THE ELITE QUARTERLY – Taxation
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A word about our updated newsletter

As you can see, we have a new look! Our updated length and style combines feedback from customers, regulatory stakeholders, and our own internal review. The COVID-19 pandemic and resulting legislation has delivered an overwhelming volume of changes and challenges. As a result, our updated Summer newsletter provided us with a perfect opportunity to roll out this new format. We are now able to deliver a greater level of detail on select topics. Please note that our newsletter content has been expanded, but the number of final exam questions remains the same for a 4-hour offering (20 questions).

Thank you for your ongoing support of The Elite Quarterly. Many of you have renewed your newsletter subscriptions for 2020 – we thank you very much! Please find details of all of our subscription packages for 2020 listed at the end of this course. Thank you for being a customer – we appreciate your business!

What's Inside This Issue

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Instructions, Content Level, & Learning Objectives

Please read the course content and answer all review questions. Once you have completed reviewing all course material, please complete the enclosed final exam using the attached answer sheet or by completing the final exam online at www.cpelite.com. The location of all course materials including section content, review questions, final exam and course instructions is contained in the Table of Contents provided below.

The content level for this course material is "Update" and field of study classification is "Taxation." A general understanding of federal income taxation is the prerequisite for this course. No advance preparation is required. The ***Learning Objectives*** for this course are:

1. Recall economic and tax relief provisions provided for in recently enacted legislation spurred on by the COVID-19 pandemic.
2. Identify lending and loan forgiveness requirements specific to the Paycheck Protection Program.
3. Recall individual and business tax relief provisions contained in the CARES Act.
4. Identify factors which contribute to increases in the National Debt.
5. Recall risks companies face when mis-categorizing employee's as independent contractors.

Key Terms in This Issue of *THE ELITE QUARTERLY*

[Item 1] Shelter in Place Orders: The term denotes a government order for residents to stay home during a period of declared emergency expect for essential activities.
[Item 1] Strategic National Stockpile: Represents the United States' national repository of antibiotics, vaccines, chemical antidotes, antitoxins, and other critical medical supplies.
[Item 2] Professional Employer Organization: An outsourcing firm that provides services to small and medium sized businesses typically offering human resource consulting, safety and risk mitigation services, and payroll processing related services.
[Item 2] ACH Credit: An electronic financial deposit from one bank to another.
[Item 3] Retail Glitch: Under the Tax Cuts and Jobs Act of 2017 (TCJA), qualified improvement property (QIP) was unintentionally classified as nonresidential real property and therefore did not qualify for bonus depreciation. The Coronavirus Aid, Relief, and Economic Security (CARES) Act fixed this error (referred to as the "retail glitch") by including QIP within the scope of property depreciable over 15 years and thereby making QIP eligible for bonus depreciation retroactive to 2017.
[Item 4] National Debt: The net accumulation of the federal government's annual budget deficits. It is the total amount of money that the U.S. federal government owes to its creditors.
[Item 4] Pease Limitation: The Pease limitation was a cap on how much certain taxpayers could claim in the way of itemized deductions if their incomes exceeded certain thresholds. Named for the politician who first introduced the legislation in 1991—Congressman Donald Pease from Ohio—it was repealed on Dec. 22, 2017 upon passage of the Tax Cuts and Jobs Act (TCJA).
[Item 5] Gig Worker: A reference to independent contractors, online platform workers, contract firm workers, on-call workers and temporary workers. Gig workers typically enter into formal agreements with on-demand companies to provide services to a company's clients.

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ITEM 1 - LEGISLATIVE SUMMARY

Our country has had its share of hardship throughout the centuries, however, the COVID-19 pandemic ushered in a new challenge during the modern era. Experts from many fields have recommended for rapidly slowing down and in some cases effectively shutting off the valve of economic output. Manufacturing, wholesale, retail and service segments of the country have proceeded to become dormant during the second quarter of 2020. As a result, elected officials were quick to initiate wave after wave of legislative relief designed to mitigate the damage from this self-imposed shut down.

Commonly categorized as "Phases", this relief was designed to provide economic relief to families and businesses during the pandemic. The dust is still being kicked up on many details associated with this relief. Much needed interpretive guidance continues to follow this initial flurry of legislation. Let's dive into the some of the details in connection with these efforts.

Phase 1

Congress and the President signed into law H.R. 6074 on March 5th and 6th as an immediate response to the impacts of COVID-19. This initial legislation was geared towards funding for diagnostic testing, support for the treatment of the virus and to provide assistance to small businesses that have been impacted directly by financial losses resulting from the pandemic. Known as the Coronavirus Preparedness and Response Act of 2020, this initial volley included $8.3 billion in emergency funding. Initial appropriations were used to fund vaccination research at the Department of Health and Human Services, provide emergency funds to the Center for Disease Control including purchases of much needed medical equipment (ventilators and masks), and also to provide state, local and other related public health organizations with financial support during the initial stages of the crisis. Phase 1 was specific to one central goal; slowing the spread of the virus.

Twenty-million dollars of funding was also provided to the Small Business Administration (SBA) to shore up administration costs needed for upcoming relief programs soon to be rolled out. Medicare restrictions associated with telehealth services were also modified as part of H.R. 6074.

Additionally, while much of this Phase 1 relief was directed at domestic priorities, we find that nearly 20% or $1.6 billion in aid was also provided for international relief. The majority of this allocation was provided to the US agency for International Development. This funding provided evacuation and emergency preparedness assistance at US embassies, State Department facilities, along with humanitarian assistance and support for individuals and health systems of countries in desperate need of aid.

Phase 2

The initial legislative priority was to deliver resources to agencies and individuals to combat the virus directly. Social distancing now became the watch word. Federal and State governments were quick to enact shelter in place orders across the country. Many states imposed these lockdowns with initial estimates ranging from a few weeks to a month. As we now know, these estimates were woefully short.

Phase 2 legislation was geared towards providing relief to individuals and families impacted by these pandemic based restrictions, specifically addressing job and payroll concerns. The Families First Coronavirus Response Act (FFCRA - H.R. 6201) became law on March 18th. The 2020 spring edition of the *Elite Quarterly* covered specific details contained in this legislation. The FFCRA directs many changes to increase public health measures. Revisions to paid leave provisions including an expansion of the Family Medical Leave Act (FMLA) became a top priority. Specifically, the FMLA was enhanced so that most private U.S. employers were required to provide paid leave to employees impacted by COVID-19 related medical conditions. This expansion of the FMLA benefits also included instances in which an employee must care for a child as a result of a school or child care closing resulting from a public health emergency. Tax credits were also made available to employers who are required to make payment under these provisions. According to guidance provided by the Department of Labor, these modifications to paid leave provisions are effective beginning April 1, 2020 and run thru the end of calendar year 2020.

Phase 3

The initial two phases of relief provided funding to support public health measures and to provide workers and employers with medical and paid sick leave relief. Phase 3 would become the most ambitious effort yet. It became clearly evident during the months of March that this battle would be fought and won over the course of months and not weeks. Economic aid to individuals and businesses became a priority. The result was passage of the CARES Act, a $2 trillion dollar package which impacts nearly every individual and business across the United States.

This enormous bill had a rather unceremonious beginning. The CARES Act originated as an amendment to an unrelated existing tax bill that sat on the sidelines (HR 748, dubbed the Middle Class Health Benefits Tax Repeal Act of 2019). The Constitution dictates that only the House of Representatives may originate bills for the purpose of raising revenue. The Senate may then amend such bills. This practice of amending existing bills has been used for countless years and has enjoyed wide spread latitude. The Senate seized on an opportunity to deliver relief via the CARES on the back of this original HR 748 bill. A complete rewrite of this initial legislation was made. In fact, none of the original language remained from the original bill.

The result, a massive 600 plus page bill providing individual and business relief across vast sectors of the economy. Let's take this opportunity to provide a moderately detailed review of elements included in this landmark piece of legislation. Additionally, we'll address detailed provision of those elements included in the law that impact many businesses, individuals, and practitioners.

The CARES Act is subdivided into 6 principal "Titles" addressing sweeping economic relief:

- Title I: Keeping American Workers Paid and Employed Act
- Title II: Assistance for American Workers, Families, and Businesses
- Title III: Supporting America's Health Care System in the Fight Against the Coronavirus.
- Title IV: Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy.
- Title V: Coronavirus Relief Funds
- Title VI: Miscellaneous Provisions

Title I: Keeping American Workers Paid and Employed Act

We find the first mention of the highly publicized Paycheck Protection Program (PPP) contained within Title I of the CARES Act. An initial $349 billion dollars was set aside via this first volley with additional funding provided in future legislation. We'll dive into much greater detail concerning the PPP a bit further into this quarter's newsletter, but let's first point out some highlights of the program:

- Eligible entities which can participate in the PPP include businesses, nonprofit organizations, veteran's organizations, or tribal concerns that employ either less than 500 employees or less than the employee size standard set by the Small Business Administration (SBA) for the borrower's particular industry.

- Eligible borrowers include sole-proprietors, independent contractors, and other self-employed individuals.
- This program streamlines the typical loan process by permitting additional lenders to participate, includes a simplification of eligibility standards, along with expedited approvals.
- Collateral and credit requirements were eliminated as requirements for obtaining a loan.
- PPP loan proceeds can be used to cover business expenses including payroll support, insurance premiums, mortgage premiums, and other specified debt obligations.
- Loan proceeds specifically spent on payroll costs, mortgage interest, rent, or utilities during an 8-week period following the origination date of the loan would be forgiven, however the forgiveness amount is reduced if the borrower has certain reductions in employees or salaries as compared to the previous year.

The PPP is implemented retroactively to February 15, 2020. This measure will provide businesses with an opportunity to bring workers who may have already been laid off back onto payrolls.

Title I also addresses loan payment deferral provisions directed at current SBA lenders. Individuals currently making payments on an SBA loan may be eligible to defer payments up to 6 months. $17 billion of subsides in connection with these deferrals had been earmarked to cover principal, interest, and fees on existing loans. Title I also includes $10 billion of funding for emergency economic injury disaster loan (EIDL) grants including an expansion of this program through 2020. This relief provides funds to small business development centers and minority business development agencies. The bulk of these funds will be used to prop up programs for counseling, training, education and other SBA related resource centers impacted during the pandemic.

Title II: Assistance for American Workers, Families, and Businesses

An expansion of direct relief provided by the CARES Act is contained in Title II. The Pandemic Unemployment Assistance Program is contained in this section and was created to provide payments to eligible individuals not normally able to receive unemployment assistance including independent contractors and other self-employed individuals. This temporary measure extends thru December 31, 2020 and applies to those eligible individuals who are unable to work because of a COVID-19 related conditions. Unemployment benefits are also expanded under this Act including an appropriation of an additional $600 of unemployment benefits per individual per week for up to four months. This aid will specifically assist those individuals who must wait a week or more for state unemployment benefits to kick in. Additionally, this relief will help workers who have exhausted current state unemployment benefits.

One of the most publicized measures brought by the CARES Act involves the $1,200 per adult, and $500 per child economic impact payment. This advance tax rebate is subject to adjusted gross income limitations based on either the 2019 tax return (if filed) or the previously filed 2018 federal tax return on record.

Other key tax and economic relief provisions contained within Title II include:

- Waiving of early withdrawal penalties for certain distributions from qualified retirement accounts.
- Waiving of minimum distribution rules for defined plans and IRAs for 2020.
- Modifications to charitable donation limits.
- Modification of rules pertaining to employers and payment of an employee's student loans on a tax-free basis.
- Creation of an employee retention credit of 50% on up to $10,000 of wages paid by employers experiencing a closure or significant decline in gross receipts resulting from COVID-19 impacts. This provision also includes employees who have also been furloughed as a result of COVID-19.

- Deferment of Social Security tax payments, expanded ability to use NOLS, and additional deductions and write-offs that businesses may claim on their 2020 tax returns.

We'll discuss some of these specific tax provisions in greater detail shortly.

Title III: Supporting America's Health Care System in the Fight Against the Coronavirus.

Title III addresses the increased need to beef up our healthcare infrastructure resulting from the growing crisis. Phase 1 legislation directed dollars to provide for diagnostic testing and support for treatment of the virus. The CARES Act greatly expands on this growing need by funneling funds for the support and relief of an over-worked health care system including:

- Efforts to address supply shortages by permitting the Strategic National Stockpile to accumulate medical supplies.
- Providing liability protection to manufacturers of personal protective equipment and ventilators to incentivize production.
- Provides access to health care for COVID-19 patients by providing no-cost diagnostic testing and access to any vaccine developed.
- Provides financial support for vaccine research and development.
- Reauthorizes existing health care workforce training programs.

Non healthcare specific measures are also reflected in this section including relief for college students impacted by COVID-19. Borrowers may defer all student loan payments, including principal and interest, for six months. Loans available for this deferral must be federally owned notes. Additionally, the law also authorizes the Secretary of Education to modify all "use of funds" restriction in connection with institutional grant programs. This modification will allow recipients of such grants to repurpose dollars for COVID-19 relief efforts.

Some additional provisions included in Title III include:

- Updates to the Family Medical Leave Act's paid leave amounts and emergency paid sick leave for employees impacted by COVID-19.
- Expansion of telehealth services including an expansion of the current list of providers who can provide telehealth services, relaxation of place-of-service limitations, and an increase in reimbursement rates.
- Increases to Medicare coverage reimbursement for COVID-19 related treatment.
- Expansion of funding for community health centers and the National Health Services Corps.

Title IV: Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy.

As the title implies, this section was crafted to provide specific direct assistance and stabilize critical industries in our country. Specifically, it directs $500 billion to the Treasury's Exchange Stabilization Fund to provide loans, loan guarantees, and other investments, distributed as follows:

(1) Direct lending, including:
   - $25 billion for passenger air carriers and legally defined related businesses (inspection, repair, replace related, and ticket agents).
   - $4 billion for cargo air carriers; and
   - $17 billion for businesses important to maintaining national security.

(2) $454 billion, as well as any amounts available but not used for direct lending, for loans, loan guarantees, and investments in support of the Federal Reserve's lending facilities to eligible businesses, states, and municipalities.

This section of bill is referred to as the Coronavirus Economic Stabilization ACT of 2020 (CESA) and requires that any direct lending include various requirements and restrictions associated with this specific relief including prohibitions on stock buybacks, paying dividends for a prescribed period of time and requirements to maintain current staffing levels to the extent practicable. Lending under these programs are subject to audits. Congressional oversight will be in place to oversee implementation in connection with CESA loans.

CESA will also monitor updated rules concerning federally-backed mortgages. The Act provides protections for individuals by prohibiting certain evictions and foreclosures including a 180 day payment forbearance period for borrowers with a federally-backed mortgage.

Title V and Title VI of this landmark legislation addresses additional relief measures. Section 5001 of this Title V provides $150 billion to States, Territories, and Tribal governments to use for expenditures incurred due to the public health emergency with respect to COVID-19 in the face of revenue declines. Amounts are to be allocated by population proportions, with a minimum of $1.25 billion for states with relatively small populations. Title VI in part allocates $10 billion of borrowing authority for the United States Post Office to respond to effects of coronavirus while preserving the authority of the Treasury to set the terms of the loan.

"Phase 3.5"

Fresh off passage of the CARES Act, Congress set to work on Phase 4 legislation. Initial momentum centered on a large infrastructure bill; however, the idea of another sweeping legislative package quickly fell from the spotlight. The pressing need was to fix any holes from recently passed legislation and shore up any funding on programs which exhausted funds in rapid fashion.

