>A safe harbor in Section III, Question 5 of the April 24 IFR provides that borrowers who took out a PPP loan prior to April 24, 2020 and repay the loan in its entirety by May 7, 2020 will be deemed to have made the above certification in good faith. This Safe Harbor has been extended to May 18, 2020 in the Department of Treasury (the "Treasury") /SBA FAQs.</p> <p>PPP Loans are limited to an aggregate maximum of \$20,000,000 per corporate group. Treasury IFRs state that businesses are part of a single corporate group if they are majority owned, whether directly or indirectly, by a common parent.</p> <p>Applicants for loan forgiveness must submit an application with documentation verifying the number of full-time employees on payroll and pay rates for the covered period and certifying the loan was used to retain employees. Additional information may be required by the lenders implementing the program.</p>	<p>Relief Granted on March 27, 2020</p> <p>Covered Period:</p> <p>Feb. 15, 2020 through December 31, 2020 (inclusive)</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	the PPP and EIDL Programs" IRS Notice 2020-32 Paycheck Protection Flexibility Act of 2020 (HR 7010) PPP Extension Act (PL 116-147) PPP Loan Forgiveness FAQs IRS Announcement 2020-12 SBA Procedural Notice 5000-20057	<p>period (period beginning on the date on which the lender makes the first disbursement of the covered loan to the borrower and ending on <u>the earlier of</u> the date that is 24 weeks after the date of such origination or December 31, 2020). Borrowers may <u>not</u> make multiple draws from the loan to delay the start of the period. Forgiven amounts will <u>not</u> be included in the borrower's taxable income. The IRS has directed lenders not to file Form 1099-C information returns with respect to amounts forgiven under this act. The statute is silent on whether taxpayers may deduct expenses related to this non-included forgiven debt.</p> <p>Borrowers with PPP loans issued prior to the enactment date for the Paycheck Protection Flexibility Act of 2020 may elect to continue using the original eight-week covered period beginning on the date on which the lender made the first disbursement of the covered loan to the borrower.</p> <p>For administrative convenience, borrowers with bi-weekly (or more frequent) payroll cycles may elect to use an alternative covered period that begins on the first day of the first payroll cycle in the covered period and continues for the following eight weeks. This alternative covered period is only applicable to payroll expenses.</p> <p>Payroll costs include compensation paid to furloughed employees, bonuses, and hazard pay.</p> <p>Applicants for loans under the PPP cannot receive loans for the same purpose and duplicative in amount under Section 7(a) of the Small Business Act during the covered period.</p> <p>The loan forgiveness amount is equal to the principal and interest paid in an amount equal to the borrower's documented eligible costs, reduced by the amount of loan proceeds used for non-payroll costs in excess of 40 percent of the full amount of the loan. Continuing guidance is expected on loan forgiveness.</p>	<p>The amount of loan forgiveness may not exceed the principal amount under the covered loan.</p> <p>The amount of loan forgiveness will be reduced proportionally by any reduction in the number of employees retained as compared to February 15, 2020. The amount of reduction will be calculated by multiplying the total of eligible costs by the number obtained by dividing the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by</p> <p>For <u>non-seasonal employers</u>, the average number of full-time equivalent employees per month employed by the eligible recipient during either the period beginning on February 15, 2019, and ending on June 30, 2019, or, at the election of the borrower, the period beginning on January 1, 2020, and ending on February 29, 2020.</p> <p>For <u>seasonal employers</u>, the average number of full-time equivalent employees employed during the period beginning on February 15, 2019, and ending on June 30, 2019.</p> <p>The <u>average number of full-time equivalent employees per month</u> is calculated based on the average number of full-time equivalent employees for each pay period falling within the month.</p> <p>The amount of loan forgiveness will also be reduced proportionally by any reduction greater than 25 percent in the pay (measured during the most recent full quarter such employee was employed prior to the covered loan period) of any employee who received wages or salary, at an annualized rate <u>not</u> exceeding \$100,000 during any single pay period in 2019. In order to avoid a double reduction, only the portion of an employer's decline in wages that is <i>not</i> due to a reduction in the number of FTE employees is used to calculate the reduction resulting from a decrease in pay.</p>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>The following costs are eligible for forgiveness under the CARES Act if they are incurred during the covered period of eight weeks beginning on the origination date of the PPP Loan (unless otherwise specified below):</p> <ul style="list-style-type: none"> a) Payroll costs as defined in paragraph 36 of Section 7(a) of the Small Business Administration (“SBA”) (as amended by the CARES Act), b) Costs related to continuing health care benefits during periods of paid sick, medical, or family leave, including costs of vision and dental benefits, c) Mortgage interest (but <u>not</u> principal) payments incurred in the ordinary course of business before February 15, 2020, d) Rent under a lease in force before February 15, 2020, e) Utility payments for certain services for which service began before February 15, 2020, f) Interest (but <u>not</u> principal) on any other debt obligations so long as such debt obligations were incurred prior to February 15, 2020, and g) Refinancing Economic Injury Disaster Loans (“EIDLs”) <u>used for payroll costs</u> made between January 31, 2020, and April 3, 2020. <p>Employers may take advantage of the employer payroll tax deferral offered under CARES Act Section 2302.</p> <p>Borrowers whose PPP Loan Forgiveness application is denied, in whole or in part, may appeal the decision. Appeals must be properly served to the Associate General Counsel of the SBA and must include:</p> <ul style="list-style-type: none"> a) The basis for jurisdiction, 	<p>Eligible recipients may receive forgiveness for additional wages paid to tippable employees as described in section 3(m)(2)(A) of the Fair Labor Standards Act.</p> <p>Reductions that are corrected, either by re-hiring the previously eliminated employee <u>or</u> by hiring a new employee, no later than December 31, 2020, shall not be counted as reductions. If an employer makes a good faith, written offer of rehire which an employee rejects, and the employer documents such rejection, such employee will be not count against that employer’s loan forgiveness eligibility. Note that employees who reject reemployment offers may forfeit eligibility for continued unemployment compensation. Employees who are fired for cause, voluntarily resign, or voluntarily request schedule reductions do not count towards an employer’s reduction of FTEs.</p> <p>Employers who are able to document in good faith that they were unable to rehire employees, unable to find similarly qualified individuals to fill open positions, or were unable to return to the same level of business as before February 15, 2020 due to compliance with COVID-19 health guidelines will not have their loan forgiveness amount reduced in proportion to their reduction in number of employees.</p> <p>The loan forgiveness amount will be reduced if more than 40 percent of the loan proceeds are used for non-payroll costs such as mortgage interest, covered rent obligations, or covered utility payments. The amount of loan forgiveness requested for non-payroll costs is limited to costs attributable to the borrower’s trade or business. For example, eligible non-payroll costs may not include amounts attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, in the case of a home-based business, household expenses. Rent payments to related parties are eligible for loan forgiveness as long as (1) the amount of forgiveness for rent/lease payments to a related party is no more than the amount of mortgage interest owed during the Covered Period, and (2) the lease and mortgage were entered into prior to February 15, 2020. Mortgage interest payments made to a related party are not eligible for loan forgiveness. Any</p>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>b) A copy of the SBA loan review decision being appealed (or, if unavailable, a description of same),</p> <p>c) A full and specific statement describing why the SBA loan review decision is believed to be erroneous,</p> <p>d) The relief being sought,</p> <p>e) Signed copies of payroll tax filings actually reported to the IRS, along with quarterly State wage reporting and unemployment insurance filings actually filed with the relevant authorities for the relevant periods,</p> <p>f) Signed copies of federal tax returns actually filed with the IRS with appropriate schedules documenting income for self-employed individuals or partners in a partnership, and</p> <p>g) The name, address, telephone number, email address, and signature of the appellant or its attorney.</p> <p>If signed copies in items (e) and/or (f) are not provided, the taxpayer must provide an explanation of why such items are either not relevant or not available. Individual owners of a borrower and lenders to a borrower do not have standing to appeal an SBA loan review decision.</p> <p>Appeals must be filed within 30 calendar days after the <u>earlier</u> of:</p> <p>a) The appellant's receipt of the final SBA loan review decision, or</p> <p>b) Notification from the lender of the final SBA loan review decision.</p> <p>To prevail in its appeal, the appellant has the burden of establishing, by a preponderance of the evidence, that the SBA loan review decision was based on a clear error of fact or law. Additional details on the</p>	<p>percentage of common ownership of the property and the business owner constitutes a related party.</p> <p>Loan forgiveness is only available for costs incurred in the eight weeks following the issuance of the loan.</p> <p>Undocumented loans will not be eligible for loan forgiveness.</p> <p>Individuals with than 5% ownership stake in a C- or S- Corporation PPP borrower (i.e., owner-employees) are not subject to the owner-employee compensation rule. This exemption under the Section III(1) of the IFR dated August 24, 2020 is intended to cover owner-employees who have no meaningful ability to influence the decisions over how loan proceeds are allocated.</p> <p>Payment or nonpayment of fees to an agent or other third party is not material to the SBA's guarantee of a loan or to the SBA's payment of fees to lenders.</p> <p>Employers who take out PPP Loans are not eligible for the Employee Retention Credit under CARES Act Section 2301.</p> <p>Employers whose PPP Loans are forgiven may not take deductions for payroll expenses paid for with funds from the forgiven PPP loan.</p> <p>PPP Loans are limited to entities that either 1) have no more than 500 employees or, 2) meet the applicable SBA size standard for their industry. Because PPP Loans are SBA Loans, borrowers are bound by SBA affiliation rules unless specifically exempted under the CARES Act. SBA affiliation rules include employees of foreign affiliates when calculating a borrower's size.</p> <p>Employers with a 20% or more equity owner who (i) is presently incarcerated for any felony, criminal information, arraignment, or other means by which formal criminal charges are brought in ANY jurisdiction, or (ii) has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation for (a) a felony involving fraud, bribery, embezzlement, or a false</p>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>appeals process are available in the SBA Loan Review Decision Appeals IFR issued on August 11, 2020.</p>	<p>statement in a loan application or an application for federal financial assistance within the last five years or (b) any other felony within the last year are ineligible for PPP Loans,</p> <p>Due to conflicting SBA guidance, borrowers who applied for loans prior to May 5, 2020 and excluded non-U.S. employees from headcount calculations will not be found to be ineligible. Such borrowers will also not be found to have made inaccurate certifications solely on the basis of having excluded non-U.S. employees from headcount numbers.</p> <p><i>Change of Ownership</i></p> <p>Borrowers with outstanding PPP Loan amounts, including amounts for which forgiveness applications have been submitted but not yet granted, generally must obtain SBA consent for any proposed change of ownership.</p> <p>Consent may be obtained from the PPP Lender in lieu of from the SBA if the transfer of ownership is less than 50% of the PPP borrower's equity or, if greater than 50%, the Borrower completes the following three requirements:</p> <ul style="list-style-type: none"> • Borrower has fully utilized the PPP proceeds; AND • Borrower has submitted a forgiveness application; AND • Merger parties place the loan balance in an escrow account in the control of the PPP Lender. <p>Otherwise, changes of ownership are subject to the following requirements:</p> <ul style="list-style-type: none"> • Transaction documents must be submitted to the SBA, making them subject to FOIA requests, Such documents must include: <ul style="list-style-type: none"> ○ The reason the buyer is unable to repay or submit a forgiveness application for the PPP Loan or escrow funds as required in ownership changes exempt from SBA approval ○ Transaction Details ○ Copy of executed PPP note 	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
			<ul style="list-style-type: none"> o Any letter of intent and the purchase or sale agreement setting forth the responsibilities of the PPP borrower, seller (if different from PPP borrower), and buyer o Disclosure of any existing buyer PPP loans (including SBA loan numbers) o List of all owners of 20% or more of the purchasing entity • In asset deals, the buyer must assume the PPP loan. • SBA must have a 60-day review period to provide consent • Stock transactions that do not require SBA consent still require disclosure to the SBA, within 5 days of the closing date, of the identities and ownership percentages of all new equity owners and disclosure of the identity and EIN of all owners with 20% of more equity in the buyer • If an escrow account is required, the location of the account and the amount of funds contained in the account. <p>Additional details on the SBA approval process are available in SBA Procedural Notice 5000-20057 and through our webinar, COVID-19: Buying and Selling PPP Borrowers</p>	
Emergency EIDL Grants	<p>CARES Act Sec. 1110</p> <p>PPPHCE Act Secs. 101(b) and (c)</p> <p>15 USC §636(b)(2)</p> <p>15 USC §636(a)</p>	<p>Expands eligibility for loans under section 7(b)(2) of the Small Business Act (“SBA”) and provides for emergency advance grant of certain loan amounts prior to a final decision on the full loan application.</p> <p>Advances paid to applicants under this section need not be repaid, even if the applicant is ultimately denied its SBA Section 7(b)(2) loan.</p> <p>Amounts advanced under this section will reduce the amount of loan forgiveness available for payroll costs under Section 7(a) of the SBA.</p> <p>Applicants who receive advances under this section and then later transfer into or are approved for the loan program under Section 7(a) of the SBA shall have the amount of their loan forgiveness reduced by the amount of their advance under this provision.</p>	<p>During the covered period, eligibility for loans under Section 7(b)(2) of the SBA is expanded to include “eligible entities” in addition to small business concerns, private nonprofit organizations, and small agricultural cooperatives.</p> <p>Eligible entities are:</p> <ul style="list-style-type: none"> a) Any business with not more than 500 employees, b) Any individual operating under a sole proprietorship, either with or without employees, or as an independent contractor, c) A cooperative with not more than 500 employees, 	<p>Covered Period:</p> <p>Jan. 31, 2020 through Dec. 31, 2020</p>