The Paycheck Protection Program and Health Care Act (H.R. 266) was born from this necessity. Dubbed "Phase 3.5" this legislation was signed into law on April 21st. This $484 billion law provided much needed cash for an already depleted Paycheck Protection Program. It also provided additional funding for hospitals and COVID-19 based testing. A breakdown of appropriations include:

- $320 billion of additional funding for the Paycheck Protection Program (PPP).
- $60 billion for PPP loans made by small banks, small credit unions, and community financial institutions.
- $10 billion for emergency Economic Injury Disaster Loans (EIDL).
- $50 billion for Small Business Administration disaster loans.
- $75 billion to the Public Health and Social Services Emergency Fund for health care providers' expenses and to cover lost revenues related to coronavirus.
- $25 billion to the Public Health and Social Services Emergency Fund for researching, developing, validating, manufacturing, purchasing, administering, and expanding capacity for COVID-19 testing.
- $2.1 billion for salaries for the Small Business Administration.

Paycheck Protection Program Flexibility Act of 2020

Spring turned into summer and with it came additional tweaks to the PPP. The Paycheck Protection Program Flexibility Act of 2020 was signed into law on June 5, 2020. Amendments to the PPP centered around additional flexibility for borrowers in the manner and timing of how funds could be spent while still qualifying for loan forgiveness. We will address details of this legislation in Item 2.

Review Questions

1. Legislation which included funding of $20 million to the Small Business Administration designed to cover administrative costs associated with future programs was rolled out during ________.
    a. Phase 1
    b. Phase 2
    c. Phase 3
    d. Phase 3.5

2. Which of the following financial provisions was not included in the CARES Act?
    a. Expansion of access to healthcare for COVID-19 patients.
    b. Waiving of minimum distribution rules for defined plans and IRAs for 2020.
    c. Push back the age at which retirement plan participants need to take required minimum distributions (RMDs), from 70½ to 72, and allows traditional IRA owners to keep making contributions indefinitely.
    d. Update the Family Medical Leave Act for employees impacted by COVID-19.

3. "Phase 3.5" legislation (Paycheck Protection Program and Health Care Act H.R. 266) centered on fixing financing and legislative holes from recently enacted legislation concerning the conronavirus pandemic. Which of the following was not included with passage of this legislation?
    a. Funding for Small Business Administration Disaster loans.
    b. Additional funding for the Paycheck Protection Program.
    c. Funding for the Department of Transportation to begin long overdue infrastructure projects.
    d. None of the above.

ITEM 2 - PAYCHECK PROTECTION PROGRAM

Relief measures are vast, deep and ever evolving as we witness the passage of new laws including much needed guidance as it becomes available. No one program encapsulates these relief efforts and the challenges to navigate the shifting sands of compliance then the highly touted Paycheck Protection Program. Considering the evolving nature of this program, we'll present details in chronologic order.

Origins and Basics

The Paycheck Protection Program (PPP) was established to provide small businesses with funds for up to eight weeks of coverage for cash outlays connected with payroll costs including benefits. Proceeds received could also be used to pay interest on mortgages, rent and utilities. The key provision of this loan program was its forgiveness feature. Funds which were provided in the forms of loans would be fully forgiven if borrows could demonstrate that at proceeds were used to pay for the above referenced business expenses. One specific requirement contained in the original legislation states that at least 75% of the forgiven amount must have been used for payroll. Loans entered into under this program do not require collateral or personal guarantees. Additionally, the government nor the lender will directly charge the small business applicant a fee for obtaining a loan thru the PPP.

Loan forgiveness will be based on an employer maintaining current salary levels. This includes the rehiring of employees if done in connection with the obtaining of PPP loan proceeds. Loan forgiveness amounts will be reduced under the program if full-time headcount would decline and if salary and wages should decrease.

The PPP program was made available to small businesses that contain fewer than 500 employees. There are some limited exceptions to the 500-employee eligibility requirement for certain industries, such as businesses in the hospitality and food sectors that have multiple locations, which can have up to 500 employees per physical location of the business. The range of eligible businesses who can participate in the program is expansive (i.e. nonprofits, veteran's organizations, tribal concerns, self-employed individuals, sole proprietorships, and independent contractors).

Interested small businesses and sole proprietorships were able to begin the loan process on April 3rd, and were highly encouraged to apply early before funds set aside for the program ran out. Independent contractors and self-employed individuals were delayed a week before they were eligible to apply (April 10th).

Response

Demand was great, and funds were quickly spoken for. The total loans applied for within less than two weeks was staggering. The Small Business Administration reported the following "Approvals" statistics thru April 16th (less than two weeks after the program first became available):

- Total Loans – 1,661,367
- Net Approved Loan Amount - $342,277,999,103
- Lender Count – 4,975

Over $340 billion dollars in lending in less than half a month. The average loan size during this period totaled just over $200,000, however nearly three quarters of all approved loans were for dollar amounts less than $150,000; a sign that the dollars amounts set aside for small business generally hit the mark.

Industry participation was varied, however companies with high salary and equipment related costs topped the list for borrowers. Sector statistics including percentage of borrowing relative to total approved loans follow:

- Construction: 13.12 %
- Professional, Scientific, and Technical Services: 12.65%
- Manufacturing: 11.96%
- Health Care and Social Assistance: 11.65%
- Accommodation and Food Services: 8.91%

Critiques, criticisms, confusion

Clearly speed and reach were pressing priorities concerning the program. The primary goal was to have funds made available to businesses that were shut down resulting from government imposed stay in place orders. This "shoot first and ask questions later" approach was effective in distributing funds to businesses in need, however it did come at a cost. Guidance and oversight were desperately needed to oversee such a large undertaking.

As expressed above, funds dried up quickly. Passage of Phase 3.5 helped to replenish the PPP. Applications into the program resumed on April 27th upon passage of this bill.

Guidance from the Department of Treasury and the Small Business Administration arrived in piecemeal fashion as questions poured out from applicants concerning details of the application process, especially provisions regarding loan forgiveness. Highlights include:

April 23rd: The SBA stated that it is unlikely that a publicly traded business with substantial market value and access to capital markets would be eligible for a PPP loan. Such a business would not be able to certify in good faith that the PPP loan is necessary to support its ongoing operations because of "current economic uncertainty". The SBA said it would not pursue action against any such business that applied for a PPP loan prior to April 23 and repays the loan proceeds by May 18. On April 28, similar guidance was extended to businesses owned by private companies with similar situations.

April 28th: Treasury Secretary Mnuchin declared that the SBA would perform a "full review" of each PPP loan exceeding $2 million warning that businesses would held be "criminally liable" if they receive a loan exceeding $2 million and do not follow the rules.

May 5th: The SBA clarifies rules regarding nonprofit organizations stating that loan proceeds are not considered federal financial assistance and are not subject to audit requirements under Uniform Guidance rules.

May 13th: The SBA announces that any business that, together with its affiliates, received a total of less than $2 million of PPP loan proceeds will be assumed to have met the good-faith certification requirement.

Challenges are ongoing as the PPP continues to answer specific questions across a vast span of industries and individual situations. The Treasury department link home.treasury.gov/policy-issues/cares/assistance-for-small-businesses is the definitive resource for pronouncements associated with the program. The tools section of this link has updated guidance and resources for businesses and advisors on a range of topics. Below is a breakout of available resources (including date guidance was pronounced by the Treasury

Department) which many individuals, businesses, and practitioners should reference when seeking specific answers related to this program.

We strongly recommend checking this website regularly given the fluid nature of this loan program. Specifically, many elements of the recently enacted Paycheck Protection Flexibility Act (PPFA) have not been reflected in current guidance provided by the Treasury Department. Specifically, the loan forgiveness application has not been updated as of this writing and currently reflects limits prior to passage of this recent legislation. As a result, our discussion focuses on existing guidance along with a detailed explanation of changes reflected in the PPFA at the end of this section.

Program Overview

- Top-line Overview of PPP (3/31/2020).
- SBA Paycheck Protection Program Loan Report (4/16/2020).
- SBA Paycheck Protection Program Loan Report Round 2 (5/18/2020).

Borrowers

- More information (3/31/2020).
- Search Tool: Find an Eligible Lender.
- Borrower Application Form (4/2/20).
- Applicable Affiliation Rules.
- How to Calculate Loan Amounts.
- Loan Forgiveness Application.

Lenders

- More information (3/31/2020).
- Lender Application Form (4/2/2020).
- Lender Application Form for Federally Insured Depository Institutions, Federally Insured Credit Unions, and Farm Credit System Institutions (4/3/2020).
- Lender Application Form for Non-Bank and Non-Insured Depository Institution Lenders (4/8/2020).
- Guidance on Whole Loans Sales of PPP Loans.

Program Rules

- Frequently Asked Questions (5/13/2020).
- Interim Final Rule 1 (originally posted April 2, 2020).
- Interim Final Rule on Applicable Affiliation Rules (originally posted 4/3/2020).
- Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans (originally posted 4/14/2020).
- Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility (originally posted 4/24/2020).
- Interim Final Rule Additional Criterion for Seasonal Employers (originally posted 4/27/2020).
- Interim Final Rule on Disbursements (originally posted 4/28/2020).
- Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders (originally posted 4/30/2020).
- Interim Final Rule on Nondiscrimination and Additional Eligibility Criteria (originally posted 5/5/2020).
- Interim Final Rule on Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request (originally posted 5/8/2020).
- Interim Final Rule on Loan Increases (originally posted 5/13/2020).

- Interim Final Rule on Eligibility of Certain Electric Cooperatives (originally posted 5/14/2020).
- Interim Final Rule on Treatment of Entities with Foreign Affiliates (5/18/2020).

Of particular interest and relevance is the Frequently Asked Question guidance provided by the above link. The goal of the application was simplicity, however details associated with completing the application prove difficult to pin down. Definitions of key terms in particular were needed. Below are *key excerpts* from the FAQ guidance covering specific considerations practitioner's and businesses should be mindful of when applying for loan proceeds and submitting follow-up documentation seeking loan forgiveness.

2.

Question: *Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers in the PPP?*

Answer: *No. Small business concerns can be eligible borrowers even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a "small business concern" under section 3 of the Small Business Act, 15 U.S.C. 632…*

7.

Question: *The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of $100,000. Does that exclusion apply to all employee benefits of monetary value?*

Answer*: No. The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to non-cash benefits, including:*

- *employer contributions to defined-benefit or defined-contribution retirement plans;*
- *payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and*
- *payment of state and local taxes assessed on compensation of employees.*

8.

Question: *Do PPP loans cover paid sick leave?*

Answer: *Yes. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127).*

9.

Question: *My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business's operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?*

Answer: *In evaluating a borrower's eligibility, a lender may consider whether a seasonal borrower was in operation on February 15, 2020 or for an 8-week period between February 15, 2019 and June 30, 2019.*

10.

Question: *What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?*

Answer: *SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.*

14.

Question: *What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?*

Answer: *In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019. An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020. Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).*

15.

Question: *Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?*

Answer: *No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.*

16.

Question: *How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?*

Answer: *Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax.*

Example

An employee who earned $4,000 per month in gross wages, from which $500 in federal taxes was withheld, would count as $4,000 in payroll costs. The employee would receive $3,500, and $500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the $4,000 in wages are excluded from payroll costs under the statute.

The definition of "payroll costs" in the CARES Act excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period," defined as February 15, 2020, to June 30, 2020.

The SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages.

This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers. remain paid and employed.

20.

Question: *The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week period; when does that eight-week period begin?*

Answer: *The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.*

The time of forgiveness provision had been a particularly difficult provision to comply with. Companies have experienced issues aligning their payrolls with the receipt of cash from loan proceeds. An example would include cases in which a business does not receive the PPP loan days before a regularly scheduled payroll. In this instance, it may be difficult for the business to meet the requirements necessary to forgive the loan.

This led to a discussion of extending the deadline. Stay in place and mandatory shut down orders have prevented businesses from opening their doors. Businesses may be sitting on loan proceeds without having an opportunity to run their business and hire back staff. On May 18th the President met with restaurant owners to discuss this very issue which became the spark to pass the Paycheck Protection Program Flexibility Act of 2020. The updates reflected in this new law will provide much needed relief on this deadline for restauranteurs, retailers, and other businesses impacted by mandatory shutdown measures imposed by their respective state. We are hopeful that clarification on this new law is soon forthcoming and reflected in the Treasury Departments FAQ's section and other guidance.

32.

Question: *Does the cost of a housing stipend or allowance provided to an employee as part of compensation count toward payroll costs?*

Answer: *Yes. Payroll costs includes all cash compensation paid to employees, subject to the $100,000 annual compensation per employee limitation.*

36.

Question: *To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must a borrower count all employees or only full-time equivalent employees?*

Answer: *For purposes of loan eligibility, the CARES Act defines the term employee to include "individuals employed on a full-time, part-time, or other basis." A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold. For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees. By contrast, for purposes of loan forgiveness, the CARES Act uses the standard of "fulltime equivalent employees" to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions*

The criteria for FTE loan eligibility is fairly straight forward. We will proceed with a more difficult challenge of a somewhat similar calculation as we address the task of applying for loan forgiveness.

46.

Question: *How will SBA review borrowers required good-faith certification concerning the necessity of their loan request?*

Answer: *When submitting a PPP application, all borrowers must certify in good faith that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA's review of PPP loans with respect to this issue:* ***Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.*** *SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns. Importantly, borrowers with loans greater than $2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance. SBA has previously stated that all PPP loans in excess of $2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request. SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee.*

Borrower's should not assume that this safe harbor limit will serve as a shield of immunity. This provision only applies to economic uncertainty, however other requirements associated with these loans are still subject to scrutiny. Simply because a provision exists in a "frequently asked questions" section of the SBA website does not offer blanket immunity from other government agencies such as the Department of Justice in cases where fraud may be present.

47.

Question: An SBA interim final rule posted on May 8, 2020 provided that any borrower who applied for a PPP loan and repays the loan in full by May 14, 2020 will be deemed by SBA to have made the required certification concerning the necessity of the loan request in good faith. Is it possible for a borrower to obtain an extension of the May 14, 2020 repayment date?

Answer: Yes, SBA is extending the repayment date for this safe harbor to May 18, 2020, to give borrowers an opportunity to review and consider FAQ #46. Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA's interim final rule providing the safe harbor.

As we can see, the efforts by the federal government to extend loans to businesses in an expedited fashion has created a bit of chaos. The task of crafting one set of simple rules in an applications based on the varied nature of businesses and industries across the United States is simply too tall an order. Our goal as practitioners is to understand the rules as best we can, particularly given the fluid nature of this program. One recommendation is to continue to monitor the Department of Treasury and Small Business Administration website. Clarifications, changes and additional guidance has been ongoing since passage of the CARES Act relative to the PPP. The frequently asked questions section has been updated many times since it was first launched.

The bigger challenge facing businesses and particularly practitioners is applying for loan forgiveness. The stakes are huge and our collective expertise in helping to unpack the various requirements associated with loan forgiveness provisions may make or break many businesses. With that said, let's dive into the rules, as they currently exist.

Loan Forgiveness

On May 15th, the SBA and Treasury Department rolled out the application and instructions in connection with the Paycheck Protection Program. The eleven page form will serve, undoubtedly, as the starting point in this process. Many practitioners (and nervous business owners) are hopeful that an updated form, additional regulations and guidance are available after passage of recent legislation.

Rather than navigate thru the entirety of specifics of the calculations and form, we'll take this opportunity to discuss general concepts concerning the loan forgiveness provisions and also to highlight key areas that practitioners should pay attention to as they work with their clients to calculate possible tax outcomes resulting from this program.

Basics

The genesis of this program was to provide liquidity to businesses which were impacted by the COVID-19 pandemic and facing the threat of having to shut down or significantly modify their business. The popularity of the PPP loans lie in the forgiveness provisions contained within. In general, a borrower who receives funds and spends a pre-determined amount of those proceeds over the course of eight weeks on payroll, mortgage interest, rent and utilities may be eligible to receive a complete forgiveness of this debt. The phrase “forgiveness of debt” is a familiar one with tax practitioners. As such, less touch upon potential tax impacts for borrowers in connection debt forgiveness.

The CARES Act provides that forgiveness of a PPP loan will be considered tax free. However, expenses incurred allocable to tax exempt income are not deductible by the payor. As such, any expenses incurred by a borrower that originated from loan proceeds will not be deductible by the borrower on their 2020 tax returns. It does not appear that Congress will pass subsequent legislation permitting this double benefit of expenses, but given the current environment we are operating in, one can never quite tell. Clearly a need is present to work with clients in connection with these calculation associated with this loan forgiveness option. Additionally, we should also be updating any tax projections or similar planning models to project the impact of these loans and related (non-deductible) expenses.

Key Concepts

As expressed earlier, many borrowers and practitioners are eager to obtain updated guidance and regulations given the calculations and assumptions one must make to complete the application. However, there are some critical concepts and definitions that applies to the current application and set of instructions, or as it may be modified in the form of future pronouncements.

Let’s first cover some important definitions contained in the instructions:

Covered Period: *This represents the eight-week (56-day) period in connection with the PPP loan. The first day of the Covered Period must be the same as the PPP Loan Disbursement Date.*

Example

If the Borrower received its PPP loan proceeds on Monday, April 20, the first day of the Covered Period is April 20 and the last day of the Covered Period is Sunday, June 14.

The covered period is fairly straight forward to understand. Unfortunately, the reality of many payroll cycles was such that this period did not align with the exact date when proceeds from a PPP loan were received. As a result, many stakeholders in this process asked for an alternative measurement period. The SBA and Treasury Department concurred, and provided a secondary option.

Alternative Payroll Covered Period: *For administrative convenience, Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (the “Alternative Payroll Covered Period”).*

Example

The Borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20.

One important point concerning the covered period needs to be mentioned. In this example it is possible that borrowers could receive PPP loans on April 26 and immediately pay payroll if the disbursement date fell immediately afterwards (i.e. April 27th) even though amounts earned by the employees were in connection with work and hours from the previous two weeks. As such they would include these amounts in the forgiveness calculation because the amounts had been paid within the covered period.

The opposite may also hold true. Employees may have earned wages for the two weeks prior to the end of the covered period, and the employer may have a pay-date which falls just beyond the outer boundary of the covered period, in which case those dollars would not be reflected in the calculation. Nothing reflected in current guidance suggests that either of these scenarios would be contrary to these outcomes.

Eligible payroll costs: *Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred during the eight-week (56-day) Covered Period (or Alternative Payroll Covered Period) ("payroll costs"). Payroll costs are considered paid on the day that paychecks are distributed or the Borrower originates an ACH credit transaction. Payroll costs are considered incurred on the day that the employee's pay is earned. Payroll costs incurred but not paid during the Borrower's last pay period of the Covered Period (or Alternative Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date. Otherwise, payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period). For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of $100,000, as prorated for the covered period. Count payroll costs that were both paid and incurred only once.*

Based on the above instruction, if an employee earns wages during the Covered Period/Alternative Covered Period but payment is made after this period but would be paid during the next regular payroll date, then this amount would be included within the period eligible for loan forgiveness. Unless subsequent guidance is issued removing this provision, it appears that we can have our cake and eat it too for purposes of this calculation. Additionally, this same logic applies to non-payroll costs attributable to this loan forgiveness calculation.

Eligible nonpayroll costs*: Nonpayroll costs eligible for forgiveness consist of:*

a) covered mortgage obligations: payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020 ("business mortgage interest payments");

b) covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020 ("business rent or lease payments"); and

c) covered utility payments: business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020 ("business utility payments").

An eligible nonpayroll cost must be paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period. Eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount.

Practitioners working with clients throughout this process should remain mindful of these details because they can prove vitally important when proceeding thru this loan forgiveness application.

Salary and FTE

We'll now turn our attention to some of the key components that factor into the loan forgiveness calculation starting with Salary and Full Time Equivalents. PPP Schedule A Worksheet, a component of the Loan

Forgiveness Application, is the starting point for this process. We'll proceed with some important definitions and comments.

Cash Compensation: *The sum of gross salary, gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act), and allowances for dismissal or separation paid or incurred during the Covered Period or the Alternative Payroll Covered Period. For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of $100,000, as prorated for the Covered Period; therefore, do not enter more than $15,385 in Table 1 or Table 2 for any individual employee.*

The $15,385 represents the maximum amount of annual salary that can be considered for the prorated period (8 weeks divided 52 weeks in the year multiplied by $100,000). The tables used in the application break out individuals who exceed the $100,000 since $15,385 represents the maximum dollar amount for any individual that can be included in the loan forgiveness calculation. Additional guidance will be required to clarify questions regarding this proration and also to understand factors such as one time bonuses that may be included in annual salaries depending on a variety of factors.

The CARES Act spells out amounts that are considered "payroll costs" eligible for this forgiveness calculation, specifically:

- Salary, wage, commission, or similar compensation;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave; or
- Allowance for dismissal or separation.

What is excluded?

- Any compensation of an employee whose principal place of residence is outside of the United States;
- Qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Response Act.
- Qualified family leave wages for which a credit was allowed under the Families First Coronavirus Response Act.
- Prorated wages for an individual employee in excess of $100,000 based on the calculations presented above ($15,385 maximum).

Average FTE: *The average full-time equivalency (FTE) during the Covered Period or the Alternative Payroll Covered Period. For each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0. A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the Borrower….*

The SBA and Treasury department provide some measure of relief regarding this calculation. The simplified method suggested above should make the calculation of FTE's a bit less tedious.

FTE's become important because several components factor into the calculation of loan forgiveness. One element that we just covered includes the use of loan proceeds (compensation, rent/mortgage, and utilities). The other important element in this calculation is the retention of employees during the measurement period as measured by FTE.

Example

During the covered period beginning May 1, Jet Co. employed the following individuals:

Allison, 50 hours per week/average
Derek 40 hours per week/average
Angela 28 hours per week/average
Marion 20 hours per week/average

FTE calculations would be as follows:

Allison: 50 divided by 40,	1.0 max
Derek: 40 divided by 40,	1.0
Angela 28 divided by 40,	.7
Marion 20 divided by 40,	.5

Total FTE's would equal 3.2

Alternatively, under the simplified method, the calculation would remain the same for everyone except for Angela since her hours were below 40 per week. Her FTE would calculate to .5, the simplified safe harbor amount for individuals below 40 hours per week. Marion's hours are also below 40 hours per week, but she is currently at .5 hours, this simplified method amount so her calculation remains unchanged. The result under the simplified method would equal 3.0 FTE's.

Average FTE*: ……this calculation will be used to determine whether the Borrower's loan forgiveness amount must be reduced due to a statutory requirement concerning reductions in full-time equivalent employees. Borrowers are eligible for loan forgiveness for certain expenditures during the Covered Period or the Alternative Payroll Covered Period. However, the actual loan forgiveness amount that the Borrower will receive may be less, depending on whether the Borrower's average weekly number of FTE employees during the Covered Period or the Alternative Payroll Covered Period was less than during the Borrower's chosen reference period. The Borrower is exempt from such a reduction if the FTE Reduction Safe Harbor applies.*

We'll cover this FTE Safe Harbor shortly, but first, let's closely look at the intent behind these calculations in the context of the government's objectives associated with this loan. Loans are to be forgiven wholly or in part if companies are willing to retain headcount and salary levels above a certain minimum during the covered period (normally representative of the height of the crisis). This covered period is measured against a "chosen reference period" to determine whether compensation or headcount has dropped sufficient to deny in part any loan forgiveness.

We are able to understand, and with some latitude, select the "covered period". What would be considered the "chosen reference period"? The PPP Loan Forgiveness Instructions provides us with some guidance on this….

Line 11: Enter the Borrower's total average weekly full-time equivalency (FTE) during the ***chosen reference period****. For purposes of this calculation, the reference period is, at the Borrower's election, either (i) February 15, 2019 to June 30, 2019; (ii) January 1, 2020 to February 29, 2020; or (iii) in the case of seasonal employers, either of the preceding periods or a consecutive twelve-week period between May 1, 2019 and September 15, 2019. For* *each employee, follow the same method that was used to calculate Average FTE on the PPP Schedule A Worksheet. Sum across all employees during the reference period and enter that total on this line.*

The calculations on lines 11, 12, and 13 will be used to determine whether the Borrower's loan forgiveness amount must be reduced based on reductions in full-time equivalent employees, as required by the statute. Specifically, the actual loan forgiveness amount that the Borrower will receive may be reduced if the Borrower's average weekly FTE employees during the Covered Period (or the Alternative Payroll Covered Period) was less than during the Borrower's chosen reference period. The Borrower is exempt from such a reduction if the FTE Reduction Safe Harbor applies.

This excerpt from the instructions provides us with the chosen reference period. This becomes the baseline by which FTE for the current period is compared to. Once again, practitioners are provided options when seeking to maximize the benefit available for clients. Reviewing each of the periods expressed above to select the period generating the lowest FTE during the chosen reference period will result in a larger ratio relative to the covered period.

Confused? Understandable. We recommend stepping thru the actual loan forgiveness application in conjunction with this newsletter to fully understand the complete scope of calculations included. This excerpt is designed to (hopefully) provide a level of awareness based on definitions provided by the SBA on key terms and also the rationale behind the calculations.

We can agree that the measurement of FTE's between the Covered Period and the Chosen Reference Period is designed to measure any reduction in FTE's which in turn may represent a reduction in the loan forgiveness calculation. Additionally, we have a safe harbor provision that we can utilize in this process.

FTE Reduction Safe Harbor: A safe harbor under applicable law and regulation exempts certain borrowers from the loan forgiveness reduction based on FTE employee levels. Specifically, the Borrower is exempt from the reduction in loan forgiveness based on FTE employees if both of the following conditions are met:

1) the Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and
2) the Borrower then restored its FTE employee levels by not later than June 30, 2020 to its FTE employee levels in the Borrower's pay period that included February 15, 2020.

One concern has been addressed in this application process which involves employees who, after being rehired by an employer, do not return. The application provides for an FTE Reduction Exception. Specifically, applicants are asked to indicate the FTE of:

1) any positions for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and
2) any employees who during the Covered Period or the Alternative Payroll Covered Period (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours.

Any FTE reductions resulting from the above circumstances do not reduce the Borrower's loan forgiveness.

Summary - FTE requirement's

- SBA will first determine if during the 8-week covered period, a business employs fewer FTEs than it did during the "chosen reference period" which is either from 2019 or earlier in 2020.

- If the answer is no, then we know that the business employs more people than it did during the look-back periods, so no reduction to the loan forgiveness amount relative to FTE's is required.
- If the number of FTEs has gone down relative to the look-back period, then the forgiveness amount is reduced because the borrower has not met the goal of keeping employment at pre-COVID-19 numbers.
- However (by utilizing the safe harbor available) if the borrower can, at the very least, return its number of FTEs at June 30, 2020 to pre COVID-19 pandemic levels beginning February 15, 2020, the forgiveness will not be reduced, even if the February 15th, 2020 numbers are less than they were in 2019 or the average of the first two months of 2020.

With that said, borrowers should wait until at least June 30, 2020 to complete the forgiveness application since the measurement period for the safe harbor period ends on that date.

We've covered the FTE's in relative detail, let's now turn our attention to the salary considerations. From the loan forgiveness instructions we find:

<u>Salary/Hourly Wage Reduction:</u> *This calculation will be used to determine whether the Borrower's loan forgiveness amount must be reduced due to a statutory requirement concerning reductions in employee salary and wages. Borrowers are eligible for loan forgiveness for certain expenditures during the Covered Period or the Alternative Payroll Covered Period. <u>However, the actual amount of loan forgiveness the Borrower will receive may be less, depending on whether the salary or hourly wages of certain employees during the Covered Period or the Alternative Payroll Covered Period was less than during the period from January 1, 2020 to March 31, 2020. If the Borrower restored salary/hourly wage levels, the Borrower may be eligible for elimination of the Salary/Hourly Wage Reduction amount.</u> Borrowers must complete this worksheet to determine whether to reduce the amount of loan forgiveness for which they are eligible. Complete the Salary/Hour Wage Reduction column only for employees whose salaries or hourly wages were reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period as compared to the period of January 1, 2020 through March 31, 2020.*

The reduction in forgiveness amount occurs if the reduction in wages over the 8-week period is in excess of 25% of the total salary or wages of the employee during the period from January 1, 2020 through March 31, 2020. One important point to note is that independent contractors, owner-employees, self-employed individuals or partners are not included in this calculation. Employees with annualized salary of less than $100,000 are isolated in Table 1. By definition, only these employees can experience a reduction in salary during the covered period that necessitates a corresponding reduction in the amount eligible for forgiveness.

To determine the amount of reduction required, applicants must go through the following steps for EACH employee as shown in the application:

Step 1. Determine if pay was reduced more than 25%.

a. Enter average annual salary or hourly wage during Covered Period or Alternative Payroll Covered Period: ______________.
b. Enter average annual salary or hourly wage between January 1, 2020 and March 31, 2020: _____________.
c. Divide the value entered in 1.a. by 1.b.: ______________.
   If 1.c. is 0.75 or more, enter zero in the column above box 3 for that employee; otherwise proceed to Step 2.

Step 2. Determine if the Salary/Hourly Wage Reduction Safe Harbor is met.

a. Enter the annual salary or hourly wage as of February 15, 2020: ______________.

b. Enter the average annual salary or hourly wage between February 15, 2020 and April 26, 2020: ______________.

   If 2.b. is equal to or greater than 2.a., skip to Step 3. Otherwise, proceed to 2.c.

c. Enter the average annual salary or hourly wage as of June 30, 2020: ______________.

   If 2.c. is equal to or greater than 2.a., the Salary/Hourly Wage Reduction Safe Harbor has been met – enter zero in the column above box 3 for that employee. Otherwise proceed to Step 3.

Step 3. Determine the Salary/Hourly Wage Reduction.

a. Multiply the amount entered in 1.b. by 0.75: ______________.

b. Subtract the amount entered in 1.a. from 3.a.: ______________.

If the employee is an hourly worker, compute the total dollar amount of the reduction that exceeds 25% as follows:

c. Enter the average number of hours worked per week between January 1, 2020 and March 31, 2020: ______________.

d. Multiply the amount entered in 3.b. by the amount entered in 3.c. ______________. Multiply this amount by 8: ______________. Enter this value in the column above box 3 for that employee.

If the employee is a salaried worker, compute the total dollar amount of the reduction that exceeds 25% as follows:

e. Multiply the amount entered in 3.b. by 8: ______________. Divide this amount by 52: ______________. Enter this value in the column above box 3 for that employee.

Paycheck Protection Flexibility Act of 2020 (PPFA)

As promised earlier, we'll take this opportunity to provide details concerning this legislation and how it impacts the PPP and loan forgiveness provisions of the program. We're hopeful that providing you with a working grasp of the PPP, current guidance along with changes from this new law will prove helpful as you tackle these calculations.

Let's jump right into a summary of what changes took place upon passage of the PPFA:

- Borrowers now have the right to elect a 24-week covered period (or a covered period ending on Dec. 31, 2020 if shorter than a 24-week covered period) instead of an eight-week covered period, the effect of which is to allow for borrowers to continue to pay permitted costs out of loan proceeds over the extended period and obtain loan forgiveness for those additional expenditures. It is unclear at this time whether a borrower can choose an intermediate period between 8 and 24 weeks.
- It lowers to 60% from 75% the portion of PPP funds borrowers must spend on payroll costs associated with loan forgiveness. That change would allow borrowers to direct more funds to other costs such as rent and utilities.
- Loans originated on or after June 5, 2020 (enactment date) would have a minimum term of five years. Currently the Paycheck Protection Program loans have a term of two years for any unforgiven principal. Any borrower that currently has a PPP loan would still be subject to the two year term; however, the Act does include provisions whereby lenders and borrowers can mutually agree to modify the loan term.