Relief for Businesses				
<u>Subject</u>	<u>Applicable Law and Regulations</u>	<u>General Description of Relief</u>	<u>Conditions of Relief</u>	<u>Effective Dates</u>
			<ul style="list-style-type: none"> d) An ESOP as defined in Section 3 of the SBA with not more than 500 employees, or e) A tribal small business concern as defined in Section 31(b)(2)(C) of the SBA. f) An agricultural enterprise as defined in section 18(b) of the SBA with not more than 500 employees <p>Eligible entities, including small business concerns, private nonprofit organizations, and small agricultural cooperatives, that apply for loans under Section 7(b)(2) of the SBA may request an advance by self-certifying under penalty of perjury that the requesting entity is an eligible entity as defined above. Such advances:</p> <ul style="list-style-type: none"> a) Must be requested within three days after the administrator receives the application, b) May not exceed \$10,000, c) May be used for any allowable purpose under Section 7(b)(2) of the SBA, including <ul style="list-style-type: none"> a. Providing paid sick leave to employees directly affected by COVID-19, b. Maintaining payroll to retain employees during business disruptions or substantial slowdowns, c. Meeting increased costs to obtain raw materials due to supply chain disruptions, d. Making rent or mortgage payments, and e. Repaying obligations that cannot otherwise be met due to revenue losses. 	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Employee Retention Credit for Employers Subject to Closure Due to COVID-19	<p>CARES Act, Section 2301</p> <p>CARES Act Section 1102</p> <p>FFCRA Sections 7001 and 7003</p> <p>I.R.C. § 45S</p> <p>I.R.C. § 51</p> <p>I.R.C. § 52(a) and (b)</p> <p>I.R.C. § 414(m) and (o)</p> <p>I.R.C. § 448(c)</p> <p>I.R.C. § 501(a) and (c)</p> <p>I.R.C. § 3111(a), (e) and (f)</p> <p>I.R.C. § 3121(a)</p> <p>I.R.C. § 3221(a)</p> <p>I.R.C. § 3231(e)</p> <p>I.R.C. § 3511(d)(2)</p> <p>I.R.C. § 6402(a)</p>	<p>Employers may claim a refundable payroll tax credit for 50 percent of the “qualified wages” (i.e., qualified retention wages, maximum \$10,000 for all calendar quarters, including qualified health plan expenses and certain pre-tax salary reduction contributions) paid to each employee of such employer for each calendar quarter. The maximum credit with respect to any employee is \$5,000.</p> <p>The credit is available to employers carrying on a “trade or business” (which has the same meaning when used in Code Section 162) in calendar year 2020 whose:</p> <p>(1) operations were fully or partially suspended during any calendar quarter due to a Federal, State or local “governmental order”, or</p> <p>(2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year (i.e., a “significant decline in gross receipts”).</p> <p>“Governmental orders” are orders from an appropriate governmental authority that limit commerce, travel, or group meetings due to COVID-19 in a manner that affects an employer’s operation of its trade or business, including orders that limit hours of operation and workplace closures for cleaning and disinfecting. Taxpayers should review the IRS FAQs for the Employee Retention Credit which discuss when an employer operating an essential and/or non-essential business is “partially suspended” due to a governmental order. For more information regarding the application of the aggregation rule when determining whether an employer is “partially suspended”, see the “Comparison of the Affiliation & Aggregation Rules” chart discussed below.”</p> <p>For employers satisfying (2) above, eligibility ceases at the end of the calendar quarter in which gross receipts are greater than 80 percent of gross receipts for the same calendar quarter for the prior year. “Gross receipts” for purposes of this credit has the same meaning as when used under Code Section 448(c), and is determined based on the entire aggregated group. For more information regarding the application of the aggregation rule for calculation of a single employer’s gross receipts, see the “Comparison of the Affiliation & Aggregation Rules” chart discussed below.”</p>	<p>Taxpayers are advised to review the IRS FAQs for the Employee Retention Credit which, among other things, attempts to clarify issues surrounding employer eligibility. However, the conclusions reached and examples provided by the IRS are less intuitive and contain inconsistencies which are harder to reconcile with CARES Act objectives and policy.</p> <p>Eligible employers may include:</p> <ul style="list-style-type: none"> • Employers who operate an essential business if, under the facts and circumstances, more than a nominal portion of its business operations are suspended by a governmental order. • Employers where the workplace is closed by a governmental order, but the employer’s workplace remains open for other purposes, or the employer is able to continue certain operations remotely. However, if all of the employer’s business operations may continue, even if subject to modification, it is not considered a partial suspension of business operations due to a governmental order (unless the modification required by the governmental order has more than a nominal effect on the business operations). • Employers (including essential businesses) that reduce operating or normal working hours due to a governmental order. • Employers that operate a trade or business in multiple locations and are subject to State and local governmental orders limiting operations in some, but not all, jurisdictions. • Otherwise, employers that operate a trade or business in calendar year 2020 which experience a significant decline in gross receipts (i.e., where gross receipts declined by more than 50 percent when compared to the same quarter in the prior year). 	<p>Date Relief Granted: March 13, 2020</p> <p>Relief Expiration Date: December 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>I.R.C. § 6413(b)</p> <p>15 U.S.C. § 636(a) Small Business Act § 7(a)</p> <p>31 U.S.C. § 1324</p> <p>IRS Notice 2020-22</p> <p>T.D. 9904, Recapture of Excess Employment Tax Credits under the Families First Act and the CARES Act</p> <p>IRS Employee Retention Credit FAQs</p> <p>IRS Form 7200, Instructions, and IRS COVID Tax Tip 2020-47</p> <p>IRS Form 941</p> <p>IRS COVID Tax Tip 2020-58</p> <p>IRS Publication 5419: New</p>	<p>“Qualified wages” are:</p> <ul style="list-style-type: none"> For employers with an average of greater than 100 full-time employees, wages paid to employees when they are not providing services (i.e., employees who did not work or were working a reduced schedule but being paid for more hours than they worked) for reasons stated under (1) or (2) above. For employers with an average of 100 or fewer full-time employees, all employee wages whether they worked or not. Qualified wages paid or incurred by an employer with respect to an employee for any period are limited by to the amount the employee would have been paid for working an equivalent duration the 30 days immediately preceding the period. <p>“Qualified health plan expenses” are amounts paid or incurred by an employer that are properly allocable to employees’ qualified wages to provide and maintain a group health plan (including any employee pre-tax salary reduction contribution), but only to the extent that these amounts are excluded from the employees’ gross income. The term does not include amounts the employee paid for with after-tax contributions. However, an employer may not treat health plan expenses allocable to the time for which the employees are receiving wages as qualified wages, rather only the portion of health plan expenses allocable to the time that the employees are not providing services are treated as qualified wages. If no wages are paid to an employee, but the employer continues to cover 100 percent of the health plan expenses that are allocable to the time that the employees are not providing services, such health plan expenses are qualified wages.</p> <p>Employers may elect not to apply this credit for any calendar quarter by not claiming the credit on the employer’s employment tax return. If an employer does not claim the credit for one calendar quarter, it is not prohibited from claiming the credit in a subsequent calendar quarter</p>	<p>Ineligible employers may include:</p> <ul style="list-style-type: none"> Employers who voluntarily suspend operation of a trade or business or reduce hours and are not subject to any governmental orders that restrict operations. Employers whose workplaces are closed by a governmental order, but who are able to continue comparable operations prior to the closure by requiring employees to telework. However, if the closure of the workspace causes the employer to suspend business operations for certain purposes, but not others, it may be considered to have a partial suspension of operations due to the governmental order. Employers operating an essential business as determined by a governmental order. Governmental orders that cause customers of an essential business to stay home do not rise to the level of a governmental order for an essential business. However, an essential business may be an eligible employer if its suppliers are unable to make deliveries of critical goods or materials due to a governmental order that causes the supplier to suspend its operations. <p>When a governmental order to fully or partially suspend an eligible employer’s business operations is subsequently lifted, the employer is considered to only have business operations suspended for the periods during the calendar quarters where the trade or business operations were fully or partially suspended. If the governmental order was effective for a portion of the calendar quarter, then the employer is an eligible employer, but can only claim the credit for wages paid during the period in which the governmental order was in force.</p> <p>The credit is available to tax-exempt organizations described under Code Section 501(c) who are exempt from tax under Code Section 501(a). A tax-exempt organization’s operations must have been fully or partially suspending during any calendar quarter due to a government order. The IRS plans to issue future guidance</p>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>Employer Tax Credits</p> <p>COVID Tax Tip 2020-67</p> <p>IR-2020-169</p>	<p>provided it meets the requirements to claim the credit. These credits are treated as a described under Code Section 3511(d)(2).</p> <p>Credits are limited by the applicable employment taxes (and reduced by credits allowed by Code Sections 3111(e) and (f) and FFCRA Sections 7001 and 7003) on the wages paid with respect to the employment of all the employees of the employer for such calendar quarter. "Applicable employment taxes" means the Social Security tax and the "Tier 1" excise tax (relating to the Railroad Retirement Act) imposed under Code Sections 3111(a) and 3221(a), respectively.</p> <p>Excess credits over the employment taxes owed by employers are refundable under Code Sections 6402(a) and 6413(b), and the manner of refund is the same as the credit provisions under 31 U.S.C. § 1324. .</p> <p>If the anticipated credit for Qualified Wages exceeds the employer's required federal employment tax deposits for that calendar quarter, the employer can apply for an advance refund of the remaining balance of the credit for which it does not owe federal employment tax deposits (effectively allowing the employer to immediately receive the benefit of the tax credit). See IRS Form 7200 "Advance Payment of Employer Credits Due to COVID-19," and instructions thereto. However, a refund, credit, or an advance of any portion of this credit in excess of the amount the employer is entitled is an erroneous refund, and shall be treated as an underpayment of taxes under which the IRS is authorized to seek repayment.</p> <p>Employers may use a third party to report and pay employment taxes to the IRS to get the Employee Retention Credit, and the payroll reporting agent can sign and submit Form 7200 on behalf of the employer. However, the employer and the third party payer will be liable for employment taxes that are due in connection with this credit that are improperly claimed. Employers are required to include on the form the name and EIN of the third party payer they use to file their employment tax returns if the third party payer uses its own EIN on the employment tax returns. If the third-party payer is filing the employment tax returns on behalf of the employer, the employer's name and EIN must be used. The same will apply where the employer uses a third-party payer for only a portion of its workforce, meaning two separate Forms 7200</p>	<p>addressing how a tax-exempt organization can determine whether it experiences a "significant decline in gross receipts."</p> <p>Employers in U.S. territories are eligible for this credit. Tribes or tribal entities may be eligible if they operate a trade or business.</p> <p>All persons treated as a single employer under Code Sections 52(a) or (b) or 414(m) or (w) shall be treated as one employer for purposes of this Section 2301. For more information, see the "Comparison of the Affiliation & Aggregation Rules" chart discussed below.</p> <p><u>Other Exclusions from Eligibility</u></p> <ul style="list-style-type: none"> • The credit cannot be taken if the employer is allowed a credit under Code Section 51 (work opportunity credits) with respect to such employee for such period. • Any wages taken into account in determining this credit will not be taken into account for purposes of determining the credit allowed under Code Section 45S (effectively denying a double benefit). • Employers who receive a covered (PPP) loan are not eligible for this credit, regardless of whether and when the loan is forgiven. Covered loans are loans guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of the CARES Act. The Treasury/SBA FAQs indicate that employers who have applied for a PPP loan, received payment, and repaid the loan by May 18, 2020 will be treated as though they had not received a covered loan, and remain eligible for this credit. • The credit does not apply to the government of the United States, any State or political subdivision thereof, or any agency or instrumentality. 	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>should be filed, one using the employer’s name and EIN, and the other using the third-party payer’s name and EIN.</p> <p>Alternatively, in anticipation of receiving the credits, an employer may choose to fund Qualified Wages by accessing federal employment taxes, including those previously withheld that are required to be deposited with the IRS. However, the employer must account for the reduction in deposits on Form 941, Employer’s Quarterly Federal Tax Return, for the quarter.</p> <p>See also “Penalty Relief for Failure to Deposit Employment Taxes (Qualified Leave and Retention Wages)” discussed below.</p>	<ul style="list-style-type: none"> Self-employed individuals are not eligible for this credit for their own self-employment earnings, though they may be able to claim the credit for wages paid to their employees. Household employers are not considered to operate a trade or business and, therefore, are not eligible for the credit with respect to their household employees. <p>An employer may obtain Form 7200, Advance Payment of Employer Credits Due To COVID-19 online and may fax its completed form to 855-248-0552. After July 2, 2020, the minimum advance amount that can be claimed on a Form 7200 is \$25. A Form 7200 requesting an advance of less than \$25 will not be processed. Taxpayers can claim credits of less than \$25 on the Form 941.</p> <p>Instructions for Form 7200 provide information on who may properly sign a Form 7200 for each type of entity, which is generally a person who is duly authorized or has knowledge of the entity’s affairs. Otherwise, taxpayers should submit a copy of Form 2848, Power of Attorney and Declaration of Representative authorizing a person to sign Form 7200 with the Form 7200.</p> <p>The IRS will send letters to taxpayers who have experienced a delay in processing their Form 7200. Taxpayers may receive letter 6312 if the IRS either rejected Form 7200 or made a change to the requested amount of advance payment due to a computation error. The letter will explain the reason for the rejection, or if the amount is adjusted, list the new payment amount. A taxpayer may receive letter 6313 if the IRS needs written verification from the taxpayer that the address listed on Form 7200 is the current mailing address.</p>	
Delay of Payment of Employer Payroll Taxes	CARES Act, Section 2302, as amended by the PPPFA.	Allows employers (including governmental entities), self-employed individuals (based on their net earnings), and household employers that file Schedule H to defer the deposit and payment of all (in the case of employers) or half (in the case of self-employed) the employer share of the Social Security tax (6.2 percent) otherwise due before January 1,	Under the original CARES Act, this relief was explicitly unavailable to any taxpayer if such taxpayer has had indebtedness forgiven under Section 1106 Loan Forgiveness with respect to a loan or indebtedness forgiven under Section 1109 of the CARES Act (i.e., a PPP Loan). This limitation was repealed by the PPPFA, and a	The payroll deferral tax period begins on March 27, 2020 and ends on

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>CARES Act, Section 1102 and 1109</p> <p>IRS Employment Tax Deferral FAQ</p> <p>I.R.C. § 1401(a)</p> <p>I.R.C. § 3111(a)</p> <p>I.R.C. § 3121(a)</p> <p>I.R.C. § 3221(a)</p> <p>I.R.C. § 6654</p> <p>COVID Tax Tip 2020-67</p>	<p>2021. The deferred taxes are paid over the following two years, with 50 percent of the eligible amount to be paid by December 31, 2021, and the remaining 50 percent by December 31, 2022. If any employer pays any amount before the applicable dates, any such payment is first applied to the amount due December 31, 2021, and then to the amount due December 31, 2022.</p> <p>An employer defers the employer's share of Social Security tax by reducing required deposits or payments for a calendar quarter by an amount up to the maximum amount of the employer's share of Social Security tax for the return period (to the extent the return period falls within the payroll tax deferral period). The amount reduced does not need to be applied evenly during the return period.</p> <p>Employers may defer only the employer's share of Social Security tax that is equal to or less than the liability for the employer's share of Social Security tax that is due to be deposited during the payroll tax deferral period or was for payment due on wages paid during the payroll tax deferral period. Balances due prior to the payroll deferral tax period of an employer's share of Social Security tax is not deferrable.</p> <p>Employers entitled to credits against the employer's share of Social Security tax (including the refundable tax credits for paid leave under the FFCRA or for qualified wages under the ERC) and deferral may leave the employment tax subcategory amounts attributable to this reduction blank on the EFTPS worksheet.</p> <p>Employers that have already deposited all or any portion of the employer's share of Social Security tax during the payroll tax deferral period may not subsequently defer payment of the tax already deposited and generate an overpayment of tax. The exception to this is when an employer reduces its Social Security tax liability based on credits claimed on Form 941, including the Research Payroll Tax Credit, the FFCRA paid leave credits, and the Employee Retention Credit, which result in an overpayment of tax and may be refunded by filing Form 941-X.</p> <p>If an employer uses a third party to file, report, and pay employment taxes, different rules for reporting the deferred amounts and submitting other information will apply depending on the type of third party payer</p>	<p>business may continue to defer payroll taxes even after PPP loan forgiveness.</p> <p>Deferrals are available to all employers (including governmental entities) <u>regardless</u> of whether such employers are eligible for paid leave credits or employee retention credits. Employers are not required to make a special election to defer deposits and payments of employment taxes, but it should be reported on the appropriate line of the employer's employment tax return. Employers who file annual employment tax returns are eligible to defer deposit and payment of the employer's share of Social Security tax during the payroll tax deferral period.</p> <p>Employers with an employment tax liability in excess of \$2,500 must deposit employment taxes due for a return period on a semi-weekly, monthly or next-day basis depending on the amount of their employment tax liability. Employers failing to deposit employment taxes timely will owe a failure to deposit penalty and must pay those taxes with their return. Deposits in excess of the employer's employment tax liability may be refunded only with the employment tax return filed by the employer.</p> <p>An employer that accumulates \$100,000 or more in employment tax liabilities, even if the amount required to be deposited is less than \$100,000, continues to be subject to the \$100,000 next-day deposit rule. Generally, the \$100,000 next-day deposit rule requires an employer that accumulates \$100,000 or more in liability for employment taxes on any day during a monthly or semiweekly deposit period to deposit the employment taxes the next business day. While the FFCRA paid leave credits and the employee retention credit are applied against the tax imposed, they do not necessarily reduce an employer's tax liabilities for purposes of the \$100,000 next-day deposit rule.</p> <p>The IRS intends to issue a reminder notice to employers reflecting the total amount of deferred taxes and the payment due dates. The IRS also recognized that employers that deferred deposits of the employer's share of Social Security tax for the first quarter of 2020 will have a discrepancy on their first quarter Form 941 between the amount of the liability reported and the deposits and</p>	<p>December 31, 2020.</p> <p>Date Relief Granted: March 27, 2020</p> <p>Relief Expiration Date: December 31, 2020</p>

Relief for Businesses				
<u>Subject</u>	<u>Applicable Law and Regulations</u>	<u>General Description of Relief</u>	<u>Conditions of Relief</u>	<u>Effective Dates</u>
		<p>the employer uses. See the IRS Employment Tax Deferral FAQ, Question 26.</p> <p>If an employer (i) uses a third-party agent who deposits employment taxes on its behalf or (ii) is a customer of a certified professional employer organization (“PEO”), and the employer directs its agent or the PEO to defer the payment of the employer’s share of the Social Security tax, the employer (not the agent or PEO) is solely liable for the amount of delayed taxes to be paid by the delayed due dates. The employer for whom services are provided who does not have control of the payment of wages may not defer deposit and payment of the employer’s share of Social Security tax.</p>	<p>payments made for that quarter. The IRS will send additional notices to these employers identifying the difference between the liability reported for the first calendar quarter and the deposits and payments made as an unresolved amount. The IRS notice will include additional information and instructions for the employer to inform the IRS that it deferred deposit or payment of its share of Social Security tax due.</p> <p>If an employer reduces its deposits by an amount in excess of the allowable FFCRA paid leave credits, employee retention credit, and deferral, then the failure to deposit penalty may apply to the excess reduction.</p> <p>Employers are entitled to deferrals prior to determining eligibility for paid leave credits under Sections 7001 and 7003 of the FFCRA or eligibility for the employee retention credit under Section 2301 of the CARES Act.</p> <p>Employers are entitled to defer deposit and payment prior to applying the Research Payroll Tax Credit against the employer’s liability for the employer’s share of Social Security tax. If the amount of the Research Payroll Tax Credit exceeds the employer’s liability for the employer’s share of Social Security tax, the excess remaining may be carried over to subsequent calendar quarters.</p> <p>Tax-exempt employers are entitled to defer deposit and payment of the employer’s share of Social Security tax prior to determining whether the employer is entitled to the Work Opportunity Tax Credit. Tax-exempt employers may claim this credit without regard to whether the employer has deferred deposit and payment of the employer’s share of Social Security tax. Since the Work Opportunity Tax Credit is processed on Form 5884-C, which is separate from the employment tax return, the amount reported on line 11 of Form 5884-C may not be refunded in full if the employer chooses to defer its share of Social Security tax on Form 941.</p>	

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Delay of Payment of Employee Payroll Taxes	<p>Presidential Executive Order: Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster (August 8, 2020)</p> <p>IRS Notice 2020-65</p> <p>COVID-19: IRS Releases Guidance on Employee Payroll Tax Deferral but Fails to Quell Concerns Over Implementation and Collection of Deferred Taxes</p> <p>I.R.C. § 3121(a)</p> <p>I.R.C. § 3131(e)</p> <p>IR-2020-195</p>	<p>An “Affected Taxpayer” (i.e., an employer required to withhold and pay the employee’s share of social security taxes or equivalent railroad retirement taxes) may defer the withholding and payment of an employee’s share of FICA on “Applicable Wages” from September 1, 2020 through December 31, 2020 (the “Applicable Taxes”).</p> <p>“Applicable Wages” are wages and compensation (each defined under Code Sections 3121(a) and 3231(e), respectively) paid to the employee in an amount less than \$4,000 on a bi-weekly basis (or an equivalent threshold if the pay period is shorter or longer than bi-weekly). In order to determine whether wages and compensation paid to the employee is less than \$4,000 on a bi-weekly basis, consider the following:</p> <ul style="list-style-type: none"> • The \$4,000 income threshold is determined on a payroll period by payroll period basis. • The threshold applies on a cash basis and without a phase-in or phase-out, making it an all or nothing benefit (i.e., \$1 over the threshold results in an ineligible deferral). • The employee’s wages may fluctuate due to overtime, bonuses, seasonal hours or other flexible work schedules, meaning some pay periods may qualify, while others may not. • Other types of remuneration (i.e., certain health and pension benefits) that may place the total value above the \$4,000 bi-weekly income threshold are not counted toward Applicable Wages. 	<p><u>Participation Voluntary or Mandatory</u> The notice and memorandum are silent as to whether employer participation is mandatory but Administration officials have stated it is not mandatory. Similarly, the documents do not address whether employees can insist the employer participates in the deferral or whether an employee can opt-out if the employer does participate in the deferral. Notice 2020-65 does not discuss situations where an employer decides to participate after September 1, 2020.</p> <p><u>Payment of Deferred Applicable Taxes</u> There is no tax holiday or forgiveness for the amounts due. The deferred taxes must be ratably withheld and paid beginning January 1, 2021 and ending April 30, 2021. If necessary, an Affected Taxpayer may make other arrangements for collecting Applicable Taxes due from the employee. If the full amount of Applicable Taxes is not withheld and paid by April 30, 2021, interest, penalties, and additions to tax will begin to accrue on unpaid amounts beginning May 1, 2021. It is unclear whether the IRS expects the employer to take legal action to collect from former employees or otherwise be required to pay that employee’s share of deferred Applicable Taxes.</p> <p><u>Employment Terminated before April 30, 2021</u> Notice 2020-65 does not specifically discuss situations where an employee is terminated after withholding has been deferred, but prior to the full amount of deferred Applicable Taxes being withheld collected.</p> <p><u>Self-Employed and Household Employees</u> Notice 2020-65 does not address how self-employed individuals and household employers can implement the deferral.</p>	<p>The payroll deferral tax period begins on September 1, 2020 and ends on December 31, 2020.</p> <p>Deferred amounts must be ratably withheld and paid during the period beginning on January 1, 2021 through April 30, 2021</p>
Code Section 6411 Timely Filed - Special Rules for Claiming Quick Refunds for Net Operating Loss Deductions and Prior Year Minimum Tax Liability of	CARES Act Sections 2303 and 2305	<u>CARES Act Section 2303</u> : A taxpayer may file (i) an application under Code Section 6411(a) for a tentative refund claim with respect to the carryback of net operating losses (“NOL”) arising in a taxable year beginning before January 1, 2018, and ending after December 31, 2017, and (ii) elect to forgo any carryback of such NOL, reduce any	See Conditions for Relief under “NOL Technical Correction for fiscal year filers with an NOL arising in the 2017/2018 straddle year” and “Modification of Prior Year Minimum Tax Credit” below.	<p>Date Relief Granted: March 27, 2020</p> <p>Tentative Refund Claim</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Corporations Refund Claims (AMT)	<p>I.R.C. § 6411(a), (b) and (c)</p> <p>Temporary Procedures to Fax Certain Forms 1139 and 1045 due to COVID-19</p> <p>IRS Notice 2020-26</p> <p>Questions and Answers about NOL Carrybacks of C Corporations to Taxable Years in which the Alternative Minimum Tax Applies</p>	<p>period to which such NOL may be carried back, or revoke any election made under Code Section 172(b) to forgo any carryback of such NOL.</p> <p>CARES Act Section 2305: A taxpayer may file an application for a tentative refund claim for tax years beginning after December 31, 2017. Tentative refund claims are verified in the same manner as an application for a tentative carryback adjustment filed under Code Section 6411(a). Within 90 days of filing, the Secretary of the Treasury will review the application, determine the amount of the overpayment, and apply, credit, or refund any overpayment in a manner similar to Code Section 6411(b). For consolidated returns, Code Section 6411(c) shall apply to an adjustment to the same extent and manner as the Secretary of the Treasury may provide.</p> <p>Starting on April 17, 2020 and until further notice, the IRS will accept eligible refund claims Form 1139 submitted via Fax to 844-249-6236 and eligible refund claims Form 1045 submitted via fax to 844-249-6237.</p> <p>NOL Carrybacks of C Corporations where Alternative Minimum Tax (“AMT”) applies: If a C corporation carries back all or a portion of a post-2017 NOL to a pre-2018 tax year in which Alternative Minimum Tax (“AMT”) rules apply, the AMT NOL in the post-2017 tax year is treated as zero for amended returns or tentative refund forms filed on or after June 1, 2020. If a C corporation filed an amended return or claim for tentative carryback adjustment carrying back an NOL from a post-2017 tax year to pre-2018 tax years, but did not treat the AMT NOL for the post-2017 tax year as zero, the C corporation does not need to take any action unless contacted by the IRS.</p> <p>As a result of an NOL carryback, a C corporation may have an AMT liability in a pre-2018 carryback year or have released minimum tax credits (“MTC”) under Code Section 53 in a pre-2018 carryback year because it no longer has enough regular tax liability to use them. If the C corporation made an election under Code Section 53(e)(5) to recover 100% of its MTC as refundable credits in its first taxable year beginning</p>	<p>For NOL carrybacks of a C corporation where AMT applies, a C corporation can make the election under Code Section 53(e)(5), by either filing a Form 1120X or Form 1139 and including at the top of the form “Electing to Take 100% Refundable Credit Amount in 2018 - per CARES Act Section 2305(b)”.</p> <ul style="list-style-type: none"> • If filed on Form 1139, the election must be filed no later than December 30, 2020. • If filed on Form 1139, and the election also includes a claim for refundable MTC and an NOL carryback, it must be filed by the earlier of the extended due date provided under Notice 2020-26 or December 30, 2020. • If filed on Form 1120X, the election must be filed within the period described under Code Section 6511(a) that applies to the C corporation’s first taxable year beginning in 2018. 	<p>Application Due Dates:</p> <p>CARES Act Section 2303 - July 27, 2020</p> <p>CARES Act Section 2305 - December 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>in 2018, it may claim both the NOL carryback and the MTC refund for 2018 on the same Form 1139.</p> <p>If the MTC generated or released by the NOL carryback in one year in the carryback year is used in a subsequent year in the carryback period to reduce the C corporation's tax liability, the C corporation may claim a refund for any decrease in tax resulting from that use of the MTC on Form 1139.</p> <p>If a C corporation is entitled to a refundable MTC for a year in the carryback period for any reason other than a Code Section 53(e)(3) election, it must separately file a Form 1120X to claim a refund for that portion of the MTC.</p>		
Net Operating Loss Modifications: Five Year Carryback of NOLS for 2018, 2019 and 2020	<p>CARES Act, Section 2303</p> <p>I.R.C. § 172(b)(1)</p> <p>I.R.C. § 172(b)(3)</p> <p>IRS Notice 2020-26</p> <p>Rev. Proc. 2020-24</p> <p>Frequently asked questions about carrybacks of NOLs for taxpayers who have had Section 965 inclusions</p> <p>Temporary Procedures to Fax Certain Forms 1139 and</p>	<p>NOLs arising in tax years beginning after December 31, 2017, and before January 1, 2021, (i.e., calendar years 2018, 2019, and 2020) may be carried back five years ("CARES Act NOLs"). Taxpayers may elect to forego the entire five-year carryback period with respect to a particular year's NOL, with the election being irrevocable.</p> <p>Carryback of NOLs by Certain Exempt Organizations: Code Section 512(a)(6) requires exempt organizations with more than one unrelated trade or business to "silo" NOLs arising in taxable years beginning after December 31, 2017 (including CARES Act NOLs) so that each trade or business calculates its NOL separately.</p> <p>An exempt organization subject to Code Section 512(a)(6) can carry back and deduct a CARES Act NOLs from one of its separated unrelated trades or businesses for a pre-2018 year, even if the exempt organization would not have had a CARES Act NOL. However, the NOL that is carried back to a pre-2018 year may not be deducted against the aggregate unrelated trade or business for a post-2017 year.</p> <p>Consolidated NOLs ("CNOL") Generally, a consolidated group may make an irrevocable election to waive the entire carryback period with respect to a CNOL for any consolidated return year (i.e., a general waiver election, not made on a member-by-member basis), and is permitted to make a split-waiver election during the year the acquired member joined the group.</p>	<p>Corporate taxpayers with NOLs arising in tax years 2018, 2019, and 2020.</p> <p>Under Notice 2020-26, taxpayers with an NOL that arose in a taxable year beginning during calendar year 2018 and that ended on or before June 30, 2019 are granted a six-month extension of time to file Form 1045 or 1139. The taxpayer must:</p> <ul style="list-style-type: none"> File the applicable form no later than 18 months after the close of the taxable year in which the NOL arose; and Include on the top of the applicable form "Notice 2020-26, Extension of Time to File Application for Carryback Adjustment." <p>Under Rev. Proc. 2020-24, a taxpayer may elect under Code Section 172(b)(3) to <i>waive the carryback period</i> for an NOL arising in a tax year beginning 2018 or 2019.</p> <ul style="list-style-type: none"> The election must be made no later than the due date (including extensions) for filing the taxpayer's federal income tax return for the first taxable year ending after March 27, 2020. 	<p>Applies to NOLs arising in taxable years beginning after December 31, 2017, and taxable years before, on, or after such date that such NOLs are carried back.</p> <p>Extension of time deadline for NOLs arising in tax year 2018: June 30, 2020.</p> <p>T.D. 9900 applies to any CNOL arising in a taxable year beginning after December 31, 2017.</p> <p>Applicability of</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	1045 due to COVID-19 Internal Revenue Manual Update (May 6, 2020) IRS FAQs - Carryback of NOLs by Certain Exempt Organizations Chief Counsel Advice Memorandum: AM-2020-008 T.D. 9900, Carryback of Consolidated Net Operating Losses IRB 2020-33, Announcement 2020-11	<p>In response to this CARES Act provision, the Treasury published temporary regulations (T.D. 9900) which provide consolidated groups with two additional elections to waive the pre-acquisition years of an acquired member for CNOL carryback purposes in situations where the carryback rules are amended to extend the carryback period (i.e., the extended carryback period) following the acquisition of the member beyond the carryback period in effect at the time of the acquisition (i.e., the default carryback period).</p> <ol style="list-style-type: none"> <i>Amended Statute Split-Waiver Election:</i> The acquiring consolidated group elects to waive a portion of the extended carryback period during which it was a member of another consolidated group. <i>Extended Split-Waiver Election:</i> The acquiring consolidated group elects to waive the portion of the extended carryback period in excess of the default carryback period. 	<ul style="list-style-type: none"> The election is made by attaching a separate statement for each of the taxable years (2018 or 2019) the taxpayer intends to elect to its federal income tax return, The separate statement must state that the taxpayer is election to apply Code Section 172(b)(3) under Rev. Proc. 2020-24 and the taxable year for which the statement applies. <p>If there is missing information or questions about the filing, taxpayers will be contacted by phone, thus the taxpayer's name and phone number must be accurately reflected on the Form 1139/1045. The person listed will need to be able to provide the missing information and possibly authentication information. The statutory timeframe for processing these forms is 90 days.</p> <p>Split-Waiver Elections for CNOLs: The temporary regulations apply to consolidated NOLs arising in a tax year ending after July 2, 2020, but may apply these rules to consolidated NOLs arising in tax years beginning after December 31, 2017. The election must be made in a separate statement filed with the acquiring consolidated group's original income tax return for the year in which the target corporation became a member.</p>	<p>the temporary regulations expire on July 3, 2023.</p> <p>Amended return with an either split-waiver election: Due November 30, 2020.</p>
Net Operating Loss Modifications: Suspension of 80 percent Limit for 2018-2020	<p>CARES Act, Section 2303</p> <p>I.R.C. § 172(a)</p>	<p>Suspends the 80 percent of taxable income limitation on the use of NOLs arising in tax years beginning after December 31, 2017, and before January 1, 2021. This allows corporate taxpayers to use NOLs to fully offset (instead of an 80 percent offset) taxable income in tax years 2018, 2019, and 2020.</p>	<p>Corporate taxpayers with NOLs arising in tax years 2018, 2019, and 2020.</p>	<p>Applies to taxable years 2018, 2019 and 2020.</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	Internal Revenue Manual Update (May 6, 2020)			
Net Operating Loss Modifications: NOL Technical Correction for fiscal year filers with an NOL arising in the 2017/2018 straddle year	<p>CARES Act, Section 2303</p> <p>I.R.C. § 172(b)</p> <p>I.R.C. § 6411(a)</p> <p>Rev. Proc. 2020-24</p> <p>Frequently asked questions about carrybacks of NOLs for taxpayers who have had Section 965 inclusions</p> <p>Temporary Procedures to Fax Certain Forms 1139 and 1045 due to COVID-19</p> <p>Internal Revenue Manual Update (May 6, 2020)</p>	<p>Corrects the effective date under the Tax Cuts and Jobs Act.</p> <p>Allows NOLs arising in the 2017/2018 straddle year to be eligible for a two-year carryback period and 20-year carry-forward period.</p>	<p>Taxpayers with a tax year straddling December 31, 2017, were unable to carry back losses generated in that straddle year because of tax legislation under the Tax Cuts and Jobs Act generally terminated the ability to carry back NOLs for losses in tax years ending after December 31, 2017.</p> <p>Taxpayers with a NOL arising during the 2017/2018 straddle year may file an under Code Section 6411(a) on either Form 1045 or Form 1139 for a carryback of that loss. The application will be treated as timely filed if filed no later than July 27, 2020.</p> <p>Taxpayers with a NOL arising during the 2017/2018 straddle year may irrevocably elect to forgo the carryback under Code Section 172(b)(3). The election will be treated as timely filed if filed no later than July 27, 2020.</p> <ul style="list-style-type: none"> The election is made by filing its federal income tax return with “Filed pursuant to Rev. Proc. 2020-24” at the top, to an amended return, Form 1045, or Form 1139 containing only the taxpayer’s name, address, and taxpayer ID number. The election must also include a separate statement indicating the section under which the election is being made, and shall set forth information to identify the election, the period for which it applies, and the taxpayer’s basis and entitlement to make the election. <p>If there is missing information or questions about the filing, taxpayers will be contacted by phone, thus the taxpayer’s name and phone number must be accurately reflected on the Form 1139/1045. The person listed will need to be able to provide the missing information and possibly authentication information. The statutory timeframe for processing these forms is 90 days.</p>	<p>Date Relief Granted: March 27, 2020</p> <p>Relief Expiration Date: July 27, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Net Operating Loss Modifications: REIT Carryback Limitations	CARES Act, Section 2303 I.R.C. § 172(b)(1) Internal Revenue Manual Update (May 6, 2020)	NOLs of a taxpayer may not be carried back to any REIT year in which the taxpayer was a REIT. NOLs of a REIT may not be carried back to any tax year, regardless of whether the taxpayer was a REIT in that tax year.	Taxpayers who are considered to be a real estate investment trust ("REIT") during any tax year. A REIT year is any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.	Applies to NOLs arising in taxable years beginning after December 31, 2017.
Net Operating Loss Modifications: Modified 80 percent Limit Calculation for 2021+	CARES Act, Section 2303 I.R.C. § 172(b)(2)(C) I.R.C. § 172(d)(6)(C) I.R.C. § 860E(a)(3)(B) Internal Revenue Manual Update (May 6, 2020)	Reinstates the NOL 80 percent of taxable-income limitation for tax years beginning after December 31, 2020. The limitation is based on 80 percent of taxable income, after giving effect to the use of pre-2018 NOLs (i.e., reflects the absorption of pre-Tax Cuts and Jobs Act NOLs). As a result, the 80 percent limitation does not give effect to the deductions for qualified business income, foreign-derived intangible income ("FDII") and global intangible low-taxed income ("GILTI") under Code Sections 199A and 250, respectively.	Corporate taxpayers with NOLs arising in tax years beginning January 1, 2021.	Applies to taxable years beginning January 1, 2021.
Net Operating Loss Modifications: Interactions with Section 965 Transition Years	CARES Act, Section 2303 I.R.C. § 172(b)(1) Rev. Proc. 2020-24 Frequently asked questions about carrybacks of NOLs for taxpayers who	<u>Automatic 965(h) Election</u> - When a 2018, 2019, or 2020 NOL is carried back to a 965 Inclusion Year, the taxpayer is deemed to have automatically made the Section 965(n) election to "waive off" use of the NOL against the taxpayer's transition tax inclusion. No opt out is available. <u>Waivers of NOL Carrybacks</u> - In lieu of a waiver applying to the entire carryback period, taxpayers may choose a modified method whereby the NOL is carried back, and exclude 965 Inclusion Years.	"965 Inclusion Years" are tax years for which corporate taxpayers with NOL carrybacks included income from its foreign subsidiaries under Code Section 965, and taxpayers with foreign subsidiaries which made the one-month deferral election. After April 9, 2020, a taxpayer may elect under Code Section 172(b)(1)(D)(v)(I) to exclude all 965 Inclusion Years from the carryback period for an NOL arising in a taxable year beginning 2018, 2019, or 2020. <ul style="list-style-type: none"> Elections for tax years 2018 and 2019 must be made by the due date (including extensions) for filing the taxpayer's return for the first taxable year ending after the March 27, 2020. 	The due date is the due date (including extensions) for filing the taxpayer's return for the first taxable year ending after March 27, 2020.