- Under the CARES Act, employers had the ability to avoid a cutback in the level of loan forgiveness based on reduced headcount or compensation reductions if they restored the headcount or compensation fully by June 30, 2020. The PPFA has extended that date until December 31, 2020. However, the PPFA does not indicate whether borrowers may continue to use June 30, 2020 for this "safe harbor."
- The PPFA has created certain safe harbors for employers that have been unable to restore headcount because (i) employees who were employed as of February 15, 2020 will not return to work; (ii) the employer is unable to hire qualified employees; or (iii) governmental action has impeded operations in a way that has interfered with hiring.
- The CARES Act provided that no payments of principal or interest were due on a loan before six months after the loan origination date. The PPFA extends this deferral period until the date on which the amount of loan forgiveness is determined. However, if the borrower does not apply for loan forgiveness within 10 months after the end of the borrower's covered period, the borrower must begin making payments of principal and interest after expiration of that 10-month period.
- Under the CARES Act, once companies received loan forgiveness, the companies could no longer take advantage of a provision that allows employers to defer their share of Social Security employment taxes that would otherwise have to be deposited during the period from March 27, 2020 to December 31, 2020, to 2021 and 2022. Under the PPFA, qualifying borrowers can now take advantage of the payroll tax deferral provisions in the CARES Act without regard to whether the borrowers receive loan forgiveness.

We will address the topic of this payroll tax deferral a little later in this newsletter.

Review Questions

1. The Paycheck Protection Program (PPP) was designed to provide borrowers with much needed relief funds to weather business downturns during periods of state mandated quarantines. Which of the following is not true concerning this program?
    a. A key provision of this loan program was its forgiveness feature.
    b. In order to take advantage of the forgiveness feature included as part of a PPP loan, at least 75% of expenditures from loan proceeds must be used towards rent and utilities.
    c. Loan forgiveness features will predominantly be based on employer's maintaining current salary levels.
    d. Self-employed individuals were able to apply for PPP loans.

2. The CARES Act specifically excludes from the definition of payroll costs the excess of any individual employee annual compensation exceeding ________ in connection with the Payroll Protection loan program.
    a. $25,000
    b. $50,000
    c. $75,000
    d. $100,000

3. Jones and Associates have applied for a PPP loan and are wondering if mortgage payments on their property would constitute "covered mortgage obligations". You correctly advise them that they would if the property obligation was in place prior to ____________.
    a. February 15, 2020
    b. February 29, 2020
    c. March 15, 2020

   d. March 31, 2020

4. Calculation of Full Time Equivalents (FTE's) under the Payroll Protection Loan Program also includes a simplified method for calculating these FTE's by stating that employees who work less than 40 hours per week will be assigned an FTE of __________.
   a. 1.0
   b. .75
   c. .50
   d. .25

ITEM 3 - TAX CONSEQUENCES

COVID-19 impacts are deep and far reaching. Legislation has centered on providing assistance to those directly on the front-line and stabilizing an economy that has been switched off. We'll continue our review of coronavirus based relief efforts by discussing some tax implications associated with recent pandemic legislation. We'll then follow with a discussion of larger economic issues and growing concerns over the financial stability of various federal and state institutions.

Economic Impact Payments

The Cares Act delivered what some would argue was the single most visible and direct financial aid measure in connection with the crisis. The act provides for payments known to taxpayers (and the IRS) as "Economic Impact Payments". Note that some will refer to these payments as "Recovery Rebates", however as practitioners we should note that the term "Economic Impact Payments" is the preferred term, particularly given the sudden rise in fraudulent activity associated with these payments. Before we dive into the details of the payments themselves, let's take a moment to review some of the ways in which criminals are targeting unsuspecting taxpayers in connection with these payments.

Unfortunately, when legislation is passed in such a rapid fire fashion, confusion and crime often follow. What are some of the common frauds being committed?

- Criminals will try to persuade taxpayers to sign over checks to the fraudsters.
- Criminals may obtain important filing information from unsuspecting individuals and use their personal information to receive economic impact payment funds.
- Additionally, they may use this same information to file future false tax refunds claiming unwarranted refunds and directing those payments to accounts established by those initiating the fraud.

Specific Scams

<u>Impersonating the IRS – Telephone</u>

Callers will phone taxpayers claiming to be the IRS and told that they owe back taxes to the IRS. This form of fraud has been commonplace before the pandemic, however because of the specific dollar amounts which are connected with relief, the con appears more believable. Fraudsters are providing details specific to the Economic Impact Payment program to lend an air of creditability to the request. The aggressive callers will direct unsuspecting victims to wire monies or pay their "tax debt" through a pre-loaded debit card.

<u>Emails: Phishing and Malware frauds</u>

Emails which appear very realistic, often with a stolen IRS logo, are sent to countless individuals designed to trick taxpayers into believing that the requests sent via email are official communications. Requests of this nature can vary however many times these emails will request personal information from the recipient such as banking routing and account numbers, dates of birth and social security numbers. Often times these emails will contain links that appear legitimate to another site designed to capture this taxpayer sensitive data. Practitioner's should continue to remind taxpayers that the IRS does not initiate contact with taxpayers by email to request any personal or financial information.

Economic Impact Payment

Payments made under this program are technically considered an advance refund of a 2020 tax credit. Individuals will receive a tax credit of $1,200 ($2,400 for joint filers) plus $500 for each qualifying child under the age of 17. The credit is phased out for taxpayers with adjusted gross income (AGI) above $150,000 (for joint filers), $112,500 (for heads of household), and $75,000 (for other individuals).

The credit is reduced by 5% of the amount of the taxpayer's AGI that exceeds these income limits. Reference to either a 2018 tax return or 2019 tax return (if filed and available by the IRS when making the above determination) will be used when calculating any eligibility for payment including reduced payments resulting from the referenced phase-out limits.

The credit is not available to nonresident aliens, individuals who can be claimed as a dependent by another taxpayer, and estates and trusts. When filing their upcoming 2020 Individual tax return, taxpayers will be required to reduce the amount of the credit available on their 2020 tax return by the amount of the advance refund payment they received.

The IRS indicated on March 30th that payments were scheduled to be remitted to most taxpayers starting in April and lasting mid to late month. Individuals with existing direct deposit information reflected on their 2018 or 2019 individual tax return were expected to receive payments early in the process. Those individuals that did not have direct deposit information on file with the IRS may be receiving paper checks in the mail resulting in several months of delay before receiving relief payments under this program. The IRS provided a website for individuals who choose to inform the IRS of a routing/account number in lieu of receiving and waiting on a traditional check or other form of payment as we'll cover next. (https://www.irs.gov/coronavirus/non-filers-enter-payment-info-here).

The IRS is sending some payments under this program in the form of a prepaid debit card. The debit cards will arrive in a plain envelope from "Money Network Cardholder Services." Nearly 4 million people are being sent their Economic Impact Payment by prepaid debit card, instead of paper check. The determination of which taxpayers received a debit card was made by the Bureau of the Fiscal Service, a part of the Treasury Department that works with the IRS to handle distribution of the payments.

Those who receive their Economic Impact Payment by prepaid debit card can perform the following transactions without incurring fees.

- Initiate purchases online and at any retail location where Visa is accepted.
- Receive cash from in-network ATMs.
- Transfer funds to their personal bank account.
- Check their card balance online, by mobile app or by phone.

Filing and Payment Deadline Changes

The CARES Act provides an opportunity for employers to delay payment of 50% of 2020 employer payroll taxes until Dec. 31, 2021; with the other 50% becoming due Dec. 31, 2022. The deferral applies to deposits and payments of the employer's share of Social Security tax that would otherwise be required to be made during the period beginning on March 27, 2020, and ending December 31, 2020.

Form 941 will be revised for the second calendar quarter of 2020 (April - June, 2020) to reflect this deferral feature. Practitioners should note that employers are not required to make a special election to be able to defer deposits and payments of employment taxes under this provision.

Self-employed individuals may also defer the payment of 50 percent of the Social Security tax on net earnings from self-employment income imposed under section 1401(a) of the Code for the period beginning on March 27, 2020, and ending December 31, 2020. They would also have until December 31, 2021 to pay at least 50% of what is due for 2020, and until December 31, 2022 to pay the remaining amount.

One change of significant importance included the postponement of the filing and payment deadline for affected taxpayers who were defined as any "individual, a trust, estate, partnership, association, company or corporation" with a federal income tax return or income tax payment due on April 15th.
IRS Notice 2020-18 issued by the IRS states that in response to the COVID-19 outbreak individuals and businesses will receive an automatic postponement of the April 15 deadline until July 15 without having to file Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, or Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.

Under this notice no interest, penalty, or addition to tax for failure to file a federal income tax return or to pay federal income taxes will accrue between April 15, 2020, and July 15, 2020, for any return or payment postponed by the notice. This postponement applies only to federal income tax returns and payments (including self-employment tax payments) due April 15, 2020, for 2019 tax years, and to estimated income tax payments due April 15, 2020, for the 2020 tax year. The payment and filing postponement has also been expanded to include federal gift and generation-skipping transfer tax payments and returns.

The IRS addressed many questions regarding this filing and payment postponements by posting online Frequently Asked Questions (FAQs) on March 24th (available at www.irs.gov). One key piece of information contained in the FAQs was that taxpayers who sought a filing extension past July 15 will have until July 15 to request an extension until Oct. 15. Additionally, second-quarter estimated tax payments are still due June 15, 2020, even though first-quarter estimated tax payments are not due until July 15 (not a typo…..strange times indeed!).

The April 15th deadline for making 2019 IRA contributions has also been postponed to July 15. Other deferred deadlines, according to these FAQs, include the deadline for paying the Sec. 72(t) additional 10% tax on certain distributions from an IRA or retirement plan and the Sec. 404(a)(6) grace period for employers to make 2019 contributions to qualified retirement plans. However, the deadline for removing excess deferrals from a retirement plan remained April 15.

One important point that practitioners should consider concerning these automatic extensions of time relate to state tax returns. Filers should be checking with individual states to determine which deadlines may be impacted in connection with Notice 2019-18 or other related COVID-19 relief measures.

Federal Tax Law Changes

In addition to legislative changes and relief provisions impacting deadlines and the timing of federal tax payments, we also have tax law changes impacting the 2020 filing year.

Retirement plans

Under Section 2202 of the CARES Act, taxpayers can receive up to $100,000 in coronavirus-related distributions from retirement plans without being subject to the Sec. 72(t) 10% additional tax for early distributions. Eligible distributions associated with this relief can be received up to December 30, 2020.

Coronavirus-related distributions are included in income ratably over a three-year period, starting with the year in which the taxpayer receives the distribution.

Example

A taxpayer receive a $9,000 coronavirus-related distribution in 2020, they would report $3,000 in income on their federal income tax return for each of 2020, 2021, and 2022. However, they also have the option of including the entire distribution in income for the year of the distribution.

Who is eligible?   Taxpayers that:

- Are diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention;
- Have a spouse or dependent who was diagnosed with SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control and Prevention;
- Experienced adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having work hours reduced due to SARS-CoV-2 or COVID-19;
- Experience adverse financial consequences as a result of being unable to work due to lack of child care due to SARS-CoV-2 or COVID-19; or
- Experience adverse financial consequences as a result of closing or reducing hours of a business that they own or operate due to SARS-CoV-2 or COVID-19.

Other important provisions under Section 2202 relating to loans from eligible retirement plans include:

- **Certain loan repayments may be delayed for one year:** If a loan is outstanding on or after March 27, 2020, and any repayment on the loan is due from March 27, 2020, to December 31, 2020, that due date may be delayed under the plan for up to one year. Any payments after the suspension period will be adjusted to reflect the delay and any interest accruing during the delay.
- **Loan limit may be increased:** The CARES Act also permits employers to increase the maximum loan amount available to qualified individuals. For plan loans made to a qualified individual from March 27, 2020, to September 22, 2020, the limit may be increased up to the lesser of: (1) $100,000 (minus outstanding plan loans of the individual), or (2) the individual's vested benefit under the plan.

Charitable deductions

The CARES Act creates an above-the-line charitable deduction for 2020 not to exceed $300. The act also modifies the AGI limitations on charitable contributions for 2020, to 100% of AGI for individuals and 25% of taxable income for corporations (up from 10%). One point that is not clear from the legislation is whether the $300 limit would be $600 for a married filing joint tax return.

Currently it appears that the $300 is for each tax form filed, so until such time we'll await guidance from the IRS on this ambiguity. Additionally, it appears that this above the line deduction is only available for tax year 2020.

Some other details concerning donations under this provision:

- Only cash gifts are eligible for the $300 (stocks, clothes, vehicles, etc. are not eligible).
- Donations to a donor-advised-fund or supporting organization will not count for this deduction.
- Substantiation rules from the charity supporting the taxpayer's donation would remain in effect.

Net operating losses (NOLs)

The Tax Cuts and Jobs Act had introduced material changes to the utilization of NOL's. NOL's claimed after 2017 were limited to 80% of taxable income. Additionally, the TCJA eliminated a taxpayer's ability to carry NOL's back to prior years.

The CARES Act serves to reverse course and provide additional relief. The Act temporarily repeals the 80% income limitation for NOL deductions for years beginning before 2021. For losses arising in 2018, 2019, and 2020, a five-year carryback is allowed for 100% of these losses. Losses which are carried back would first be applied to the earliest of the tax years available to absorb the loss.

The CARES Act also provides that this carryback provision can be waived and NOL's can be carried forward to subsequent tax years. For tax years beginning after 2021, taxpayers will be eligible for: (1) a 100% deduction of NOLs arising in tax years before 2018, and (2) a deduction limited to 80% of taxable income for NOLs arising in tax years after 2017.

Changes upon passage of the Act also provide corporate taxpayers with eligible NOL's to claim a refund for tax returns from prior tax years. Practitioners should consider the opportunities that come with a carryback and take advantage of the difference in corporate tax rates after passage of the TCJA. NOL's carried back to years before 2018 have the potential advantage of reducing tax at a maximum 35% rate which is far more beneficial than offsetting income at the current 21% corporate rate.

Revenue Procedure 2020-24 provides specific guidance concerning NOL's and carrybacks under the CARES Act including:

- How to waive the carryback period in the event of an NOL beginning after Dec 31, 2017 and before January 1 2021.
- Treatment of foreign income subject to transaction tax as it relates to NOL provision.
- Application of carrybacks for various taxable periods.

Excess loss limitations

The CARES Act also repeals the Sec. 461(l) excess loss limitation. Sec. 461(l) which was originally added to the Code by the TCJA. The law disallowed excess business losses of noncorporate taxpayers if the amount of the loss exceeds $250,000 ($500,000 for married taxpayers filing jointly). Under the CARES Act, this limitation is repealed for tax years 2018, 2019 and 2020. This limitation will only apply for tax years beginning after 2020 and before 2026. Taxpayers who filed tax returns for 2018, 2019 and were subject to limit restrictions are encouraged to file amended tax returns. Form 461, Limitation on Business Losses will not be available for tax year 2020, returning in 2021.

Corporate alternative minimum tax (AMT)

The TCJA repealed the corporate alternative minimum tax and allowed corporations to fully offset regular tax liabilities with AMT credits. Any remaining AMT credits became refundable incrementally from 2018 thru 2021. The CARES Act modifies the AMT credit for corporations to make it a refundable credit for tax years 2018 or 2019. Quick refund procedures are available via Form 1139.

Business Interest Expense limitation

Under the TCJA, beginning on or after January 1, 2018, the new code Sec. 163(j) provided that business interest expense, with several exceptions, was only deductible to the extent the deduction was less than 30%

of the adjusted taxable income (ATI) of the business. This limitation on excess business interest expense was, for many taxpayers, effective for tax years beginning after Dec. 31, 2017 and was scheduled to sunset after December 31, 2025 with increasing restrictions beginning in 2022.