Relief for Businesses

<u>Subject</u>	<u>Applicable Law and Regulations</u>	<u>General Description of Relief</u>	<u>Conditions of Relief</u>	<u>Effective Dates</u>
	<p>have had Section 965 inclusions</p> <p>Temporary Procedures to Fax Certain Forms 1139 and 1045 due to COVID-19</p> <p>Internal Revenue Manual Update (May 6, 2020)</p>		<p>Election for tax year 2020 must be made no later than the due date, including extensions.</p> <ul style="list-style-type: none"> • The taxpayer must attach an election statement to the earliest filed of: <ul style="list-style-type: none"> ○ the federal income tax return for the taxable year in which the NOL arises; ○ the taxpayer's claim for a tentative carryback adjustment applying the NOL to a taxable year in the carryback period; or ○ the amended federal income tax return applying the NOL to the earliest taxable year in the carryback period that is not a Section 965 year. • The election statement must state that the taxpayer is electing to apply Code Section 172(b)(1)(D)(v)(I) under Rev. Proc. 2020-24, the taxable year in which the NOL arose, and the taxpayer's 965 Inclusion Years. • The election statement above must also be attached to each amended return for taxable years where the taxpayer has claimed a refund or credit as a result of the carryback of the NOL. <p>If there is missing information or questions about the filing, taxpayers will be contacted by phone, thus the taxpayer's name and phone number must be accurately reflected on the Form 1139/1045. The person listed will need to be able to provide the missing information and possibly authentication information. The statutory timeframe for processing these forms is 90 days.</p>	
Modification of Loss Limitations for Non-Corporate Taxpayers	CARES Act, Section 2304	Section 2304 retroactively postpones the excess business loss limitation under Code Section 461(l) for tax years beginning prior to January 1, 2021 (i.e., calendar years 2018, 2019, and 2020). As a result, excess business losses that would otherwise been disallowed for tax years 2018, 2019 and 2020 are permitted and may be applied to	Retroactively postponing application of the excess business loss rules allows non-corporate taxpayers, namely individuals, to submit amended returns and claim refunds for excess business	Applies to taxable years beginning after