Upon passage of the CARES Act, for tax years 2019 and 2020, this business interest expense limitation is amended to increase the adjusted taxable income percentage from 30% to 50%. Impacted businesses and individuals may elect to not apply the 50% limitation to either 2019 or 2020 if they choose. Any remaining business interest expense above the threshold may be carried forward.

Worth noting is the fact that partnerships receive slightly different treatment concerning business interest deductions under the CARES Act. The above rules apply to most businesses for tax years 2019 and 2020, however partnerships are still bound to the 30% limitation for tax year 2019. Starting for tax year 2020, partners may take the 50% deduction for business interest expense. The election under this section is irrevocable.

The CARES Act also provides that taxpayers may use their 2019 adjusted taxable income (ATI) to calculate the 2020 limitation. Most businesses anticipate that 2020 will look worse than the previous year so this carve out may provide a higher threshold (2019 ATI) and deliver a greater interest deduction for the 2020 tax year.

Practitioners should note that these measures are somewhat temporary in nature. Beginning in 2021, this temporary limit amount of 50% will revert back to the 30% threshold. Also, changes currently reflected in the law state that beginning in 2022, the calculation of the components which make up ATI will change. Starting in 2022, ATI will be calculated as taxable income plus interest expense, and will not include adjustments for any depreciation or amortization expense.

Qualified improvement property

The pandemic has brought about wave after wave of bad news, whether health or financial related. We should therefore take some measure of satisfaction when we can find a bit of good news that comes from all this. One such measure relates to the fix of the “retail glitch” concerning qualified improvement property eligible for bonus depreciation. Certainly not earthshattering, but we’ll take it!
Let’s step back for a moment to review.

Qualified improvement property (QIP) relates to improvements made to an interior portion of an existing structure. This relates to nonresidential real property. Tenant improvements are a prime example of these costs, for example, installation of drywall, drop ceilings, doors, etc. Mechanical, electrical and plumbing systems are also included in this definition. Actual structural modifications to the natural framework of the building is excluded from the definition. Costs associated with elevators and escalators are also not included.

Originally the Tax Cuts and Job Act was meant to categorize QIP’s as 15-year property beginning in 2018. As such, costs would be eligible for bonus depreciation treatment. Many taxpayers would benefit from this tax treatment, in particular retail and restaurant establishments given the nature of their niche in renovating (and re-renovating) business space. However, an error took place in the drafting of the legislation and QIP was not explicitly included as 15 year property under Section 168(e)(3)(E). It was also not included as “qualified property” under Section 168(k)(2)(A) upon passage of the TCJA.

The IRS subsequently stated that they were not in a position to correct any mistake and a legislative fix would be required in order to rectify the error. Legislation languished, and the result was that QIP would fall under the 39-year property umbrella and be ineligible for bonus depreciation treatment.

Passage of the CARES Act provides us, at long last, with the technical correction regarding qualified improvement property under Sec. 168 by making it 15-year property, fixing the so-called retail glitch introduced by the TCJA and making the property eligible for bonus depreciation. This fix applies retroactively to January 1, 2018. This provides practitioners and taxpayers with several opportunities to realize tax savings that may not be confined to a boost in depreciation expense. Let's first cover some decisions to consider.

First, practitioners should be working with clients to revisit those businesses that incurred improvements costs to commercial buildings in 2018 and 2019 to identify assets that would qualify as QIP. Significant expenditures may warrant the use of a cost segregation study. Taxpayers who incurred QIP in 2019 and have not filed a 2019 tax return can simply categorize expenditures under the 15-year designation. Taxpayers who have filed a 2019 tax return claiming these costs as 39-year property may file a superseding 2019 tax return (if still eligible) or simply file an amended tax return to make this adjustment and claim any additional bonus depreciation.

Taxpayers with QIP incurred in 2018 should consider amending 2018 tax returns filed. Practitioners should look at clients with C corporations in particular. Recall that NOL provisions have been amended (discussed above) that could prove quite favorable for our clients. A C corporation with material QIP in 2018 could effectively file an amended tax return claiming bonus depreciation for those expenditures. Net Operating Losses would result from this amended tax return which in turn could be carried back to tax years before 2018 when tax rates reached 35%. This holds true even though the losses were generated during years when the tax rate was lower.

Practitioners should also need to consider the impact of these changes for partnership tax returns when contemplating an amended return. Partnerships which are subject to the Centralized Partnership Audit Regime would file an Administrative Adjustment Request in lieu of an amended tax return.

Aviation taxes

The CARES Act also extends a measure of relief to the airline industry. Beginning on March 27, 2020 until the end of the 2020 calendar year, the federal excise tax of 7.5% paid for commercial air transportation is suspended. This applies to domestic and international segment fees.

Additional suspensions of taxes imposed on kerosene and fuel storage were also enacted thru this date. A reduction in taxes coupled with lower fuel costs driven by diminished demand may lower airline prices and help increase demand for an industry heavily impacted by COVID-19.

Health plans

Starting March 27th, the CARES Act allows high deductible health plans paired with health savings accounts (HSA) to cover telehealth services prior to a patient spending up to their plan deducible. This benefit extends thru end of 2020.

In addition, the Act will allow owners of an HSA, health reimbursement arrangement (HRA's) or flexible spending accounts (FSA's) to purchase certain over-the-counter medical products including medical masks without a prescription. Certain feminine hygiene products have also been included as eligible medical expenses.

The CARES Act also addresses medical costs specific to COVID-19. Under this new law, any testing for coronavirus must be covered by both fully insured and self-insured plans without any cost sharing and outside the plan deductible. Coverage must extend to any services or items provided during a medical visit that results in coronavirus testing or screening. This provision includes in person or telehealth visits to a doctor's office, urgent care center or emergency room. Coverage requirements for this COVID-19 testing will remain in effect only while a declared public health emergency as defined under federal law is in effect.

Payroll tax credits

The changes we have experienced within our own corner of the world have been numerous. We've covered some of the changes to tax law along with payment and filing deadlines modifications resulting from the "Phases" of relief. Let's address specifics areas of relief which were enacted relative to payroll based tax credits.

Passage of the Families First Coronavirus Response Act, P.L. 116-127 was a general relief bill, but included within it several tax credits for employers who provide paid sick leave, family or medical leave for their employees who miss work for various coronavirus-related reasons.

Payroll tax credit for required paid family leave

The Act provides an employer payroll tax credit that equals 100% of the qualified family leave wages paid by the employer under the subsection of the Act referred to as the Emergency Family and Medical Leave Expansion Act (Division C of the Act). The Emergency Family and Medical Leave Expansion Act requires employers with fewer than 500 employees to provide public health emergency leave under the Family and Medical Leave Act (FMLA), P.L. 103-3, when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency related to COVID-19. Employers with fewer than 50 employees would be exempted from the requirement.

This credit would apply to eligible wages paid during the period starting April 1, 2020, through Dec. 31, 2020. The credit applies against the employer portion of:

- Sec. 3111(a) old age, survivors, and disability insurance (OASDI) taxes, and
- Sec. 3221(a) Tier 1 Railroad Retirement Act excise taxes.

The credit is generally available for up to $200 in wages for each day an employee receives qualified family leave wages. A maximum of $10,000 in wages per employee would be eligible for the credit. The amount of the credit is increased by the amount of the Sec. 3111(b) Medicare tax imposed on the qualified family leave wages for which a credit is allowed.

Clients and practitioners should note that if an employer claims the credit, the employer's gross income will be increased by the amount of the credit. The credit is not taken into account for purposes of determining any amount allowable as a payroll tax deduction, deduction for qualified family leave wages, or deduction for health plan expenses.

This credit will not be allowed for wages for which a Sec. 45S family and medical leave credit is claimed. Internal Revenue Code Section 45S provides a tax credit for employers who provide paid family and medical leave to their employees. Eligible employers may claim the credit, which is equal to a percentage of wages they pay to qualifying employees while they're on family and medical leave. The credit generally is effective for wages paid in taxable years of the employer beginning after December 31, 2017. The Taxpayer Certainty and Disaster Tax Relief Act of 2019 extends this credit until December 31, 2020.

Comment

No Double Dipping! If a lesson is to be gleaned from many of these new tax law provisions, it's this one consistent dogma. Many of the relief provisions contained in the various phases of relief address payroll based considerations, whether they take the form of loan forgiveness when proceeds are used to shore up employee headcount, or if they take the form of payroll tax credits. With that said, practitioner's and clients must be sure to isolate those line items which may be a component of these relief measures to be sure that multiple benefits are not derived from the same expense source where the law is specific in this regard.

Additionally, this credit would not apply to the federal government, the government of any state or any subdivision of a state, or any agencies or instrumentalities of these entities. Employers also could elect not to apply the new provision for any calendar quarter.

The Act also states that eligible self-employed individuals are entitled to a refundable credit against income tax for qualified family leave equivalent amounts. An eligible self-employed individual is an individual who regularly carries on any trade or business (as defined in Sec. 1402) and would be entitled to receive paid leave under the Emergency Family and Medical Leave Expansion Act if the individual were an employee.

Note that wages paid under the Emergency Family and Medical Leave Expansion Act are not considered wages for purposes of the Sec. 3111(a) OASDI tax or the Sec. 3221(a) Railroad Retirement Act excise taxes.

Payroll tax credit for required paid sick leave

We find a similar credit related to sick leave wages. The Act also provides an employer payroll tax credit that equals 100% of the qualified sick leave wages paid by the employer under the portion of the act known as the Emergency Paid Sick Leave Act (Division E of the act). The Emergency Paid Sick Leave Act requires employers with fewer than 500 employees to provide up to 80 hours of paid sick time through the end of 2020 if the employee is unable to work due to being quarantined or self-quarantined or having COVID-19 or because the employee is caring for someone who is quarantined or self-quarantined or has COVID-19 or if the employee is caring for children whose school has been closed because of COVID-19 precautions. Similar to the provisions for family leave wages, employers with fewer than 50 employees can be exempted from this requirement.

The credit is effective for sick leave wages paid starting April 1, 2020, through Dec. 31, 2020. This credit will also apply against Sec. 3111(a) OASDI taxes or Sec. 3221(a) Tier 1 Railroad Retirement Act excise taxes and is generally available for up to $511 in wages (for workers who are quarantined or self-quarantined or who have COVID-19) and wages of up to $200 for other workers for each day an employee receives qualified sick leave pay.

This credit would be available for up to 10 days per calendar quarter and the amount of the credit is increased by the amount of the Sec. 3111(b) Medicare tax imposed on the qualified sick leave wages for which a credit is allowed.

To prevent the double dipping of benefits, employers' gross income will be increased by the amount of the credit (meaning the credit is not taken into account for purposes of determining any amount allowable as a payroll tax deduction, deduction for qualified sick leave wages, or deduction for health plan expenses), and no credit will be allowed for wages for which a Sec. 45S family and medical leave credit is claimed. The credit would not apply to the federal government, the government of any state or any subdivision of a state, or any agencies or instrumentalities of these entities. Employers also could elect not to apply the new provision for any calendar quarter.

The credit can be increased by certain qualified health plan expenses of the employer that are allocable to qualified sick leave wages for which the credit is allowed. Self-employed individuals can also participate in this credit. The act provides eligible self-employed taxpayers with a refundable credit against income tax for qualified sick leave equivalent amounts. An eligible self-employed individual is an individual who regularly carries on any trade or business (as defined in Sec. 1402) and would be entitled to receive paid leave under the Emergency Paid Sick Leave Act if he or she were an employee.

Having sifted thru the technicalities of this credit, the main question is "how does this work"? Both paid leave credits would be reflected on the Form 941. Effectively filers would report total qualified leave wages, health plan expenses associated with those wages along with the employer share of Medicare tax on the leave wages. Taxes that filers can retain to claim the credit include federal income taxes withheld, along with the employee and employer share of social security tax and Medicare tax.

What if the credit exceeds the amount of payroll that is available in the form of withholdings from the above taxes? In that instance, taxpayers would be entitled to a refund. Form 7200, Advance Payment of Employer Credits Due to COVID-19 should be completed. This form can be filled out any time before the end of the month following the quarter in which the qualified wages were paid. The form can be filled out several times during each quarter. The IRS is also waiving any penalties for failure to deposit payroll taxes under Sec. 3111(a) or 3221(a) if the failure was due to these anticipated payroll tax credits.

Still not enough? We have one more (saving possibly the best for last)….

Employee retention credit

The CARES Act ushered in the Employee Retention Credit. This credit is a fully refundable tax credit for employers and is equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that eligible employers pay their employees. This Employee Retention Credit applies to qualified wages paid after March 12, 2020, and before January 1, 2021. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is $10,000, so that the maximum credit for an eligible employer for qualified wages paid to any employee is $5,000.

Eligible Employers for this credit are not limited by a set number of employees (employee cap) and include those who in any calendar quarter in 2020 have either:

- Fully or partially suspended operations as a result of orders from a governmental authority as a result of the coronavirus, or
- Experienced a significant decline in gross receipts.

This employee retention credit is clearly significant for many businesses since it is based on direct wages and applies to companies regardless of the number of employees present. The IRS has published an extensive FAQ section on their website specific to this credit (https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-general-information-faqs). We'll take this opportunity to cover some of the key questions specific to this credit.

4.

Question: *What is a "significant decline in gross receipts"?*

Answer: *A significant decline in gross receipts begins with the first calendar quarter in 2020 in which an employer's gross receipts are less than 50 percent of its gross receipts for the same calendar quarter in 2019. The significant decline in gross receipts ends with the first calendar quarter that follows the first calendar quarter in which the employer's 2020 quarterly gross receipts are greater than 80 percent of its gross receipts for the same calendar quarter in 2019, or with the first calendar quarter of 2021.*

6.

Question: *What are "qualified wages"?*

Answer: *Qualified wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code")) and compensation (as defined in section 3231(e) of the Code) paid by an Eligible Employer to some or all employees after March 12, 2020, and before January 1, 2021. Qualified wages include the Eligible Employer's qualified health plan expenses that are properly allocable to the wages.*

The definition of qualified wages depends, in part, on the average number of full-time employees (as defined in section 4980H of the Code) employed by the Eligible Employer during 2019.

If the Eligible Employer averaged more than 100 full-time employees in 2019, qualified wages are the wages paid to an employee for time that the employee is not providing services due to an economic hardship, specifically, either:

(1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or
(2) a significant decline in gross receipts.

For these employers, qualified wages taken into account for an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship described in (1) or (2) above.

If the Eligible Employer averaged 100 or fewer full-time employees in 2019, qualified wages are the wages paid to any employee during any period of economic hardship described in (1) or (2) above.

Although there is no limit on the number of employees that can participate in the credit, there is a distinction between those employers that have averaged more than 100 full-time employees and those that have less than that threshold.

11.

Question: Against what employment taxes does the Employee Retention Credit apply?

Answer: The credit is allowed against the employer's share of social security taxes under section 3111(a) of the Internal Revenue Code (the "Code"), and the portion of taxes imposed on railroad employers under section 3221(a) of the Railroad Retirement Tax Act (RRTA) that corresponds to the social security taxes under section 3111(a) of the Code.

12.

Question: *What makes the Employee Retention Credit "fully refundable"?*

Answer: *The credit is fully refundable because the Eligible Employer may get a refund if the amount of the credit is more than certain federal employment taxes the Eligible Employer owes. That is, if for any calendar quarter the amount of the credit the Eligible Employer is entitled to exceeds the employer's share of the social security tax on all wages (or on all compensation for employers subject to RRTA) paid to all employees, then the excess is treated as an overpayment and refunded to the employer under sections 6402(a) and 6413(a) of the Internal Revenue Code (the "Code"). Consistent with its treatment as an overpayment, the excess will be applied to offset any remaining tax liability on the employment tax return and the amount of any remaining excess will be reflected as an overpayment on the return. Like other overpayments of federal taxes, the overpayment will be subject to offset under section 6402(a) of the Code prior to being refunded to the employer.*

14.

Question: *May an Eligible Employer receive both the tax credit for qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act?*

***Answer*:** *Yes, but not for the same wages. The amount of qualified wages for which an Eligible Employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer receives tax credits under the FFCRA.*

Once again we continue with our reminder. In general, we will not be able to use the same "wages" for multiple benefits thru available credits within the CARES Act or other credits available based on wages.

15.

Question: May an Eligible Employer receive both the Employee Retention Credit and a Paycheck Protection Program (PPP) loan that is authorized under the CARES Act?

Answer: No. An Eligible Employer may not receive the Employee Retention Credit if the Eligible Employer receives a PPP loan that is authorized under the CARES Act. An Eligible Employer that receives a PPP loan should not claim Employee Retention Credits.

81.

Question: Is an employer eligible to receive an Employee Retention Credit after the Paycheck Protection Program (PPP) loan is forgiven?

Answer: No. An employer that receives a PPP loan may not receive an Employee Retention Credit, regardless of whether and when the loan is forgiven.

This is an important point worth emphasizing. We may have clients who apply for and receive a PPP loan and subsequently fail to meet the criteria for loan forgiveness. Based on the FAQ's from the IRS, this client would not be able to avail themselves to the Employee Retention Credit. Once a client has received funding under a PPP loan, the Employee Retention Credit becomes unavailable but with one exception.

An employer that applied for a PPP loan, received payment, and repaid the loan by May 18, 2020 will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer would be eligible for the credit if the employer is otherwise an Eligible Employer.

23.

Question: *Are self-employed individuals eligible for the Employee Retention Credit?*

Answer: *Self-employed individuals are not eligible for the Employee Retention Credit with respect to their own self-employment earnings.*

A self-employed individual who employs individuals in its trade or business and who otherwise meets the requirements to be an Eligible Employer may be eligible for the Employee Retention Credit with respect to qualified wages paid to the employees.

85.

Question: Does the Employee Retention Credit reduce the expenses that an Eligible Employer could otherwise deduct on its federal income tax return?

Answer: Yes. Section 2301(e) of the CARES Act provides that rules similar to section 280C(a) of the Internal Revenue Code (the "Code") shall apply for purposes of applying the Employee Retention Credit. Section 280C(a) of the Code generally disallows a deduction for the portion of wages paid equal to the sum of certain credits determined for the taxable year. Accordingly, a similar deduction disallowance would apply under the Employee Retention Credit, such that an employer's aggregate deductions would be reduced by the amount of the credit as result of this disallowance rule.

86.

Question: Does an Eligible Employer receiving an Employee Retention Credit for qualified wages need to include any portion of the credit in income?

Answer: No. An employer receiving a tax credit for qualified wages, including allocable qualified health plan expenses, does not include the credit in gross income for federal income tax purposes. Neither the portion of the credit that reduces the employer's applicable employment taxes, nor the refundable portion of the credit, is included in the employer's gross income.

This FAQ section of the IRS website provides substantive details and examples on other key considerations when claiming this credit including:

- Definition of Trade/Business for purposes of this credit.
- Which governmental agencies may be excluded from taking the credit.
- Understanding what constitutes an "order from an appropriate governmental entity" including specific examples providing various closure scenarios impacting businesses.
- Identification of qualified wages and health plan expenses with examples.

- Guidance regarding employers who use a third party payer such as a reporting agent or payroll service provider.

Review Questions

1. The CARES Act provides direct financial aid to qualifying taxpayers better known as _________.
    a. Economic Impact Payments
    b. Recovery Rebates
    c. Stimulus Cash Incentives
    d. Dollar Incentive Program

2. The CARES Act provides employers the opportunity to delay payments of __________ that would otherwise be required to be made between March 27, 2020 and December 31, 2020.
    a. the employer's share of social security taxes
    b. the employees share of social security taxes
    c. the employer's share of Medicare taxes
    d. the employees share of Medicare taxes

3. The business interest expense limitation has been amended to increase the adjusted taxable income percentage from 30% to 50%. Qualifying businesses and individuals may elect to not apply the 50% limitation to either 2019 or 2020 if they choose. Which of the following entities may not take advantage of this increased percentage for tax year 2019?
    a. C Corporations
    b. S Corporations
    c. Partnerships
    d. None of the Above

4. The Emergency Paid Sick Leave Act requires employers with fewer than 500 employees to provide up to 80 hours of paid sick time through the end of 2020 if the employee is unable to work due to being quarantined or self-quarantined or having COVID-19 or because the employee is caring for someone who is quarantined or self-quarantined or has COVID-19 or if the employee is caring for children whose school has been closed because of COVID-19 precautions. The act provides an employer a payroll tax credit that equals 100% of the qualified sick leave wages paid by the employer up to $511 in wages for workers who are quarantined or self-quarantined or who have COVID-19 up to ___________ days per calendar quarter.
    a. 5
    b. 10
    c. 20
    d. 30

ITEM 4 - ECONOMICS AND THE FUTURE

As we can see from this avalanche of legislative action, practitioners have a veritable mountain of changes to digest. This holds true for filings due this year and also opportunities to recover taxes in the form of amended tax returns. We also most hold an eye to the future. There is great uncertainty in the months and years ahead. The new “normal” is a catch phrase being bandied about. With that said we shouldn’t make light of the tremendous challenges that lie ahead. Previous editions of the *CPElite quarterly* focused on some important macro-economic issues. Let’s revisit some of these key points of concern and examine how the COVID-19 crisis impacts the choices we make for the challenges which lay ahead.

National Debt

Prior to the COVID-19 crisis, federal debt as a percentage of the gross domestic product reached 78%, its highest level since shortly after World War II. Excluding the financial impacts of the pandemic (legislative aid and reduction in federal taxes from business closures) the Congressional Budget Office projects that growing budget deficits will boost the national debt sharply over the next 30 years. Calculations support predictions that it would approach 100 percent of GDP by the end of the next decade and 152 percent by 2048.

This amount would be the highest in the nation’s history by far. Moreover, if lawmakers changed current law to maintain certain policies now in place such as preventing a significant increase in individual income taxes in 2026, for example—the result would be even larger increases in debt. The prospect of large and growing debt poses substantial risks for the nation and presents policymakers with significant challenges.

According to the president's budget for FY 2020 the public debt projection totals $18.087 trillion. This represents debt owed to individuals, businesses, and foreign central banks. The current interest on the national debt was projected to total $479 billion based on the federal budget for fiscal year 2020 which runs from October 1, 2019, through September 30, 2020. Over 90% of this amount is funded by Treasury bills, notes, and bonds. The remaining debt instruments are TIPS, Savings Bonds, and other securities.

Eighteen trillion dollars seems like an overwhelming number; however, this debt projection included in the FY 2020 budget has proven to be quite a bit less than actual. How much less? Currently we are above $25 trillion dollars. How did we get here? Let’s focus specifically on the impact that COVID-19 has had on recent increases. Since March of 2020, Congress has approved nearly $2.7 trillion to provide economic relief.

- Phase 1 - $8.3 billion
- Phase 2 - $192 billion
- Phase 3 (CARES Act) - $2 trillion
- Phase 3.5 - $484 billion

The Congressional Budget office estimated prior to passage of Phase 2 relief (March 2020) federal spending would approach $4.7 trillion for the 2020 budget year. Prior to legislative relief contained in pandemic legislations, the federal government anticipated a deficit for 2020 of $1.1 trillion. Stimulus from current relief legislation is expected to more than triple the original 2020 deficit projection elevating this deficit to $3.5 trillion. Additionally, initial projections on economic growth and projected tax revenues have evaporated for the first half of 2020 contributing substantially to an increase in the debt.

Interest on the Debt by Year (2008 - 2027)

Interest on the national debt totaled $253 billion in 2008. It consumed 8.5% of the FY 2008 federal budget. In 2009, it declined to $187 billion resulting from a decline in interest rates. As a result, the interest on our national debt only consumed 5.3% of the FY 2009 budget, even though the public debt rose to $7.5 trillion. From 2009 to 2016, it remained below $250 billion even though the debt almost doubled. The debt grew because public spending skyrocketed and revenue plummeted.

Interest on 10-year Treasury notes remained below 3% until 2018 thanks to strong demand for U.S. Treasuries. Interest rate forecasts over the long term reflect an expected increase in rates up to 3.7% by 2026. By then, the interest on the debt will be above $750 billion annually and consume roughly 13% of the annual federal budget. This is prior to passage of COVID-19 legislation. Factor in current consequences and increases in the debt and we may be approaching $1 trillion of annual interest payments in the not too distant future. In short, interest payments may approach 20% of our entire federal budget.

Root causes

Higher interest rates and a growing debt are the two main causes of the interest on the debt. What causes each of these to rise? Interest rates will typically increase when the economy is doing well. One reason is because investors have the confidence to buy riskier assets, such as stocks. There is less demand for bonds, so interest rates will generally rise to attract buyers.

Simply stated, the national debt is effectively the accumulation of each year's budget deficit. This happens each year spending is greater than revenue. A larger debt also affects the deficit, thanks to the higher interest payment. Deficit spending stimulates the economy by putting money into the pockets of businesses and families. They purchase goods and hire workers, creating a robust economy.

Another factor contributing to this cycle is the desire of politicians seeking elected (and re-elected) positions in government. Promises of job and economic growth normally produce a winning formula for garnering votes. Elections have historically been lost when unemployment and taxes both increase. As a result, Congress finds little incentive to reduce the deficit and buck this trend.

Tipping Point

Prior to the COVID-19 crisis, the U.S. debt-to-Gross Domestic Product (GDP) ratio had more than doubled to 79% in 2019 up from 35% in 2007. Deficit hawks, somewhat hard to find, disappeared once the virus delivered a wholesale shutdown of the U.S. economy. As discussed above the debt has materially increased resulting from relief legislation. The U.S. is destined for much higher levels of debt when the contagion passes. The Committee for a Responsible Federal Budget, a non-profit bipartisan group predicts under a worse-case scenario that the national debt could reach 117% of GDP by 2025, easily exceeding the record of 106% set in 1946.

What impact will this have on the US economy? Interest on the debt immediately reduces the money available for other spending programs. As it increases over the next decade, advocates of those benefits will call for a reduction in spending in other areas.

In the long-term, a growing debt burden becomes a big problem for everyone. This is known as the tipping point. The World Bank states that a country reaches that point when the debt-to-GDP ratio approaches or exceeds 77%. This occurs because gross domestic product measures a country's entire economic output. When the debt is greater than the entire country's production, lenders worry whether a country will repay them. This may seem like an overblown proposition given the United States financial standing in the world, nevertheless it does become problematic.

Once lenders become concerned, they demand higher interest rates. Buyers of U.S. Treasuries appreciate the security of knowing they will be repaid. They will seek additional returns on their investment commensurate with an increase in risk. Diminished demand for U.S. Treasuries would further increase interest rates which in turn slows economic growth.

Lower demand for Treasuries also puts downward pressure on the dollar. One reason for this is because the dollar's value is tied to that of Treasury securities. As the dollar declines, foreign holders receive less back in currency which is worth less. This factor further decreases demand.

We can call agree that a rising interest obligation and national debt is problematic. Over the next 20 years, budget forecasts predict that the Social Security Trust Fund will not have enough funds to cover planned retirement benefits to seniors. What choices do we have?

<u>Lower Interest Rates.</u> The most painless way to reduce the interest on the debt is to lower interest rates. Unfortunately, we have reached the end of our rope for this option. On March 15, 2020 the Federal Reserve announced that it was dropping its benchmark interest rate to zero. Additionally, the Federal Reserve will embark on another round of quantitative easing by purchasing $700 billion worth of Treasuries and mortgage-back securities. Quantitative easing is a form of monetary policy employed by a central bank like the Federal Reserve in order to increase the domestic money supply thereby stimulating economic activity. Needless to say, the printing presses at the Bureau of Engraving and Printing are working non-stop.

<u>Increase tax revenues.</u> Tax rate increases are an immediate solution since they reduce annual budgetary deficits. However, over time increases in tax rates weigh heavy on economic growth. In addition, voters have grown to reject politicians who raise taxes in a wholesale manner. Ideally, a fast-growing economy will serve to boost tax revenues.

<u>Cut spending.</u> The “far easier said than done” option will typically anger whomever is getting their benefits reduced. Although politicians often talk about it, they usually want to cut someone else's spending. One somewhat recent example of this was the inability of Congress to adopt the bi-partisan Simpson-Bowles plan in 2010. Lawmakers passed the 2011 Budget Control Act to force themselves to come up with a solution. When they couldn't, sequestration cut all discretionary spending by 10%. Congress' reluctance to raise taxes then led to the 2013 fiscal cliff crisis.

The answer is much like weight loss. Exercise more and eat less. Exercise more in this analogy represents an increase in tax revenue and eat less represents cuts in spending. We will need to find the courage to seek a dual course of action. Increases in tax revenue will undoubtedly come in the form of a mixed solution of (somewhat modest?) tax rate increases and boosts in economic activity driving up tax revenues. However, given the data and predictions for future deficits, our elected officials will also need to address spending cuts sooner rather than later.

We as citizens are cautiously optimistic for a strong economic rebound as we enter the second half of 2020. Our collective hope is that legislative stimulus and relief are sufficient to steer clear of a depression and put us back on a path of recovery and solutions for a more sustainable and vibrant financial future. Let's continue to stay strong, work together, and remain hopeful.

2020 Elections

Each election cycle brings countless promises of a better tomorrow. We remain eternally optimistic that as a country we will overcome any challenges we face. Republicans and Democrats have varying if not competing plans to addresses these problems. November is just around the corner and the possibility of legislative and tax law changes that may result based on who is in office may follow in short order.

Currently President Trump has not issued a formal proposal regarding "Tax Cuts 2.0". National Economic Council Director Larry Kudlow announced in January 2020 that details of a projected plan would be rolled out during the year prior to the campaign. Initial indications include:

- Make the TCJA permanent
- Tax cuts focused on boosting take-home earnings for middle class taxpayers.

The COVID-19 pandemic essentially halted any momentum in developing a detailed plan at this stage. As such, the President's team is looking to react on current measures before detailing any new proposals.

The Biden camp seeks to lay out their case for taking the White House and announced some initial proposals to distinguish their position from their Republican opponent's. Excerpts from their proposals include:

Individual

- Imposes a 12.4 percent Old-Age, Survivors, and Disability Insurance (Social Security) payroll tax on income earned above $400,000, evenly split between employers and employees. This would create a gap in the current Social Security payroll tax, where wages between $137,700, the current wage cap, and $400,000 are not taxed.
- Reverts the top individual income tax rate for taxable incomes above $400,000 from 37 percent under current law to the pre-Tax Cuts and Jobs Act level of 39.6 percent.
- Impose rates for long-term capital gains and qualified dividends at the ordinary income tax rate of 39.6 percent on income above $1 million and eliminate the step-up in basis for capital gains taxation.
- Caps the tax benefit of itemized deductions to 28 percent of value, which means that taxpayers in the brackets with tax rates higher than 28 percent will face limited itemized deductions.
- Restores the Pease limitation on itemized deductions for taxable incomes above $400,000.
- Phases out the qualified business income deduction (Section 199A) for filers with taxable income above $400,000.
- Expand the Earned Income Tax Credit (EITC) for childless workers over age 65.
- Provide renewable-energy-related tax credits to individuals.