Relief for Businesses				
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	<p>I.R.C. § 172</p> <p>I.R.C. § 199A</p> <p>I.R.C. § 461(l)(1), (2) and (3)</p> <p>Internal Revenue Manual Update (May 6, 2020)</p>	<p>ordinary and capital gain income. Generally, excess business losses are the amount by which the total deductions attributable to all of a taxpayer's trades or businesses exceed the taxpayer's total gross income and gains attributable to those trades or businesses, plus \$250,000 (or \$500,000 for joint returns).</p> <p>Amends Code Section 461(l) excess calculation to exclude items that are attributable to the trade or business of performing services as an employee. This includes no longer taking into account NOL deductions under Code Section 172 and qualified business income deductions under Code Section 199A when determining excess business losses.</p> <p>Amends Code Section 461(l)(3) such that the Code Section 461(l) limitation no longer takes into account deductions for capital losses, and for purposes of determining the excess business loss limit, net capital gains of the trade or business are includable in gross income.</p>	<p>losses that were previously disallowed for tax years 2018, 2019 and 2020.</p>	<p>December 31, 2017.</p> <p>Excess business loss limitation sunsets: Tax years beginning after January 1, 2021.</p>
Modification of Prior Year Alternative Minimum Tax Credit	<p>CARES Act, Section 2305</p> <p>I.R.C. § 53(e)</p> <p>Internal Revenue Manual Update (May 6, 2020)</p>	<p>While the Tax Cuts and Jobs Act repealed the corporate alternative minimum tax beginning after December 31, 2017, corporate taxpayers that have an AMT credit for AMT amounts paid prior to the repeal have been required to use that AMT credit to receive percentage refunds over a four year period from 2018 to 2021.</p> <p>Amendments to Code Section 53(e) allow corporate taxpayers to accelerate the refund of AMT credits by permitting the taxpayer to elect to take the entire refundable AMT credit amount in its 2018 or 2019 tax years.</p>	<p>Corporate taxpayers with an AMT credit in tax year 2018.</p> <p>Affected taxpayers have until December 31, 2020, to file an application under Code Section 6411(a) to claim the AMT refund. See "6411 Timely Filed - Special Rule" above.</p>	<p>Date Relief Granted: March 27, 2020</p> <p>Relief Expiration Date: December 31, 2020</p>
Modification of Business Interest Limitation	<p>CARES Act, Section 2306</p> <p>I.R.C. § 163(j)</p> <p>I.R.C. § 6627</p> <p>Rev. Proc. 2020-22</p>	<p>Temporarily increases the limitation on the deduction for business interest expense from 30 percent to 50 percent of the taxpayer's adjusted taxable income ("ATI") for tax years 2019 and 2020.</p> <p>In the case of a partnership, <u>unless a partner elects to not have the temporary limitation apply</u>, any excess business interest of the partnership for tax year 2019 (which is allocated to the partner) is deductible as follows:</p> <ul style="list-style-type: none"> 50 percent of such excess business interest shall be treated as business interest paid or accrued by the partner in the partner's first taxable year beginning in 2020, and 	<p>Applies to all taxpayers with business interest expenses in excess of 30 percent of the taxpayer's ATI for tax years 2019 and 2020.</p> <p>A taxpayer may elect not to have the temporary limitation increase apply to any taxable year. If an election is made, it may only be revoked with consent of the Secretary of the Treasury.</p> <p>In the case of a partnership, any such election must be made by the partnership and may be made only for taxable years beginning in 2020.</p>	<p>Applies to taxable years beginning after December 31, 2018</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>Rev. Proc. 2020-23</p> <p>T.D. 9905 Limitation on Deduction for Business Interest Expense</p>	<ul style="list-style-type: none"> 50 percent of such excess business interest shall be subject to the limitations of Code Section 163(j)(4)(B)(ii) (i.e., treatment of excess business interest allocated to partners) in the same manner as any other excess business interest so allocated. <p>For taxable years beginning in 2020, the taxpayer may elect to use the taxpayer's ATI from the last taxable year beginning in 2019 for the taxpayer's ATI for the current taxable year.</p>	<p>Rev. Proc. 2020-22 allows taxpayers to make a late election or to withdraw an election under Code Section 163(j)(7)(B) (real property trade or business) or Code Section 163(j)(7)(C) (farming business). Furthermore, it also describes the time and manner in which certain taxpayers can (i) elect out of the 50 percent ATI limitation for tax years 2019 and 2020, (ii) elect out of deducting 50 percent of the business interest expense for tax years beginning in 2020, and (iii) elect to use the taxpayer's ATI from the last taxable year beginning in 2019 to calculate the taxpayer's Code Section 163(j) limitation for tax year 2020.</p> <p>Rev. Proc. 2020-23 provides that Bipartisan Budget Act of 2015 ("BBA") partnerships the option to file amended returns instead of an administrative adjustment request under Code Section 6227 ("AAR").</p>	
Modification of Qualified Improvement Property	<p>CARES Act, Section 2307</p> <p>I.R.C. § 168</p> <p>I.R.C. § 6627</p> <p>IRS Rev. Proc. 2020-25</p> <p>IRS Form 3115</p> <p>Temporary Procedure to Fax Automatic Consent Forms 3115 due to COVID-19</p>	<p>Corrects the so-called "retail glitch" under the Tax Cuts and Jobs Act, which increased the Qualified Improvement Property ("QIP") depreciation period from 15 to 39.5 years for interior upgrades and other improvements, such as remodeling and installation of energy efficient equipment.</p> <p>QIP was added to the definition of "15-year property" under Code Section 168(e)(3)(E), which allows taxpayers to immediately deduct the costs associated with QIP, and retroactively to QIP placed in service after December 31, 2017.</p>	<p>Taxpayers with QIP with a prior depreciation period of 39.5 years can change the QIP's depreciation method by filing an automatic accounting method change or correct it with an amended return.</p> <p>Rev. Proc. 2020-25 permits taxpayers to change their depreciation under Code Section 168 for QIP placed into service after December 31, 2017. For tax years 2018, 2019 and 2020, a taxpayer is allowed to make a late election or to revoke or withdraw an election under:</p> <ul style="list-style-type: none"> Code Section 168(g)(7) - Election to depreciate any class of property under the alternative depreciation system. Code Section 168(k)(5) - Election for farming businesses to apply special additional depreciation rules to one or more plants. Code Section 168(k)(7) - Election out of bonus depreciation for any class of qualified property placed in service during the taxable year. Code Section 168(k)(10) - Election to claim 50 percent instead of 100 percent bonus depreciation for the tax year that includes September 27, 2017. 	<p>Retroactively effective for QIP placed in service in 2018</p> <p>Relief Expiration Date: N/A</p> <p>Full bonus depreciation is phased down by 20 percent each year for property placed into service after December 31, 2022, and before January 1, 2027.</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
			As such, the taxpayer may also use a Form 3115, Change of Accounting Method, to change the elections described above, with one exception that Code Section 168(g)(7) may only be revoked with an amended return or an AAR. Starting on July 31, 2020, the IRS will accept the duplicate copy of Form 3115 via fax to 844-249-8134.	
Excise Tax Exemption for Alcohol used in Production of Hand Sanitizer	CARES Act, Section 2308 I.R.C. § 5214(a)	Temporary one-year exception on any distilled spirits (i.e., alcohol) used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the U.S. Food and Drug Administration from the federal excise tax under Code Section 5214(a). Certain labeling and bulk sales requirements and penalties do not apply during the temporary exception.	Distilled spirits must be used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the U.S. Food and Drug Administration that is related to the outbreak of virus SARS-CoV-2 or coronavirus disease 2019 (“COVID-19”).	Effective for distilled spirits for such specified use after December 31, 2019 Relief Expiration Date: December 31, 2020
Increase FMLA Limitation	CARES Act, Section 3601 FFCRA 7003	Creates a limitation stating that an employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee with respect to the qualified family leave wages. See “Tax Credit for Paid Family Leave” discussed in the chart above.	See Conditions for Relief under “Tax Credit for Paid Family Leave” above.	Date Relief Granted: March 27, 2020, but otherwise effective April 1, 2020 Relief Expiration Date: December 31, 2020
Emergency Paid Sick Leave	CARES Act, Section 3602 FFCRA Section 5102	Creates a limitation stating that an employer shall not be required to pay more than \$511 per day and \$5,110 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate to care for a quarantined individual or child for each employee with respect to qualified sick leave wages. See “Paid Sick Leave Requirement” discussed in the chart above.	See Conditions for Relief under “Paid Sick Leave Requirement” above.	Date Relief Granted: March 27, 2020, but otherwise effective April 1, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
				Relief Expiration Date: December 31, 2020
Advanced Refunds of Payroll Credit for Paid Sick Leave and Paid Family Leave	<p>CARES Act, Section 3606</p> <p>FFCRA Sections 7001 and 7003</p> <p>I.R.C. § 3111(a)</p> <p>I.R.C. § 3221(a)</p> <p>I.R.C. § 6656</p> <p>T.D. 9904, Recapture of Excess Employment Tax Credits under the Families First Act and the CARES Act</p> <p>IRS Notice 2020-22</p> <p>COVID-19-Related Tax Credits: How to Claim the Credits FAQs (last updated September 25, 2020)</p> <p>IR-2020-158</p>	<p>Allows employers to receive an advance payroll tax credit for paid sick leave under FFCRA Section 7001 and paid family leave under FFCRA Section 7003 from the Department of the Treasury. The advanced refund is calculated through the end of the most recent payroll period in the quarter.</p> <p>Alternatively, an employer can also fund qualified sick and family leave wages (plus the allocable qualified health plan expenses and the employer's share of Medicare taxes) by accessing federal employment taxes (including those of which are currently being withheld) that are required to be deposited with the IRS, for other wage payments made during the same quarter as the qualified leave wages.</p> <p>Because quarterly returns are not filed until after qualified leave wages are required to be paid, some Eligible Employers may not have sufficient federal employment taxes set aside for deposit to fund their required qualified leave wages. The IRS procedure in this case requires the Eligible Employer to reduce its remaining federal employment tax deposits for wages paid during that quarter to zero, and then to file Form 7200 to claim an advance credit for the remaining qualified leave wages it has paid for the quarter for which it did not have sufficient federal employment tax deposits.</p> <p>The Secretary of the Treasury shall waive penalties under Code Section 6656 for any failure to make a deposit Social Security taxes if the Secretary determines that such failure was due to the anticipation of the credit allowed. See IRS Notice 2020-22 below.</p>	<p>See Conditions for Relief under "Tax Credits for Paid Sick Leave" and "Tax Credit for Paid Family Leave" above.</p> <p>Employers may choose to receive an advance payment of employer credits by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19 online and may fax its completed form to 855-248-0552. After July 2, the minimum advance amount that can be claimed on a Form 7200 is \$25. A Form 7200 requesting an advance of less than \$25 will not be processed. Taxpayers can claim credits of less than \$25 on the Form 941.</p> <p>Instructions for Form 7200 provide information on who may properly sign a Form 7200 for each type of entity, which is generally a person who is duly authorized or has knowledge of the entity's affairs. Otherwise, taxpayers should submit a copy of Form 2848, Power of Attorney and Declaration of Representative authorizing a person to sign Form 7200 with the Form 7200. Employers are required to include on the form the name and EIN of the third party payer they use to file their employment tax returns if the third party payer uses its own EIN on the employment tax returns. If the third-party payer is filing the employment tax returns on behalf of the employer, the employer's name and EIN must be used. The same will apply where the employer uses a third-party payer for only a portion of its workforce, meaning two separate Forms 7200 should be filed, one using the employer's name and EIN, and the other using the third-party payer's name and EIN.</p> <p>The IRS will send letters to taxpayers who have experienced a delay in processing their Form 7200. Taxpayers may receive letter 6312 if the IRS either rejected Form 7200 or made a change to the requested amount of advance payment due to a computation error. The letter will explain the reason for the rejection, or if the amount is adjusted, list the new payment amount. A taxpayer may receive letter 6313 if the IRS needs written verification from the</p>	<p>Date Relief Granted: March 27, 2020, but otherwise effective April 1, 2020</p> <p>Relief Expiration Date: December 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	IR-2020-169		<p>taxpayer that the address listed on Form 7200 is the current mailing address.</p> <p>Any credits or advanced refunds that exceed the amount to which the employer is entitled and that are actually credited or paid by the IRS are considered to be erroneous refunds of the credits. Temporary regulations provide that such erroneous refunds of these credits are treated as underpayments of taxes imposed under Code Sections 3111(a) or 3221(a), and authorize the IRS to assess any portion of the credits erroneously credited, paid or refunded in excess of the amount allowed as if those amounts were tax liabilities.</p>	
Single Employer Plan Funding Rule Changes	<p>CARES Act, Section 3608</p> <p>I.R.C. § 430(a) and (j)</p> <p>I.R.C. § 436</p> <p>I.R.C. § 4971</p> <p>29 U.S.C. 1083(a) and (j)</p> <p>29 U.S.C. 1056(g)</p> <p>IRS Notice 2020-61</p> <p>IRS Announcement 2020-17</p>	<p>Delays the due date for single employer pension plan companies, who are required to meet their funding obligations by making minimum required contributions (as determined by Code Section 430(a) and 29 U.S.C 1083(a)), for contributions otherwise due during calendar year 2020 until January 15, 2021.</p> <p>However, interest will continue to accrue on the amount of minimum required contribution for the period between the original due date and the payment date. Thus, under Code Section 430(j)(2) and Treasury Regulation Section 1.430(j)-1(b)(4)(i), the minimum required contribution is adjusted for interest for the period between the valuation date for the plan year and the payment date for the contribution, at the plan's effective interest rate for the plan year. If the plan's effective interest rate has not been determined at the time the payment is made, then the rules for determining the interest rate for this adjustment are the same as the rules for determining the interest rate for the interest adjustment under Treasury Regulation Section 1.436-1(f)(2)(i)(A).</p> <p>To determine the amount of a quarterly installment due by the extended due date of January 15, 2021, the amount of that installment is increased from the installment's original due date to the payment date at the effective interest rate for the plan year that includes the date the quarterly installment is paid. If a plan sponsor does not satisfy the quarterly installments due by the extended due date, then under Code Section 430(j)(3)(A), the unpaid portion of each quarterly installment is</p>	<p>Applies to single-employer pension plans. The extended contribution due date of January 15, 2021, does not apply to a multiemployer plan, a CSEC plan, a fully-insured plan described in Code Section 412(e)(3), or a money purchase pension plan.</p> <p>After the original due date for the minimum required contribution, a plan sponsor would be subject to an excise tax under Code Section 4971(a) on the unpaid portion of the minimum required contribution for the plan year if the contribution is less than the amount that was due on that original due date (as adjusted for additional interest).</p> <p>If the contribution deadline under Code Section 430(j)(1) for a plan year is during 2020, a contribution which exceeds the amount needed to satisfy the minimum required contribution by January 15, 2021 may be designated as a contribution for that plan year.</p> <p>The extended due date does not change the date by which a contribution must be made in order to be deducted for a taxable year under Code Section 404.</p>	<p>Date Relief Granted: March 27, 2020</p> <p>Relief Expiration Date: January 15, 2021</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>subject to a higher interest rate for the respective period during which the installment (or a portion of the installment) remains unpaid.</p> <p>For purposes of Code Section 430, a contribution that is made after the original due date for a plan year (but on or before the extended due date) is taken into account as of a valuation date for a plan year after the plan year for which the contribution was made.</p> <p>If the plan year is a plan year for which the extended due date applies, then the deadline for a plan sponsor's election to increase a prefunding balance or to use a prefunding balance or a funding standard carryover balance to offset the minimum required contribution for that plan year is extended to January 15, 2021.</p> <p>A plan sponsor may elect to treat the plan's adjusted funding target attainment percentage for the last plan year ending before January 1, 2020, as the plan's adjusted funding target attainment percentage for calendar 2020 year.</p>		
Application of Co-Op and Small Employer Charity Pension Rules to Charitable Employers Whose Primary Exempt Purpose is to Provide Services to Mothers and Children	<p>CARES Act, Section 3609</p> <p>I.R.C. § 414(y)(1)</p> <p>29 U.S.C. 1060(f)(1)</p>	<p>Expands the definition of Cooperative and Small Employer Charity Pension Plans ("CSEC") under Code Section 414(y)(1) and ERISA §1060(f)(1) to include a provision that covers charitable employers whose primary exempt purpose is to provide services to mothers and children. Effective for plan years beginning after December 31, 2018.</p>	<p>A defined benefit plan (other than a multiemployer plan) is a CSEC plan if, as of January 1, 2000, the plan sponsored by the employer:</p> <ol style="list-style-type: none"> (1) is exempt from taxation under Code Section 501(c)(3); (2) has been in existence since 1938; (3) conducts medical research directly or indirectly through grant making; and (4) whose primary exempt purpose is to provide services with respect to mothers and children. 	<p>Effective for plan years beginning after December 31, 2018.</p>
Suspension of Certain Aviation Excise Taxes	<p>CARES Act, Section 4007</p> <p>I.R.C. § 4041</p> <p>I.R.C. § 4081</p> <p>I.R.C. § 4261</p>	<p>Provides an "excise tax holiday" for federal excise taxes imposed under Code Sections 4261 and 4271 for amounts paid for transportation by air of persons (i.e., ticket tax) and property (i.e., cargo tax), including amounts paid for the right to award free or reduced rate air transportation. More specifically, the air transportation excise taxes included are: (i) the 7.5% tax on amounts paid for transportation of persons by air; (ii) the domestic segment tax; (iii) the international travel facilities tax; (iv) amounts paid for the right to award free or reduced rate air transportation (mileage awards); and (v) the 6.25% tax on amounts paid for transportation of property by air.</p>	<p>Applies to businesses engaged in the business commercial aviation involving the transportation by air of persons or property.</p> <p>Federal excise taxes imposed on airline tickets: The taxes imposed on airline tickets purchased before the excise tax holiday for travel during or after the excise tax holiday are nonrefundable. No tax is imposed on the purchase of an airline ticket during the excise tax holiday, even if the travel would occur after the excise tax holiday.</p>	<p>Date Relief Granted: March 28, 2020</p> <p>Relief Expiration Date: December 31, 2020</p>

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>I.R.C. § 4271</p> <p>I.R.C. § 6427(l)</p> <p>FAQs: Aviation Excise Tax Holiday under the CARES Act</p>	<p>Provides an “excise tax holiday” for federal excise taxes imposed by Code Sections 4041 and 4081 for kerosene used in commercial aviation (i.e., aviation fuel), except the Leaking Underground Storage Tank tax under Code Section 6427(l). “Commercial aviation” is, generally speaking, any use of an aircraft in the business of transporting persons or property by air for compensation or hire.</p> <p>These exceptions are effective upon enactment through December 31, 2020, and do not apply to payments made on or before the date of enactment.</p>	<p>Federal excise taxes on kerosene used in commercial aviation: Taxpayers make a claim for payment on its tax return by claiming a nontaxable use, specifically use No. 15, “in an aircraft or vehicle owned by an aircraft museum”, and attaching a statement explaining the claim is for relief granted for the excise tax holiday period. The IRS intends to update the form instructions to reflect this process.</p> <p>The claim cannot be made with respect to kerosene purchased during the excise tax holiday that is not put into the fuel tank of an aircraft during the excise tax holiday. No claim can be made with respect to kerosene not used in commercial aviation.</p> <p>Taxpayers continue to be required to make deposits for the semimonthly period which generally must be at least 95% of the net tax liability for that period unless the safe harbor applies.</p>	
Effective Date for Employment Tax Credits Under the FFCRA	<p>IRS Notice 2020-21</p> <p>FFCRA Sections 7001 and 7003</p> <p>COVID-19-Related Tax Credits: How to Substantiate Eligibility and Periods of Time for Which Credits are Available FAQs</p>	<p>Establishes that tax credits for qualified sick and family leave required to be paid under the FFCRA will apply to wages paid from April 1, 2020 through December 31, 2020.</p> <p>Establishes that dates between April 1, 2020 and December 31, 2020 are taken into account for qualified sick and family leave equivalent amounts for certain self-employed taxpayers. See “Tax Credit for Paid Sick Leave” and “Tax Credit for Paid Family Leave” discussed in the chart above.</p> <p>Accordingly, the refundable tax credits for employers will apply qualified sick and family leave wages paid for the period beginning on April 1, 2020, and ending on December 31, 2020.</p>	See Conditions for Relief under “Tax Credits for Paid Sick Leave” and “Tax Credit for Paid Family Leave” above.	Published: April 1, 2020
Penalty Relief for Failure to Deposit Employment Taxes (Qualified Leave and Retention Wages)	<p>IRS Notice 2020-22</p> <p>FFCRA Sections 7001 and 7003</p>	As stated in the notice, an employer will not be subject to the failure to deposit penalty under Code Section 6656 for failing to deposit employment taxes related to <u>qualified leave wages</u> in a calendar quarter if:	See Conditions for Relief under “Tax Credits for Paid Sick Leave,” “Tax Credit for Paid Family Leave,” and “Employee Retention Credit for Employers Subject to Closure Due to COVID-19” above.	Published: March 27, 2020

Relief for Businesses				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	CARES Act, Section 2301	<ul style="list-style-type: none"> 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 under FFCRA Sections 7001 and 7003 for the calendar quarter as of the time of the required deposit; and the employer did not seek payment of an advanced credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits it relied upon to reduce its deposits. <p>An employer will not be subject to the failure to deposit penalty under Code Section 6656 for failing to deposit employment taxes related to <u>qualified retention wages</u> in a calendar quarter if:</p> <ul style="list-style-type: none"> the employer paid qualified retention 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, <u>reduced by the amount of employment taxes not deposited in anticipation of the credits claimed</u> for qualified leave wages, qualified health plan expenses, and the employer's share of Medicare tax on the qualified leave wages under FFCRA 7001 and 7003, is less than or equal to the amount of the employer's anticipated credits under CARES Act Section 2301 for the calendar quarter as of the time of the required deposit; and the employer did not seek payment of an advanced credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to the anticipated credits it relied upon to reduce its deposits. 		

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Tax Credits for Certain Self-Employed Individuals	<p>FFCRA Sec. 7002</p> <p>31 USC §1324(b)(2)</p> <p>IRC §3111(a)</p> <p>IRC §3221(a)</p> <p>Ch. 2 of the Code (cross-referenced for defined terms)</p> <p>Ch. 1, Subchapter A, part IV, Subpart C of the Code (cross-referenced for categorization of credit as refundable)</p> <p>IRS Paid Leave FAQ</p>	<p>Self-employed individuals are allowed a credit against taxes imposed by IRC §§ 3111(a) or 3221(a) equal to the amount of qualified sick leave wages for which they would have been eligible had they been employed by an individual other than themselves.</p> <p>The amount of the credit is equal to:</p> <p>a) The number of days during the taxable year (but not more than the excess, if any, of 10 days over the number of days taken in all preceding taxable years) the individual was unable to work for the individual's self-employed business for reasons that would have qualified them for emergency paid sick leave, multiplied by:</p> <p>b) The lesser of:</p> <p style="padding-left: 20px;">a. \$200 (\$511 if the inability to work is due to a federal, state, or local quarantine order for COVID-19, has been medically advised to self-isolate as a result of a COVID-19 diagnosis, or is experiencing COVID-19 symptoms and is seeking a diagnosis), or</p> <p style="padding-left: 20px;">b. Sixty-seven percent (100 percent in the same cases as would trigger the \$511 amount above) of the individual's <i>average daily self-employment income</i>.</p> <p><i>Average daily self-employment income</i> is yearly net self-employment income divided by 260.</p> <p>Credits determined under this section shall be treated as refundable credits allowed under the Code.</p> <p>Unlike employer credits, these credits cannot be advanced and are claimed on the self-employed individual's 2020 federal income tax return.</p> <p>Special rules provide that a similar credit shall be available for U.S. possessions.</p>	<p>An eligible self-employed individual is an individual who:</p> <p>a) Regularly carries on a trade or business, and</p> <p>b) Would be eligible to receive paid sick leave under the Emergency Paid Sick Leave Act if the individual were an employee of someone other than themselves.</p> <p>Individuals must maintain documentation establishing their self-employed status.</p> <p>Individuals who also receive wages or compensation from an employer under the Emergency Paid Sick Leave Act will have their credit reduced under this section if the amount received from the employer exceeds \$2,000 (or \$5,110 if the inability to work is due to a federal, state, or local quarantine order for COVID-19, has been medically advised to self-isolate as a result of a COVID-19 diagnosis, or is experiencing COVID-19 symptoms and is seeking a diagnosis).</p>	<p>Signed into Law: March 18, 2020</p> <p>Credits available for period:</p> <p>April 1, 2020 – December 31, 2020</p>

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Tax Credit for Self-Employed Family Leave	<p>FFCRA Sec. 7004</p> <p>31 USC §1324(b)(2)</p> <p>Ch. 2 of the Code (cross-referenced for defined terms)</p> <p>Ch. 1, Subchapter A, part IV, Subpart C of the Code (cross-referenced for categorization of credit as refundable)</p> <p>IRS Paid Leave FAQ</p>	<p>Self-employed individuals are allowed a credit against their federal income tax equal to the amount of qualified family leave for which they would have been eligible had they been employed by an individual other than themselves.</p> <p>The amount of the credit is equal to:</p> <ul style="list-style-type: none"> a) The number of days (up to 50) during the taxable year the individual was unable to work for the individual's self-employed business for reasons that would have qualified them for emergency paid family leave as described above, multiplied by: b) The lesser of: <ul style="list-style-type: none"> a. \$200, or b. Sixty-seven percent of the individual's <i>average daily self-employment income</i> <p><i>Average daily self-employment income</i> is yearly net self-employment income divided by 260.</p> <p>Credits determined under this section shall be treated as refundable credits allowed under subpart C of part IV of subchapter A of chapter 1 of the I.R.C.</p> <p>Unlike employer credits, these credits cannot be advanced and are claimed on the self-employed individual's 2020 federal income tax return.</p> <p>Special rules provide that a similar credit shall be available for U.S. possessions.</p>	<p>An eligible self-employed individual is an individual who:</p> <ul style="list-style-type: none"> a) Regularly carries on a trade or business, and b) Would be eligible to receive paid leave under the Emergency Family and Medical Leave Expansion Act if the individual were an employee of someone other than themselves. <p>Individuals must maintain documentation establishing their self-employed status.</p> <p>Individuals who receive wages or compensation from an employer under the Emergency Family and Medical Leave Expansion Act will have their qualified family leave credit reduced if the amount described by this section exceeds \$10,000.</p>	<p>Signed into Law: Mar. 18, 2020</p> <p>Credits available for period:</p> <p>April 1, 2020 – December 31, 2020</p>
2020 Individual Recovery Rebates	CARES Act Sec. 2201	Provides a new credit on individuals' 2020 federal income tax return and for immediate advance payments of such credit based on taxpayers' 2019 federal income tax returns, or, if a 2019 federal income	Eligible individuals are allowed a credits against their 2020 federal income tax in the amount of:	First taxable year beginning in 2020

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
	<p>New IRC §6428</p> <p>IRS Economic Impact Payment FAQs</p> <p>IRC §24(c)</p> <p>Rev. Proc. 2020-28 "Procedures for Individuals who are not Required to File Income Tax Returns to Receive Economic Impact Payment"</p> <p>IRS Economic Impact Payment Web Page (For Filers to confirm payment type and/or enter bank details and for Non-Filers to enter payment information)</p>	<p>tax return has not been filed, on taxpayers' 2018 federal income tax returns.</p> <p>If the amount of credit calculated on an individual's 2020 federal income tax return exceeds the advance payments received by the individual, the taxpayer will be allowed to claim the excess credit on their 2020 federal income tax return.</p> <p>If the amount of refundable credit calculated on an individual's 2020 federal income tax return is less than the advance payments actually received, the individual will <u>not</u> be required to repay the excess credit amounts previously advanced.</p> <p>Refunds or credits of overpayments attributable to this provision are directed to be made "as rapidly as possible" but no refund shall be made or allowed after December 31, 2020.</p> <p>Payments may be made electronically to any account authorized by the payee on or after January 1, 2018, to accept a refund of federal income taxes or of a federal payment as defined in 31 USC §3332.</p> <p>No interest is allowed on any overpayment attributable to this section.</p> <p>Eligible individuals will have their credit amounts automatically calculated based on their 2019 federal income tax return or, if a 2019 federal income tax return has not been filed, on their 2018 federal income tax return or their 2019 Form SSA-1099 or 2019 Form RRB-1099.</p> <p>Eligible individuals receiving Social Security Retirement Disability ("SSDI") and Supplemental Security Income ("SSI"), along with eligible individuals receiving Veterans Affairs ("VA") or Railroad Retirement and Survivor benefits will automatically receive payment, but may need to update information to obtain full credit for qualifying children.</p> <p>Eligible individuals not receiving SSDI, SSI, VA, or Railroad Retirement and Survivor benefits will need to enter their information using the IRS Economic Impact Payment web page.</p>	<p>a) \$1,200 (\$2,400 if Married Filing Jointly), plus</p> <p>b) \$500 multiplied by the number of qualifying children (as defined by Code Section 24(c)) of the taxpayer who are under the age of 17.</p> <p>The credit is reduced (but not below zero) by five percent of the amount of the eligible individual's income exceeds:</p> <p>a) \$150,000 if Married Filing Jointly,</p> <p>b) \$112,500 if head of household, and</p> <p>c) \$75,000 if neither Married Filing Jointly nor head of household</p> <p>Eligible individuals are any individual <u>except</u>:</p> <p>a) Nonresident aliens,</p> <p>b) Any individual who may be claimed as a dependent by another taxpayer, and</p> <p>c) An estate or trust</p> <p>The amount of this credit that may be claimed by an eligible individual on their 2020 federal income tax return will be reduced (but not below zero) by the amount of any advance payment based on the calculations described above.</p> <p>Eligible Individuals must have a valid Social Security number as defined in Code Section 24(h)(7); qualifying children may have taxpayer identification numbers if such children are adopted or placed for adoption.</p> <p>Individuals who are allowed a credit against taxes imposed by a possession of the United States, regardless of whether that</p>	

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<p>Note that the IRS Economic Impact Payment website links to two separate information entry pages:</p> <ul style="list-style-type: none"> Filers page where individuals who have filed a 2018 or 2019 federal income tax return can update their preferred payment type (direct deposit or physical check) and confirm or edit their banking details. Non-Filers page for individuals who were not required to file in 2018 or 2019 but are eligible to claim the Individual Recovery Rebate <u>and</u> individuals who are receiving SSI or VA payments and need to update information to include dependents. 	<p>possession has a mirror code tax system, are <u>not</u> allowed any credit against United States income taxes under this section.</p> <p>The IRS will <u>not</u> automatically increase payments if a taxpayer whose payment was initially determined using taxpayer's 2018 return would have been eligible for a larger payment based on their 2019 tax return. Such taxpayers <u>will</u> be able to claim the difference between larger credit amount and the amount actually issued on their 2020 tax return, filed in 2021.</p>	
Temporary Suspension of Retirement Plan Early Withdrawal Penalty	<p>CARES Act Sec. 2202</p> <p>IRC §72(t)</p> <p>IRS Notice 2020-62</p>	<p>Allows distributions of up to \$100,000 for COVID-19-related expenses from eligible retirement plans without triggering an early withdrawal penalty and increases the maximum allowed loan from such retirement plans to \$100,000 from \$50,000 while allowing a one-year delay in repayment for any loan from a retirement plan that comes due between March 27, 2020, and December 31, 2020.</p> <p>Distributions still represent taxable income to the recipient, but COVID-19-related distributions are taxed ratably over a three-year period beginning with the tax year in which the COVID-19-related distribution occurs.</p> <p>Corresponding changes were made to the laws governing qualified plans.</p> <p>Under Notice 2020-62, coronavirus distributions made under Sec. 2202 of the CARES Act are not considered eligible rollover distributions for purposes of the direct rollover rules of Section 401(a)(31), the notice requirement of Section 402(f), or the mandatory withholding rules of Section 3405. Therefore, plan administrators are not required to provide Section 402(f) notice to recipients of coronavirus distributions.</p>	<p>“Coronavirus-related distributions” of up to \$100,000 from an individual’s eligible retirement plan (as defined under Code Section 402(c)(8)(B)) will not be considered early withdrawals subject to penalties.</p> <p>“Coronavirus-related distributions” are distributions from eligible retirement plans that are made:</p> <ol style="list-style-type: none"> On or after January 1, 2020, and before December 31, 2020, To an individual: <ol style="list-style-type: none"> Diagnosed with COVID-19 by a CDC-approved test, With a spouse or dependent diagnosed with COVID-19, or Who experiences adverse financial consequences as a result of: 	First taxable year beginning in 2020

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
			<ul style="list-style-type: none"> i. Being quarantined, furloughed, laid off, or having reduced work hours due to COVID-19; ii. Being unable to work due to lack of child care as a result of COVID-19; iii. Closing or reducing hours of a business owned by said individual as a result of COVID-19; or iv. Other factors as determined by the Secretary of the Treasury. 	
Temporary Required Minimum Distribution (“RMD”) Waiver	CARES Act Sec. 2203 IRC §410(a)(9)	Removes mandatory minimum distributions from certain retirement plans in calendar year 2020.	Code Section 401(a)(9) is amended to suspend required payments in calendar year 2020 for: <ul style="list-style-type: none"> a) Defined contribution plans described in Section 401 or in sections 403(a) or 403(b), b) Defined contribution plans described section 457(b) <u>only if</u> such plan is maintained by an employer described in section 457(e)(1)(A), or c) An individual retirement plan. 	First taxable year beginning in 2020
Partial Above the Line Charitable Deduction	Section 2204 IRC §170(b)(1)(A) New IRC §62(a)	A new “above the line” charitable contribution deduction of up to \$300 for individuals who do not itemize their deductions.	Contributions must be made in cash during the 2020 calendar year to an organization described in Section 170(b)(1)(A). Contributions made to a supporting organization or a donor-advised fund do not qualify for the above the line deduction. Deduction is only available to contributions made in 2020 (i.e. carryover of prior year excess contributions is prohibited).	Date Relief Granted: March 27, 2020 Effective for tax years beginning after December 31, 2019.