Business

- Increases the corporate income tax rate from 21 percent to 28 percent.
- Creates a minimum tax on corporations with book profits of $100 million or higher. Corporations would pay the greater of their regular corporate income tax or the 15 percent minimum tax while still allowing for net operating loss (NOL) and foreign tax credits.
- Double the tax rate on Global Intangible Low Tax Income (GILTI) earned by foreign subsidiaries of US firms from 10.5 percent to 21 percent.

- Establish a Manufacturing Communities Tax Credit to reduce the tax liability of businesses that experience workforce layoffs or a major government institution closure.
- Expand the New Markets Tax Credit and makes it permanent.
- Offers tax credits to small business for adopting workplace retirement savings plans.
- Expand several renewable-energy-related tax credits and deductions.
- Ends subsidies for fossil fuels.

Analysis

Some of the proposals offered by the Democrats appear to be a roll-back of tax rates and limitations to pre TCJA levels but not necessarily an all-out repeal of the TCJA. Noteworthy points to highlight include:

Increase in SSI Tax

As addressed earlier, funding of future benefits is becoming a greater challenge with each passing day. One can imagine a day whereby the Social Security Wage Base limit will simply disappear similar to the disappearance of the Medicare upper boundary.

Year	Wage Base	Increase	Maximum Social Security Employee Share	Maximum Social Security Employer Share	Maximum Total Contribution to Social Security
2020	$137,700	3.6%	$8,537.40	$8,537.40	$17,074.80
2019	$132,900	3.5%	$8,239.80	$8,239.80	$16,479.60
2018	$128,400	0.9%	$7,960.80	$7,960.80	$15,921.60
2017	$127,200	7.3%	$7,886.40	$7,886.40	$15,772.80
2016	$118,500	0.0%	$7,347.00	$7,347.00	$14,694.00
2015	$118,500	1.3%	$7,347.00	$7,347.00	$14,694.00
2014	$117,000	2.9%	$7,254.00	$7,254.00	$14,508.00
2013	$113,700	3.3%	$7,049.40	$7,049.40	$14,098.80
2012	$110,100	3.1%	$4,624.20	$6,826.20	$11,450.40
2011	$106,800	0.0%	$4,485.60	$6,621.60	$11,107.20
2010	$106,800	0.0%	$6,621.60	$6,621.60	$13,243.20

The chart above reflects a substantial uptick in the Wage Base for Social Security during the past ten years. The COVID-19 crisis has introduced an added measure of concern. Unemployment has increased dramatically during the months in which states imposed mandatory stay at home orders and required business to shut their doors. The result was layoff's and furloughs of employees. Many individuals that were on the verge of retirement but were currently working have decided to simply accelerate their planned retirement date and have applied for benefits. The damage is two-fold. Individuals who were working are now no longer contributing into the social security coffers. Additionally, they are now drawing distributions at an earlier age (even though these amounts are lower than if individuals waited to receive their benefit at their "full retirement age").

Elimination of Step-Up Basis

A popular talking point on the campaign trail has revolved around the repealing of step-up basis for capital gains. As we are familiar with under current law, the tax basis of property transferred to an heir at death is increased to its current market value. This process, called step-up in basis, means that any appreciation in the value of the property that occurred during the original owner's life goes untaxed. If the heir chooses to sell the property, any tax would be assessed on the new basis, which means that only asset appreciation after the asset had been inherited would face capital gains tax.

Some would argue that repealing the step-up in basis would raise tax revenue relative to current law. One drawback that would be clear if step-up were eliminated revolves around the cost of compliance for both taxpayers and auditors (IRS). The original cost basis of every capital gain would have to be verified. This could provide very difficult for an heir of a decedent if accurate records concerning the original cost basis are not available. Original purchases can span decades if not a lifetime.

Review Questions

1. Which of the following "Phases" of relief contributed to the largest jump in our National Debt?
    a. Phase 1
    b. Phase 2
    c. Phase 3
    d. Phase 3.5

2. Which of the following statements is true concerning interest rates and debt?
    a. Political elections seldomly impact fiscal policy.
    b. National Debt typically is a top priority for elected officials seeking office.
    c. Interest Rates fall when there is less demand for bonds.
    d. Interest Rates will typically rise when the economy is doing well.

3. A "step-up" in basis usually results in ________ capital gains tax for the recipient of an inherited asset.
    a. higher
    b. lower
    c. no impact on
    d. none of the above

ITEM 5 - TAX UPDATES

Let's wrap-up this quarters newsletter with a discussion of other noteworthy tax related matters.

Final Regulations – Tax Exempt Organizations

Final regulations were issued on May 27th impacting certain tax-exempt organizations. Specifically, these entities will not have to supply the names and addresses of substantial donors on Schedule B, Schedule of Contributors, of Form 990, Return of Organization Exempt From Tax (T.D. 9898). The IRS had previously exempted these organizations from supplying that information using a revenue procedure, but that method was successfully challenged as not complying with the Administrative Procedure Act.

The IRS previously issued proposed regulations (REG-102508-16) to provide compliance guidance in connection with the requirements of the Administrative Procedure Act. These were subsequently finalized in T.D. 9898.

Among the requirements being finalized without change, the IRS is exempting tax-exempt organizations with gross receipts that do not exceed $50,000 from filing Form 990. Organization below this receipts threshold still have a requirement to file Form 990-N, e-postcard, annually. Under these final regulations, organizations that will only need to report the names and addresses of substantial contributors include Sec. 501(c)(3) organizations and Sec. 527 political organizations.

Other exempt organizations will no longer have to include this donor data on:

- Form 990;
- Form 990-EZ, Short Form Return of Organization Exempt From Income Tax; or
- Form 990-PF, Return of Private Foundation.

However, all these organizations will continue to be obligated to collect and keep this information and make it available to the IRS upon request. The regulations are effective May 28, 2020, but tax-exempt organizations may choose to apply them to returns filed after Sept. 6, 2019.

MCM Investment Management LLC, T.C. Memo. 2019-158

In a recent Tax Court case, MCM Investment Management LLC, T.C. Memo. 2019-158, the taxpayer successfully proved it was entitled to a Sec. 165(a) loss deduction for worthlessness of a partnership interest. This case provides a road map for establishing the legal requirements needed to sustain a deduction for worthlessness, and reinforces the position that actual abandonment of a partnership interest is not required to claim a loss under Sec. 165(a).

The IRS had historically taken the position that a worthlessness deduction was not allowed without abandonment of the underlying partnership interest. Premised on the idea that only worthless securities would qualify for such a deduction, this position ran contrary to some prior court decisions. Eventually, this issue was addressed in Echols, 935 F.2d 703 (5th Cir. 1991), where the Fifth Circuit rejected the IRS's position and reversed the Tax Court. The appeals court held that a married couple who owned an interest in a real estate partnership could take a loss deduction under Sec. 165(a) on grounds of worthlessness, even if the partnership's sole asset (an unimproved tract of land) was not abandoned.

In arriving at this conclusion, the court emphasized that the determination of worthlessness is based on a mix of objective and subjective criteria. If a property, objectively, has substantial value, it obviously cannot be treated as worthless for tax loss purposes. The subjective component relates to the important question of when a property becomes worthless. A taxpayer is entitled to exercise judgment and discretion in determining when an asset has become worthless to him or her, even if someone else might have considered the asset in question virtually valueless in a prior year or might have been willing to gamble that the value could be restored in a future year. The taxpayer's subjective determination of worthlessness must be accompanied by a reasonable showing that the asset was in fact essentially valueless at the time selected by the taxpayer, as confirmed by objective evidence.

Shortly after the Echols ruling, Rev. Rul. 93-80 was issued. In this ruling, the IRS addressed whether a loss incurred in connection with the abandonment or worthlessness of a partnership interest would generate an ordinary or capital loss. While the determination of character is significant, an interesting aspect of this ruling is that the IRS appeared to conclude that a worthlessness deduction may be available without an actual abandonment of the underlying partnership interest.

MCM Investment Management LLC

The facts of the 2019 Tax Court case involved an upper-tier partnership, MCM Investment Management LLC (MCMIM), that had a controlling interest in a lower-tier partnership, McMillin Companies LLC (Companies). Companies were in the business of home building and remodeling. When the subprime mortgage crisis began in 2007 and home values declined, Companies' business went severely "underwater." By tax year 2009, the year at issue, Companies' cash flow forecasts showed that an orderly winding down of the business over five years would produce more available cash to pay off the remaining senior debt of $70 million, but, unfortunately, leave nothing to pay the preferred interest holders or other owners of Companies upon liquidation.

Because of the decision in 2009 to begin liquidating Companies and the forecasts showing that the owners would not receive any value for their ownership interest once the liquidation was complete, MCMIM filed its 2009 partnership return reflecting a loss deduction of approximately $41 million, based on the interest in Companies having become worthless during the year.

The taxpayer and the IRS agreed that the character of the disputed loss would be ordinary (although no mention of liability relief was discussed). The issue for the court to decide was whether the taxpayer met all the requirements for claiming the Sec. 165(a) deduction for 2009. Because MCMIM did not abandon its partnership interest in Companies, the court determined whether the taxpayer was entitled to a deduction because the interest became worthless in 2009

Subjective determination of worthlessness

Applying the two-part test from Echols, the court analyzed whether MCMIM subjectively believed its partnership interest in Companies was worthless in 2009. The court found that MCMIM did subjectively believe the interest was worthless for two reasons. First, the court found that MCMIM's belief that the interest was worthless was indicated by its filing of a 2009 partnership return claiming a loss deduction for worthlessness.

Second, the owners and management of MCMIM credibly testified they believed the interest was worthless in 2009 based on the devastating impact the financial crisis was having on the real estate market. Furthermore, Companies' cash flow projections showed its inability to pay the senior lender in full or to have any assets remaining for the owners and its decision to gradually wind down Companies over a period of years was only made to maximize available cash to pay the creditor.

Objective determination of worthlessness

The court then analyzed whether the objective evidence confirmed the taxpayer's subjective determination that the partnership interest was worthless in 2009. In MCMIM's case, Companies was able to provide conservative projections based on market conditions that indicated an immediate liquidation of the assets would result in the senior creditor's receiving only 40% of its loan balance with nothing remaining to pay the preferred interest holder, or MCMIM. The court noted that balance sheet insolvency at the entity level was not necessarily required when preferred equity interests (such as preferred stock or preferred partner interests) are involved. A subordinate equity interest may become worthless if the company cannot satisfy a preferred equity interest holder's preferential claim in liquidation (Mahler, 119 F.2d 869 (2d Cir. 1941)). The court concluded that the combination of Companies' debt and the effects of the financial crisis and recession relating to the real estate market established the absence of liquidating value, both currently and in the foreseeable future.

MCMIM was successful in claiming a loss deduction as a result of the severe decline in the real estate market combined with Companies' contemporaneous documentation of worthlessness in the form of projections and forecasts. It was the lack of liquidating value of the preferred and nonpreferred interests, along with the absence of future value, that led the court to conclude that the subjective and objective factors needed to sustain a worthlessness deduction were met.

This case provides excellent guidance for taxpayers seeking to claim a deduction for worthlessness. Further, in the context of a partnership interest, the decision again reinforces the notion that abandonment of the underlying partnership interest is not a prerequisite for claiming a worthlessness deduction under Sec. 165(a). It is always important to carefully analyze the facts and circumstances to ensure the appropriate criteria are matched with the respective method of claiming a Sec. 165 loss deduction.

No Free Ride

We'll wrap up this quarters newsletter with a story that may have far reaching consequences for gig workers and for transportation network companies such as Uber and Lyft.   Recently the State of California along with city attorneys from San Francisco, Los Angeles and San Diego filed suit against Uber and Lyft claiming that the companies have violated the recently enacted "gig worker" law in California (AB-5) claiming that the companies have been misclassifying their drivers as independent contractors instead of employees.

California Attorney General Xavier Becerra states that the companies have pushed an unfair financial burden onto taxpayers since drivers are seeking unemployment benefits from funds in which no contributions have been made by either company. The companies deny that their drivers are entitled to state unemployment insurance, as well as state-mandated paid sick leave and other employee benefits.

Uber vowed to fight the suit. "At a time when California's economy is in crisis with four million people out of work, we need to make it easier, not harder, for people to quickly start earning," Uber said in a statement. "We will contest this action in court, while at the same time pushing to raise the standard of independent work for drivers in California, including with guaranteed minimum earnings and new benefits."

Lyft said in a statement that it was “looking forward to working with the Attorney General and mayors across the state to bring all the benefits of California’s innovation economy to as many workers as possible, especially during this time when the creation of good jobs with access to affordable healthcare and other benefits is more important than ever.”

Lyft and Uber have each put at least $30 million into a campaign to bring a ballot initiative to California voters this year that would exempt them from AB-5. Uber in December of 2019 sued the state over the law, claiming that “app-based independent service providers and the companies that operate the platforms they use have a constitutional right to pursue the occupation of their choice — not to be forced to be employees when they are independent, or to be forced to be taxi or delivery companies when they are technology companies.”

What is AB 5 and what does it do?

AB 5 is a bill signed into California law in September 2019 addressing employment status when a hiring entity claims that the person it hired is an independent contractor. AB 5 requires the application of the “ABC test” to determine if workers in California are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission (IWC) wage orders. The California Supreme Court first adopted the ABC test in Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903. Among other things, AB 5 added a new section to the Labor Code addressing these issues (section 2750.3).

What is the ABC test?

Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity ***satisfies all three*** of the following conditions:

A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
B. The worker performs work that is outside the usual course of the hiring entity’s business; and
C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

How do you apply the ABC test to worker relationships?

Below is a summary of the California Supreme Court’s explanation of how to apply the ABC test.

PART A: Is the worker free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact?

- The hiring entity must establish that the worker is free of such control to satisfy part A of the ABC test.
- A worker who is subject, either as a matter of contractual right or in actual practice, to the type and degree of control a business typically exercises over employees would be considered an employee.
- Depending on the nature of the work and overall arrangement between the parties, a business need not control the precise manner or details of the work in order to be found to have maintained the necessary control that an employer ordinarily possesses over its employees.

PART B: Does the worker perform work that is outside the usual course of the hiring entity’s business?

- The hiring entity must establish that the worker performs work that is outside the usual course of its business in order to satisfy part B of the ABC test.
- Contracted workers who provide services in a role comparable to that of an existing employee will likely be viewed as working in the usual course of the hiring entity’s business.

- Examples where services are not part of the hiring entity's usual course of business:
    - When a retail store hires an outside plumber to repair a leak in a bathroom on its premises.
    - When a retail store hires an outside electrician to install a new electrical line.
- Examples where services are part of the hiring entity's usual course of business:
    - When a clothing manufacturing company hires work-at-home seamstresses to make dresses from cloth and patterns supplied by the company that will thereafter be sold by the company.
    - When a bakery hires cake decorators to work on a regular basis on its custom-designed cakes.

PART C: Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity?

- The hiring entity must prove that the worker is customarily and currently engaged in an independently established trade, occupation, or business.
- The hiring entity cannot unilaterally determine a worker's status simply by assigning the worker the label "independent contractor" or by requiring the worker, as a condition of hiring, to enter into a contract that designates the worker an independent contractor.
- Part C requires that the independent business operation actually be in existence at the time the work is performed. The fact that it could come into existence in the future is not sufficient.
- An individual who independently has made the decision to go into business generally takes the usual steps to establish and promote that independent business. Examples of this include:
    - Incorporation, licensure, advertisements;
    - Routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like.
- If an individual's work relies on a single employer, Part C is not met. For example, Part C was not satisfied where a taxi driver was required to hold a municipal permit that may only be used while that driver is employed by a specific taxi company.