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
				Relief Expiration Date: December 31, 2024
Modified Charitable Contribution Limits for Individuals	Section 2205 IRC §170(b)(1)(A)	Individuals may deduct qualified contributions up to 100 percent of their adjusted gross income for 2020. If the individual's contributions exceed the 100 percent limitation, the excess contributions may be carried over for the next five tax years.	Contributions must be made in cash during the 2020 calendar year to an organization described in Section 170(b)(1)(A). Contributions to a supporting organization or donor-advised fund do not qualify for the increased limits.	Date Relief Granted: March 27, 2020
Exclusion of Certain Employer Student Loan Payments from Income	CARES Act Sec. 2206 IRC §127(a) IRC §221(d)(1)	Temporarily adds employer payments on qualified education loans to payments eligible for exclusion from an employee's income under Code Section 127(a).	Payments made by an employer of principal or interest on qualified education loans as defined in Code Section 221(d)(1) are excludable from an employee's gross income under Code Section 127(a). The maximum amount of aggregate excludable payments under Code Section 127(a)(2) <u>remains</u> \$5,250.	March 27, 2020 through December 31, 2020
Ability of HDHPs to offer telehealth services with no deductible	CARES Act Sec. 3701 IRC §223(c)	Permits High Deductible Health Plans ("HDHPs") to offer telehealth services with no deductibles for plan years beginning on or before Dec. 31, 2021 by adding a safe harbor to Code Section 223(c). NOTE: Unlike many provisions in the FFCRA and CARES Act, this provision extends through the end of 2021 and <u>not</u> 2020.	No special eligibility requirements.	Plan years beginning on or before December 31, 2021
Use of HSA Accounts to pay for Certain OTC Medication	CARES Act Sec. 3702 IRC §223(d)(2)	Expands the definition of qualified medical expenses that may be paid for with Health Savings Accounts ("HSAs"), Flexible Spending Accounts ("FSAs"), and Health Reimbursement Arrangements to include menstrual care products by amending Code Section 223(d)(2). Menstrual care products are defined as "a tampon, pad, liner, sponge, or similar product used by individuals with respect to menstruation or other genital-tract secretions." NOTE: Unlike many provisions in the FFCRA and CARES Act, this provision does <u>not</u> sunset.	No special eligibility requirements.	Amounts paid after December 31, 2019

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
Postponement of Generation-Skipping Transfer Tax Filing and Payment Deadlines	IRS Notice 2020-20	<p>Provides a three-month postponement for federal gift and generation skipping-transfer tax payments that would otherwise be due on April 15, 2020.</p> <p>Any person (as defined in Code Section 7701(a)(1)) with a federal gift or generation-skipping transfer tax payment due or a requirement to file Form 709 on April 15, 2020 will have the due date for such payments or filing requirements automatically extended to July 15, 2020 with no requirement to file Form 8892.</p> <p>Affected taxpayers may still voluntarily file Form 8892 to obtain an extension of time to file Form 709 on October 15, 2020. Postponed payments <u>will remain due on July 15, 2020.</u></p>	Automatic, no election required.	Tax returns originally due on April 15, 2020
Postponement of April 15 th Filing Deadlines	IRS Notice 2020-18 IRC §7508A(a) IRC §165(i)(5)(A) Treas. Reg. 1.1502-1	<p>Provides a three-month postponement for federal income tax returns and associated payments that would otherwise be due on April 15, 2020.</p> <p>Restates and supersedes Notice 2020-17, providing additional clarification.</p> <p>Affected Taxpayers may postpone federal income tax payments in aggregate up to the Applicable Postponed Payment Amount until July 15, 2020.</p> <p>Applicable Postponed Payment Amount is defined in Notice 2020-17 as \$10,000,000 for each consolidated group (as defined in Treas. Reg. 1.1502-1) or for each C corporation that does not join in filing a consolidated return. For all other Affected Taxpayers, the Applicable Postponed Payment Amount is \$1,000,000 <u>regardless of filing status.</u></p>	<p>Affected Taxpayers are defined as any person with a federal income tax payment due on April 15, 2020.</p> <p>This relief is available solely for federal income tax payments (including payments of self-employment tax) due on April 15, 2020, in respect of the Affected Taxpayer's 2019 taxable year, and federal estimated income tax payments (including payments of self-employment tax) due on April 15, 2020, in respect of the Affected Taxpayer's 2020 taxable year.</p> <p>The period beginning on April 15, 2020, and ending on July 15, 2020, will be disregarded in the calculation of any interest, penalty, or addition to tax for failure to file the federal income tax returns or to pay the federal income tax returns postponed by Notice 2020-18. Interest, penalties, and additions to tax with respect to postponed filings and payments will begin to accrue on July 16, 2020.</p>	Tax returns originally due on April 15, 2020
Further Expansion of Postponement Federal Tax Filing Deadlines	IRS Notice 2020-23	Amplifies Notices 2020-18 and 2020-16, expanding the postponement of filing and paying through July 15, 2020 for the following if they would otherwise be due to be performed on or after April 1, 2020 and before July 15, 2020:	Automatic, no election required.	Tax return filings and payments originally due on or after April 1, 2020 and before July 15, 2020.

Relief for Individuals				
<u>Subject</u>	<u>Applicable Law and Regulations</u>	<u>General Description of Relief</u>	<u>Conditions of Relief</u>	<u>Effective Dates</u>
		<ul style="list-style-type: none"> • Individual Income Tax payments and filings on Forms 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR, or 1040-SS • Calendar year or fiscal year corporate income tax payments and filings on Forms 1120, 1120-C, 1120-F, 1120-FSC, 1120-H, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT, 1120-RIC, 1120-S, or 1120-SF • Calendar year or fiscal year partnership return filings on Forms 1065 or 1066 • Estate and trust income tax payments and filings on Forms 1041, 1041-N, or 1041-QFT • Estate and Generation-Skipping Transfer Tax payments and return filings on Forms 706, 706-NA, 706-A, 706-QDT, 706-GS(T), 706-GS(D), or 706-GS(D-1) • Estate and Generation-Skipping Transfer Tax extensions • Beneficiary information reporting on Form 8971 • Gift and Generation-Skipping Transfer Tax payments and filings on Form 709 that are due on the date an estate is required to file Form 706 or 706-NA • Estate tax payments of principal or interest as a result of an election made under sections 6166, 6161, or 6163 • Estate tax annual recertification requirements under section 6166 • Exempt organization business income tax and other payments and return filings on Form 990-T • Excise tax payments on investment income and return filings on Form 990-PF 		

Relief for Individuals				
Subject	Applicable Law and Regulations	General Description of Relief	Conditions of Relief	Effective Dates
		<ul style="list-style-type: none"> Quarterly estimated income tax payments calculated on or submitted with Forms 990-W, 1040-ES, 1040-ES (NR), 1040-ES (PR), 1041-ES, or 1120-W 		
Allowance for HDHPs to Provide COVID-19 Benefits with \$0 Deductible	IRS Notice 2020-15 IRC §223(c)(2)(A) IRC §223(c)(1)	<p>Provides guidance stating that a health plan that otherwise satisfies the requirements of an HDHP under Code Section 223(c)(2)(A) will not fail to be an HDHP merely because the plan provides medical care services and items purchased related to testing for and treatment of COVID-19 prior to the satisfaction of the applicable minimum deductible.</p> <p>As a result, individuals covered by such plans will remain eligible individuals under Code Section 223(c)(1).</p>	No special eligibility requirements.	No Expiration Date
Exclusion from Substantial Presence Test	Rev. Proc. 2020-20 IRC §7701(b)(3) Treas. Reg. §301.7701(b)-3(c)	<p>Eligible Individuals may exclude their COVID-19 Emergency Period for purposes of applying the substantial presence test. The COVID-19 Emergency will be treated as a non-preexisting medical condition under Treas. Reg. §301.7701(b)-3(c) that prevented the individual from leaving the United States.</p> <p>Days of presence within the United States during an Eligible Individual's COVID-19 Emergency Period will not be counted for purposes of determining the Eligible Individual's eligibility for treaty benefits with respect to income from employment or the performance of other dependent personal services with the United States.</p> <p>Eligible Individuals are presumed to have intended to leave the United States on any day of their COVID-19 Emergency Period unless they have applied or otherwise taken steps to become a lawful permanent resident of the United States.</p> <p>Eligible Individuals are presumed unable to leave the United States on any day during the individual's COVID-19 Emergency Period.</p> <p>Eligible Individuals claiming treaty benefits are presumed unable to leave the United States on any day during their COVID-19 Emergency Period.</p> <p>Eligible Individual: Any individual who 1) was not a U.S. resident at the close of the 2019 tax year, 2) is not a lawful permanent resident at any point during 2020, 3) is present in the United States on each of the days</p>	<p>Eligible Individuals who have a requirement to file a Form 1040-NR for 2020 must claim this exclusion by attaching Form 8843, "Statement for Exempt Individuals and Individuals with a Medical Condition" to their Form 1040-NR and timely filing such Forms.</p> <p>Eligible individuals may not:</p> <ul style="list-style-type: none"> Have applied or otherwise taken steps to become a lawful permanent resident of the United States. Become a lawful permanent resident of the United States at any point during 2020. Become a U.S. resident due to days of presence in the United States that fall outside of the individual's COVID-19 Emergency Period. <p>Have been a U.S. resident at the close of the 2019 tax year.</p>	A period of up to 60 days starting on or after February 1, 2020 and on or before April 1, 2020

Relief for Individuals				
<u>Subject</u>	<u>Applicable Law and Regulations</u>	<u>General Description of Relief</u>	<u>Conditions of Relief</u>	<u>Effective Dates</u>
		<p>of the individual's COVID-19 Emergency Period, and 4) does not become a U.S. resident in 2020 due to days of presence outside of the individual's COVID-19 Emergency Period.</p> <p>COVID-19 Emergency Period: A single period of up to 60 consecutive calendar days starting on or after February 1, 2020 and on or before April 1, 2020, during which the Eligible Individual was physically present in the United States on each day.</p> <p>COVID-19 Emergency: The global outbreak of the COVID-19 virus.</p>		
Foreign Earned Income Exclusion	<p>Rev. Proc. 2020-27 IRC § 911(d)</p>	<p>Establishes that the COVID-19 Emergency is an adverse condition precluding the normal conduct of business for purposes of the foreign earned income exclusion under IRC § 911(d)(4) for the following countries and periods:</p> <ul style="list-style-type: none"> China (excluding Hong Kong and Macau): December 1, 2019 through July 15, 2020 Globally: February 1, 2020 through July 15, 2020 <p>Individuals who left the above areas on or after the start date, but on or before the end date, will be treated as qualified individuals for purposes of the foreign earned income exclusion with respect to the period during which they were present in, or a bona fide resident of, such areas, so long as the individuals establish a reasonable expectation that they would have met the requirements of Section 911(d)(1) but for the COVID-19 emergency.</p>	<p>Individuals must have established residency, or been physically present, in the foreign country on or before the applicable start dates (December 1, 2019 for China, February 1, 2020 globally) to take advantage of the exclusion.</p> <p>Individuals may use any 12-month period to meet the qualified individual requirement.</p>	

The following chart outlines the affiliation and aggregation rules contained in the CARES Act, and certain related guidance, notices and FAQs issued by the IRS, Treasury, and SBA. The chart is intended to help a business determine how such affiliation and aggregation rules may impact their eligibility and the overall implementation of the Paycheck Protection Program and Employee Retention Credit when such a business functions and/or operates with affiliated entities. Businesses should be aware that receiving a PPP loan will disqualify the business from using the ERC.

Comparison of the Affiliation & Aggregation Rules	
<i>Paycheck Protection Program</i>	<i>Employee Retention Credit</i>
<p>Overview: Through the PPP, the SBA provides 100% federally backed loans to help eligible businesses pay wages and other operational costs. If a business satisfies certain conditions, portions of the loan are forgivable. Eligibility for a PPP loan depends in part on the number of employees of the applicant, and affiliation rules apply for this purpose. The affiliation language is contained in the section of the CARES Act dealing with the requirements for <i>obtaining</i> a PPP Loan. The CARES Act section dealing with PPP Loan <i>forgiveness</i> is silent regarding affiliation – presumably because the affiliation rules related to obtaining the loan are a sufficient gatekeeper.</p>	<p>Overview: An eligible employer may claim a refundable payroll tax credit for 50 percent of the “qualified wages” (i.e., qualified retention wages, up to \$10,000, including health benefits) paid to each employee of the employer for each calendar quarter. The maximum credit with respect to any employee is \$5,000. See discussion of ERC above. Aggregation rules apply when determining the eligibility and implementation of the ERC to a single employer by including or excluding certain affiliated entities based on the employer’s status and voting control.</p>
<p>Affiliation Rule - Statutory Language: CARES Act Sec. 1102(a)(2)</p> <p>Affiliation rules under the PPP program are derived from existing SBA provisions. In general the affiliation rules under the SBA are broader and more likely to sweep in multiple entities as “affiliated” compared to the IRS rules governing the ERC. These rules focus mostly on the <i>power</i> to control or influence rather than on the <i>actual exercise</i> of control.</p> <p>The Interim Final Rule (“IFR”) on Affiliation rules (dated April 15, 2020) notes that although the CARES Act statutory text refers to 13 CFR 121.103 as determining affiliation for purposes of PPP Loan issuance, the affiliation standards in 121.103 do not apply to PPP Loans because section 121.103(a)(8) provides that the SBA’s Business Loan Programs (which includes PPP Loans) are subject to the affiliation rules delineated in 13 CFR 121.301 instead (unless the affiliation rules are waived under section 636(a)(36)(D)(iv) or expanded under section 636(a)(36)(D)(vi)).</p> <p>The SBA has outlined the affiliation rules under 13 CFR 121.301 in follow-on guidance, and provides at a high level that they are:</p> <ol style="list-style-type: none"> 1. Affiliation based on ownership – either majority owner, board or other person controlling the concern, or minority members with ability to block proposed entity actions. 2. Affiliation arising from stock options, convertible securities, and agreements to merge – SBA considers stock options, convertible securities, and agreements to merge, including agreements in principle, to have present effect on the power to control a firm. 3. Affiliation based on management – where the same person or group of persons control the management of multiple firms. 	<p>Aggregation Rule - Statutory Language: CARES Act Section 2301</p> <p>Aggregation rules under the ERC are derived from existing Internal Revenue Code provisions. In general, the affiliation rules under the ERC are more form-driven than those of the SBA and are focused on employer status and voting control to determine whether the business is a single employer.</p> <p><u>Aggregation Rule (§2301(d))</u> “All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986, or subsection (m) or (o) of section 414 of such Code, shall be treated as one employer for purposes of this section.”</p> <p><i>Corporations</i> Code Section 52(a) states that all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. A “controlled group of corporations” generally means more than 50 percent of the total combined voting power of all classes of stock entitled to vote within a parent-subsidiary controlled group.</p> <p><i>Partnerships & Proprietorships</i> Code Section 52(b) states that all employees of trades or business (whether or not incorporated) which are under common control, shall be treated as employed by a single employer.</p> <p><i>Affiliated Service Group</i></p>

4. **Affiliation based on identity of interest** – rebuttable presumption that “close relatives” (as defined in 13 CFR 120.10) with substantially identical business or economic interests are affiliated; can be rebutted by showing that the interests are separate.
See Treasury Guidance (dated April 3, 2020) “Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program.”

15 USC 636(a)(36)(D)(iv):

Waiver of affiliation rules. — During the covered period, the provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor regulation, are waived with respect to eligibility for a covered loan for—

- (I) any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a North American Industry Classification System code beginning with 72;
- (II) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; and
- (III) any business concern that receives financial assistance from a company licensed under section 681 of this title.

15 USC 636(a)(36)(D)(vi):

Affiliation. — The provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor thereto, shall apply with respect to a nonprofit organization and a veterans organization in the same manner as with respect to a small business concern.

Additional Guidance from the FAQs/IFR:

The IFR on the Affiliate Rules (dated April 15, 2020) also notes that **faith-based organizations** are exempt from the SBA’s affiliation rules, including those under 13 CFR part 121, if:

1. They are otherwise qualified to receive PPP loans, and
2. Application of the affiliation rules would substantially burden the organization’s religious exercise.

The IFR on Paycheck Protection Program Requirements for Corporate Groups (dated May 4, 2020) states that PPP loans are limited to an aggregate maximum of \$20,000,000 per corporate group. **For purposes of this limitation, businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent** (where “common parent” is not defined). This appears to be a narrower standard than the affiliation rules previously outlined by the SBA in its published summary “Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program” (dated April 3, 2020), as it would not include minority owners with certain control rights. Note that the SBA affiliation rules which relate to an applicant’s eligibility for PPP loan, and any waiver of those rules under the CARES Act continue to apply independent of this specific affiliation limitation. Businesses are subject to this limitation even if the businesses are eligible for the waiver-of affiliation provision under the CARES Act or are otherwise not considered to be affiliates under SBA’s affiliation rules. See businesses described above under 15 USC 636(a)(36)(D)(iv) *Waiver of Affiliation Rules*.

Code Section 414(m) states that all employees of the members of an affiliated service group shall be treated as employed by a single employer. “Affiliated service group” means a group consisting of a service organization (referred to as the “first organization” under this paragraph) and one or more of the following:

- (A) Any service organization which
 - i. is a shareholder or partner in the first organization, AND
 - ii. regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons; and
- (B) Any other organization if
 - i. a significant portion of the business of such organization is the performance of services (for the first organization, for organizations described in subparagraph (A), or both) of a type historically performed in such service field by employees, AND
 - ii. 10 percent or more of the interests in such organization is held by persons who are highly compensated employees of the first organization or an organization described in subparagraph (A).

Additional Guidance from the FAQs/IFR:

On April 29, 2020, the IRS published FAQs for taxpayers determining which entities are considered a single employer under the aggregation rules. However, these FAQs were not included in the Internal Revenue Bulletin and therefore may not be relied upon as legal authority.

Generally, the IRS FAQs (last updated April 29, 2020) confirmed the aggregation rule under CARES Act Section 2301(d) that all entities that are members of a **controlled group of corporations** or a **group of entities under common control** (Code Sections 52(a) and (b) respectively), **members of an affiliated service group** (Code Section 414(m)), or **otherwise aggregated under Code Section 414(o)** are considered a single employer for purposes of the ERC.

The eligible employer must report its ERC on its own employment tax return without regard to its aggregation with other entities as a single employer. The amount of the ERC must be apportioned among the members of the aggregated group on the basis of each member’s proportionate share of the qualified wages giving rise to the credit.

The IRS FAQs further clarified the application of the aggregation rule to other provisions of the ERC including:

The \$20,000,000 limitation is immediately effective with respect to any loan that has not yet been fully disbursed as of April 30, 2020. It is the responsibility of the applicant to notify the lender if they have received an amount in excess of the amount permitted by this IFR and the applicant must withdraw or request cancellation of any pending PPP loan application or approved PPP loan. Failure to do so will deem the use of PPP funds for unauthorized purposes, and the loan will not be eligible for forgiveness. It is not clear whether the lack of forgiveness is intended to be the exclusive consequence for being over the cap.

The Treasury/SBA FAQs (dated May 13, 2020) provided additional guidance for taxpayers including:

- Extension of the affiliation rules for purposes of the PPP's 500 or fewer employee size standard. Every applicant to a PPP loan is required to count all of its employees and the employees of its U.S. and foreign affiliates, absent a waiver or an exception to the affiliation rules.
- How the SBA reviews borrowers' required good-faith certification concerning the necessity of their loan request. Importantly, any borrower, together with its affiliates, who receives a PPP loan with an original principal amount of less than \$2 million will be deemed to have made the required good-faith certification. For purposes of this safe harbor, a borrower must include its affiliates to the extent required under the IFR on Affiliate Rules (dated April 15, 2020).

The IFR on treatment of entities with foreign affiliates (dated May 18, 2020) clarifies that for purposes of the PPP's 500 or fewer employee size standard, **a PPP applicant must calculate the number of employees of an entity by counting all employees of its U.S. and foreign affiliates**, absent a waiver of exception to the affiliation rules. Any entity that does not meet the 500 or fewer employee size standard is ineligible for a PPP loan. However, the SBA will allow PPP applicants (i) who applied prior to May 5, 2020, and (ii) who had no more than 500 employees whose "principal place of residence is in the United States" to remain eligible for a PPP loan.

The IFR on appeals of SBA loan review decisions under the PPP (dated August 7, 2020) informs PPP borrowers and lenders of the process for a PPP borrower to appeal certain SBA loan review decisions under the PPP to the SBA Office of Hearings and Appeals by establishing a new subpart L and requests public comment. The Rules of Practice for Appeals From Size Determinations and NAICS Code Designations do not apply to appeals of SBA loan review decisions or to the PPP.

The SBA published a procedural notice (effective October 2, 2020) providing information concerning the required procedures for changes of ownership of an entity that has received PPP funds. For purposes of the PPP, a "change of ownership" occurs when (1) at least 20% of the ownership interest of the PPP borrower is sold or otherwise transferred, whether in one or more transactions, including to an affiliate or existing owner of the entity; (2) the PPP borrower sells or transfers at least 50% of its assets (measured by FMV), whether in one or more transactions; OR (3) the PPP borrower is merged with or into another entity. Regardless of a change in ownership, the PPP borrower remains responsible for the performance of all obligations under the PPP loan, certifications made in connection with the PPP loan application, including certifications of economic necessity, compliance with all other PPP requirements, and remains responsible for obtaining, preparing, and retaining all PPP forms and supporting documentation and providing such forms and documentation to the PPP lender or to the SBA upon request. Prior to the closing of any change of ownership transaction, the PPP borrower must notify the PPP lender in writing of the contemplated

- Determining whether the employer has a trade or business that was fully or partially suspended due to governmental orders related to COVID-19;
- Determining whether the employer has a significant decline in gross receipts;
- Calculating whether the employer has more than 100 full time employees for purposes of determining "Qualified Wages"; and
- Determining whether the employer is precluded from claiming the ERC if any member of its aggregated group receives a PPP loan.

Determining Full or Partial Suspension due to Governmental Orders

If a trade or business is operated by multiple members of an aggregated group and if the operations of one member of the aggregated group are suspended by a governmental order, then all members of the aggregated group are considered to have their operations partially suspended, even if another member of the group is in a different jurisdiction. Taxpayers should review the IRS FAQs for the Employee Retention Credit which discuss when an employer operating an essential and/or non-essential business is "partially suspended" due to a governmental order.

Determining a Significant Decline in Gross Receipts

To be an eligible employer on the basis of a significant decline of gross receipts, the employer must take into account the gross receipts of all members of the aggregated group. If the aggregated group does not experience a significant decline in gross receipts, then no member of the group may claim the ERC (unless the full or partial suspension requirements are met).

Calculating the Average Number of Full Time Employees for Purposes of Determining "Qualified Wages"

All aggregated entities are considered by a single employer for purposes of determining the employer's average number of employees.

Aggregation Rules and Single Employer Members Receiving a PPP Loan

A single employer under the aggregation rules may not claim the ERC if any member of the employer's aggregated group receives a PPP loan

transaction and provide the PPP lender with copies of the proposed agreements and documents that would effectuate the transaction. See the SBA Procedural Notice for the different procedures depending on whether (1) the PPP Note is/is not fully satisfied, (2) change of ownership is structured as a stock or asset sale, and (3) where prior approval from the SBA is/is not required

Sources

[Small Business Administration: Paycheck Protection Program](#): Provides a high-level overview of the Paycheck Protection Program.

[Dept. of the Treasury: The CARES Act Provides Assistance to Small Businesses](#): Overview of the Paycheck Protection Program with links to IFRs, the most up-to-date FAQ, and other information for borrowers and lenders.

[Dept. of the Treasury: Affiliation Rules Applicable to U.S. Small Business Administration Paycheck Protection Program \(dated April 3, 2020\)](#): Official summary of applicable affiliation rules used in evaluation of PPP applications.

[Small Business Administration: IFR on Affiliate Rules, "Business Loan Program Temporary Changes; Paycheck Protection Program" \(85 FR 20817, dated April 15, 2020\)](#): Provides guidance on SBA interpretation of affiliation rules and exemption from affiliation rules for religious organizations under certain circumstances.

[13 CFR §121.301](#): Version of 13 CFR §121.301 immediately prior to the February 10, 2020 IFR rescinded by CARES Act §1102(e) – These are the affiliation rules that are currently in effect.

[Small Business Administration: IFR on "Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders" \(85 FR 26324, dated May 4, 2020\)](#): Provides a \$20 million maximum cap on the amount of PPP loans a corporate group can borrow, and applies a separate aggregation rule for purposes of the cap.

[Federal Reserve Board: Main Street Lending Program Frequently Asked Questions \(effective April 30, 2020\)](#): The Federal Reserve Board provides a Main Street Lending Program and a Primary Market Corporate Credit Facility ("Main Street Loans") in order to assist companies of different sizes to provide liquidity during COVID-19. According to the FAQs, these loans can be obtained and received in addition to PPP loans. Eligibility for Main Street Loans include aggregation rules for calculating employees and revenues of its affiliated entities similar to the SBA's procedures for PPP loans. See 13 CFR 121.301.

[Dept. of the Treasury: Paycheck Protection Program Loans – Frequently Asked Questions \(last updated August 11, 2020\)](#): Provides general overview of PPP loan requirements and program rules. FAQ #44

Sources

[COVID-19-Related Employee Retention Credits: Determining Which Entities are Considered a Single Employer Under the Aggregation Rules FAQs \(last updated April 29, 2020\)](#): Discusses how related entities may be aggregated and treated as a single employer for purposes of the ERC, how the aggregation rules are applied on other provisions of the ERC, and how the ERC may be allocated to members of an aggregated group.

[COVID-19-Related Employee Retention Credits: Determining Qualified Wages FAQs \(last updated April 29, 2020\)](#): Discusses how the aggregation rule is applied for purposes of calculating the average number of full-time employees under the definition of "Qualified Wages."

[COVID-19-Related Employee Retention Credits: How to Claim the Employee Retention Credit FAQs \(last updated May 7, 2020\)](#): Discusses how employers with multiple entities aggregated and treated as a single employer must report the ERC on their employment tax returns.

[COVID-19-Related Employee Retention Credits: Interaction with Other Credit and Relief Provisions FAQs \(last updated May 7, 2020\)](#): Discusses how the aggregation rule may limit an employer's eligibility for the ERC if one of its entities has received a PPP loan.

[COVID-19-Related Employee Retention Credits: Interaction with Other Credit and Relief Provisions FAQs \(last updated May 7, 2020\)](#): Adds a new question 80 which allows an employer who applied for a PPP loan, received payment and repaid the loan by May 7, 2020 to be treated as though the employer had not received a covered loan under the PPP (and would be eligible to claim the ERC). However, this safe harbor has been extended to May 18, 2020 pursuant to the May 13, 2020 update. See [Treasury/SBA FAQs \(Questions 45 & 47\)](#).

[COVID-19-Related Employee Retention Credits: Determining When an Employer's Trade or Business Operations are Considered to be Fully or Partially Suspended Due to a Governmental Order FAQs \(last updated June 19, 2020\)](#): Discusses the aggregation rule and its application in determining whether a single employer is eligible for the ERC if one member of the aggregated group is suspended by a governmental order, and provides additional guidance on what constitutes a partial suspension of operations due to a governmental order.

states for purposes of the PPP's 500 or fewer employee size standard, applicants must count all employees of its U.S. and foreign affiliates (absent a waiver of or exception to the affiliation rules). See 13 CFR 121.301(f)(6). FAQ #46 and 47 provides a safe harbor from the good-faith certification requirement for borrowers (together with its affiliates) who receive a PPP loan of less than \$2 million. The SBA's believes this approach will enable it to conserve its finite audit resources and focus its reviews on larger loans. The SBA also extends its PPP loan repayment date to May 18, 2020, to give borrowers the opportunity to review and consider the safe harbor. FAQ #12 was updated to exclude from eligibility businesses with a 20% or more equity owner who (i) is presently incarcerated for any felony, criminal information, arraignment, or other means by which formal criminal charges are brought in ANY jurisdiction, or (ii) has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation for (a) a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or (b) any other felony within the last year,

[Small Business Administration: IFR on "Business Loan Program Temporary Changes: Paycheck Protection Program - Treatment of Entities with Foreign Affiliates" \(dated May 18, 2020\)](#): Clarifies under SBA's affiliation rules that employees of foreign affiliates are required to be counted for purposes of PPP eligibility.

[Small Business Administration: IFR on "Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program" \(dated August 7, 2020\)](#): Provides that the Rules of Practice for Appeals From Size Determinations and NAICS Code Designations do not apply to appeals of SBA loan review decisions or to the PPP.

[Paycheck Protection Program - Frequently Asked Questions \(FAQs\) on PPP Loan Forgiveness \(last updated August 11, 2020\)](#): Provides guidance to address borrower and lender questions concerning forgiveness of PPP loans. Clarifies that any EIDL advance received by borrower reduces the amount PPP loan amount forgiven. If an EIDL advance is in excess of a borrower's PPP loan, it will not receive any forgiveness on its PPP loan.

[SBA Procedural Notice: Paycheck Protection Program Loans and Changes of Ownership \(Effective October 2, 2020\)](#): Provides information concerning the required procedures for changes of ownership of an entity that has received PPP funds.

[COVID-19-Related Employee Retention Credits: Determining When an Employer is Considered to have a Significant Decline in Gross Receipts and Maximum Amount of an Eligible Employer's Employee Retention Credit FAQs \(last updated June 19, 2020\)](#): Discusses how the aggregation rule is applied for purposes of calculating a "significant decline in gross receipts" to determine whether an employer is eligible for the ERC.

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