Federal Aid

Uber and Lyft drivers experienced many of the same economic hardships experienced by countless American's during the pandemic. Ride sharing slowed to a trickle. The CARES Act and related relief brought some assistance to drivers:

- Direct payments of up to $1,200 (individuals) or $2,400 (married couples who filed a joint tax return), with an additional $500 payment for each dependent child.
- Drivers who were unable to work because of issues related to COVID-19, could be eligible for a refundable tax credit up to $511 per day, for up to ten days.
- Drivers caring for a loved-one who gets sick could be eligible for tax credits up to $2,000.
- Those drivers who stopped working to take care of a child at home while schools were closed, could be eligible to receive up to $10,000 in tax credits.

Unemployment payments for independent workers

The Federal Pandemic Unemployment Compensation (FPUC) program was one of several new programs established by the CARES Act to help alleviate some of the economic pain caused by COVID-19.

The FPUC program helps unemployed business owners, self-employed individuals, and independent contractors who have limited work history, and others not usually eligible for regular state UI benefits who are out of business or services are significantly reduced as a direct result of the pandemic. The provisions of the program include:

- Up to 39 weeks of benefits starting with weeks of unemployment beginning February 2, 2020, through the week ending December 26, 2020, depending on when they became directly impacted by the pandemic.
- A new 13-week federal extension for those who run out of their regular state-provided UI benefits (maximum 26 weeks).

Employee vs. Independent Contractor – California Cost

The above referenced measures provides some relief to drivers of Uber and Lyft. With that said, these companies are far from being off the hook particularly as it relates to unemployment insurance.

Recently the UC Berkeley Labor Center published a data brief documenting the amount of California State Unemployment Insurance Uber and Lyft would have owed since 2014. Below is a brief excerpt from these findings:

- All employers must pay an Unemployment Insurance tax for each of their workers.
- In California, the tax rate for new employers is 3.4 percent of pay, up to the taxable wage limit of $7,000 a year per employee.
- Since their beginnings over a decade ago, the transportation network companies (TNCs) Uber and Lyft have not paid into California's Unemployment Insurance (UI) Fund. Both TNCs have held that their drivers are independent contractors, not employees.
- According to company-provided data obtained by the California Air Resources Board, 640,000 distinct workers drove for the two TNCs in 2018.
- Since UI payments are owed by each company a worker drives for, we adjust the number of drivers to separately count those working for both companies.
- An analysis by JP Morgan Chase found that 20 percent of online transportation platform drivers worked for more than one platform in any single month.
- Adjusting for these "multi-app" drivers, we obtain a total of 768,000 drivers for whom TNCs would have owed UI taxes in 2018.
- Our finding: If Uber and Lyft had treated workers as employees, the two ***<u>TNCs would have paid $413 million</u>*** into the state's Unemployment Insurance Fund between 2014 and 2019.

Clearly many variables and assumptions are considered in this exercise. Nevertheless, the results are staggering when you realize that this dollar amount only pertains to one state (California). Clearly the stakes are enormous. What are the demands from the state in this litigation?

1) Uber and Lyft is to remedy the wages they would have had to pay current and former drivers had they classified them as employees, entitling workers to minimum wage and overtime, during the past four years.
2) The lawsuit contends the companies violated California's anti-trust law because misclassifying employees gives them an unfair advantage over companies who follow the law. The state and cities want the companies to pay $2,500 for each act of unfair competition — presumably, for each driver — plus another $2,500 for violations against senior citizens or individuals with disabilities, which could add up to "hundreds of millions of dollars," according to the San Francisco City Attorney Dennis Herrera's office.
3) Finally, they ask the companies to stop classifying drivers as freelancers.

IRS Guidance

Practitioners should note that state views on gig work may not align with federal guidelines. We are all familiar with the 20 factor test provided by the IRS to assist business owners to correctly determine whether individuals providing services are employees or independent contractors. Recently the IRS updated their website to provide guidance on managing taxes related to gig work (https://www.irs.gov/businesses/small-businesses-self-employed/manage-taxes-for-your-gig-work).

The landing page for this link refers to booked ride related services:

> What is Gig Work? Gig work is certain activity you do to earn income, often through an app or website (digital platform), like:
>
> - Drive a car for booked rides or deliveries
> - Rent out property or part of it
> - Run errands or complete tasks
> - Sell goods online
> - Rent equipment
> - Provide creative or professional services
> - Provide other temporary, on-demand or freelance work

The site continues on to provide guidance to manage taxes for gig work as an independent contractor. This section of the IRS website does not appear to be taking sides in this or any related argument but clearly is providing some outreach and guidance to those drivers to make sure that tax dollars are being remitted on earnings. Nevertheless, the message can seem confusing when compared to language from California which insists employee status.

Outcome

No prediction is complete without factoring in the impact of the current pandemic and related economic consequences. Currently the rideshare services have suffered staggering losses in recent months. A victory by California in this lawsuit would certainly invite similar legislation from other states based on the same set of facts. States may find that they have won the battle and lost the war. Would Uber, Lyft or any other similar rideshare provider be able to financially survive? Time will tell.

We hope you and your families remain safe. Our best wishes to you for a wonderful summer.

Review Questions

1. T.C. Memo 2019-158 addresses provides important guidance for taxpayers who wish to claim a deduction for a worthless partnership investment, specifically__________?
    a. It establishes a legal requirement roadmap needed to sustain this deduction
    b. Reinforces the position that actual abandonment of a partnership interest is not required to claim a loss under Sec. 165(a)
    c. Both a & b.
    d. None of the above.

2. The Federal Program which contains unemployment payments for independent workers including up to 39 weeks of benefits is called?
    a. The Federal Pandemic Unemployment Compensation (FPUC) Program.
    b. The Paycheck Protection Program.
    c. The Economic Impact Payment Program.
    d. The Gig Work Guidance Initiative.

Review Question answers w/ Feedback

ITEM 1 – LEGISLATIVE SUMMARY

1. Legislation which included funding of $20 million to the Small Business Administration designed to cover administrative costs associated with future programs was rolled out during ________.
    a. Correct. H.R. 6074 was signed into law during the first week of March. This initial legislation was geared to provide funding for diagnostic testing, support for the treatment of the virus and to provide assistance to small businesses that have been impacted directly by financial losses resulting from the pandemic.
    b. Incorrect. Phase 2 relief was primarily geared towards individual and family relief resulting from economic shutdown measures.
    c. Incorrect. Phase 3 legislation consisted of the CARES Act; a landmark piece of legislation designed to provide sweeping economic relief resulting from the COVID-19 crisis.
    d. Incorrect. Phase 3.5 legislation primarily consisted of funding for programs already in place.

2. Which of the following financial provisions was not included in the CARES Act?
    a. Incorrect. Examples of this effort including an expansion of medical supplies to the Strategic National Stockpile.
    b. Incorrect. The Act also provides individuals with relief from early withdrawal penalties for certain distributions from qualified retirement accounts.
    c. Correct. The SECURE Act, passed at the end of 2019 included these provisions and is considered by many to be the largest change to retirement plans in decades.
    d. Incorrect. The CARES Act also expanded telehealth services, relaxed place-of-service limitations, and increased medical reimbursement rates.

3. "Phase 3.5" legislation (Paycheck Protection Program and Health Care Act H.R. 266) centered on fixing financing and legislative holes from recently enacted legislation concerning the conronavirus pandemic. Which of the following was not included with passage of this legislation?
    a. Incorrect. $50 billion was allocated to the SBA including an additional $10 billion to provide additional funding for the emergency Economic Injury Disaster Loans program.
    b. Incorrect. Funds for this program were rapidly depleted upon the initial passage of the CARES Act.
    c. Correct. Originally the next phase of legislation was to include a sweeping transportation bill, however the pressing need was to tweak recently passed legislation.
    d. Incorrect. HR 266 provided much needed cash for the already depleted Paycheck Protection Program while providing for additional funding for hospitals and COVID-19 based testing.

ITEM 2– PAYCHECK PROTECTION PROGRAM

1. The Paycheck Protection Program (PPP) was designed to provide borrowers with much needed relief funds to weather business downturns during periods of state mandated quarantines. Which of the following is not true concerning this program?
    a. Incorrect. Additionally, loans entered into under this program do not require collateral or personal guarantees.
    b. Correct. One specific requirement in connection with this forgiveness features states that at least 75% of the forgiven amount must have been used for payroll.

c. Incorrect. This includes the rehiring of employees if done in connection with the obtaining of PPP loan proceeds.
d. Incorrect. Small businesses were able to apply for loan's one week prior to independent contractors and self-employed individuals.

2. The CARES Act specifically excludes from the definition of payroll costs the excess of any individual employee annual compensation exceeding ________ in connection with the Payroll Protection loan program.
   a. Incorrect. The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to select non-cash benefits.
   b. Incorrect. The exclusion of compensation in excess of $100,000 annually applies only to cash compensation. Also, the SBA will recognize eligible borrowers that use Professional Employer Organizations to process payroll and report payroll taxes.
   c. Incorrect. The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to select non-cash benefits including employer contributions to a defined-contribution retirement plan and for the payment of state and local taxes assessed on the compensation of employees.
   d. Correct. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave.

3. Jones and Associates have applied for a PPP loan and are wondering if mortgage payments on their property would constitute "covered mortgage obligations". You correctly advise them that they would if the property obligation was in place prior to ____________.
   a. Correct. Practitioners working with clients throughout this process should remain mindful of this date because it can prove vitally important when proceeding forward with a loan forgiveness application.
   b. Incorrect. The in-force date is February 15, 2020. Covered rent obligations would also be considered an eligible nonpayroll cost with this same effective date.
   c. Incorrect. The in-force date is February 15, 2020. Covered utility payments would also be considered an eligible nonpayroll cost with this same effective date.
   d. Incorrect. The in-force date is February 15, 2020. Worth nothing is that an eligible nonpayroll cost must be paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period.

4. Calculation of Full Time Equivalents (FTE's) under the Payroll Protection Loan Program also includes a simplified method for calculating these FTE's by stating that employees who work less than 40 hours per week will be assigned an FTE of __________.
   a. Incorrect. Under the simplified method, employees who work 40 hours or more in a week are assigned an FTE of 1.0.
   b. Incorrect. Loan forgiveness under the Paycheck Protection program is generally predicated on retaining headcount during the measurement period (pandemic peak).
   c. Correct. The simplified method suggested should make the calculation of FTE's a bit less tedious.
   d. Incorrect. The FTE calculation becomes an important variable when considering whether the loan will be forgiven wholly or in part.

ITEM 3 – TAX CONSEQUENCES

1. The CARES Act provides direct financial aid to qualifying taxpayers better known as _________.
    a. Correct. Payments made under this program are technically advance refunds of a 2020 tax credit.
    b. Incorrect. Some individuals will refer to these payments as "Recovery Rebates", however practitioners should note that the term "Economic Impact Payments" is the preferred term as expressed by the IRS, particularly given the rise in fraudulent activity associated with these payments.
    c. Incorrect. Eligible individuals will receive up to $1,200 in connection with this "economic impact payment".
    d. Incorrect. Eligible joint filers will receive up to $2,400 in connection with this "economic impact payment".

2. The CARES Act provides employers the opportunity to delay payments of __________ that would otherwise be required to be made between March 27, 2020 and December 31, 2020.
    a. Correct. Form 941 will be revised for the second calendar quarter of 2020 (April - June, 2020) to reflect this deferral feature.
    b. Incorrect. Self-employed individuals may also defer the payment of 50 percent of the Social Security tax on net earnings from self-employment income imposed under section 1401(a) of the Code for the period beginning on March 27, 2020, and ending December 31, 2020.
    c. Incorrect. The deferral applies to deposits and payments of the employer's share of Social Security tax that would otherwise be required to be made during the period beginning on March 27, 2020, and ending December 31, 2020.
    d. Incorrect. Employers may be able to take advantage of this deferral, even if they haven't been impacted by COVID-19.

3. The business interest expense limitation has been amended to increase the adjusted taxable income percentage from 30% to 50%. Qualifying businesses and individuals may elect to not apply the 50% limitation to either 2019 or 2020 if they choose. Which of the following entities may not take advantage of this increased percentage for tax year 2019?
    a. Incorrect. This updated rule applies to most businesses for tax years 2019 and 2020, however partnerships are still bound to the 30% limitation for tax year 2019. Starting for tax year 2020, partners may take the 50% deduction for business interest expense.
    b. Incorrect. Beginning in 2021, this temporary limit amount of 50% will revert back to the 30% threshold.
    c. Correct. The election under this section is irrevocable.
    d. Incorrect. This updated rule applies to most businesses for tax years 2019 and 2020, however partnerships are still bound to the 30% limitation for tax year 2019. Starting for tax year 2020, partners may take the 50% deduction for business interest expense.

4. The Emergency Paid Sick Leave Act requires employers with fewer than 500 employees to provide up to 80 hours of paid sick time through the end of 2020 if the employee is unable to work due to being quarantined or self-quarantined or having COVID-19 or because the employee is caring for someone who is quarantined or self-quarantined or has COVID-19 or if the employee is caring for children whose school has been closed because of COVID-19 precautions. The act provides an employer a payroll tax credit that equals 100% of the qualified sick leave wages paid by the employer up to $511 in wages for workers who are quarantined or self-quarantined or who have COVID-19 up to ___________ days per calendar quarter.

a. Incorrect. This credit would be available for up to 10 days per calendar quarter and the amount of the credit is increased by the amount of the Sec. 3111(b) Medicare tax imposed on the qualified sick leave wages for which a credit is allowed.
b. Correct. To prevent the double dipping of benefits, employers' gross income will be increased by the amount of the credit (meaning the credit is not taken into account for purposes of determining any amount allowable as a payroll tax deduction, deduction for qualified sick leave wages, or deduction for health plan expenses), and no credit will be allowed for wages for which a Sec. 45S family and medical leave credit is claimed.
c. Incorrect. Additionally, the credit can be increased by certain qualified health plan expenses of the employer that are allocable to qualified sick leave wages for which the credit is allowed.
d. Incorrect. This credit would be available for up to 10 days per calendar quarter however, the credit would not apply to the federal government, the government of any state or any subdivision of a state, or any agencies or instrumentalities of these entities.

ITEM 4 – ECONOMICS AND THE FUTURE

1. Which of the following “Phases” of relief contributed to the largest jump in our National Debt?
    a. Incorrect. Initial projections on economic growth and projected tax revenues have evaporated for the first half of 2020 contributing substantially to an increase in the debt.
    b. Incorrect. The Congressional Budget office estimated prior to passage of Phase 2 relief (March 2020) federal spending would approach $4.7 trillion for the 2020 budget year.
    c. Correct. The CARES Act is estimated to cost $2 trillion.
    d. Incorrect. Prior to any legislative relief contained in pandemic legislation, the federal government anticipated a deficit for 2020 of $1.1 trillion.

2. Which of the following statements is true concerning interest rates and debt?
    a. Incorrect. Politicians often make promises of job and economic growth to win favor with potential voters.
    b. Incorrect. Elections have historically been lost when unemployment and taxes both increase. As a result, Congress finds little incentive to reduce annual deficits and hence the national debt.
    c. Incorrect. Interest rates tend to rise in order to attract buyers when demand for bonds is low.
    d. Correct. One reason for this is because investors have the confidence to buy riskier assets, such as stocks. As a result, there is less demand for bonds, so interest rates in turn rise to attract buyers.

3. A “step-up” in basis usually results in ________ capital gains tax for the recipient of an inherited asset.
    a. Incorrect. A step-up in basis results when an appreciation in the value of property which occurred during an originals owner’s lifetime is not taxed. The recipient of this property would inherit this elevated new basis which would potentially result in lower capital gains upon the sale of the asset.
    b. Correct. The tax basis of property transferred to an heir at death is increased to its current market value.
    c. Incorrect. The tax basis of property transferred to an heir at death is increased to its current market value. Some would argue that repealing the step-up in basis would raise tax revenue relative to current law.
    d. Incorrect. A popular talking point on the campaign trail has revolved around the repealing of step-up basis for capital gains.

ITEM 5 – TAX UPDATES

1. T.C. Memo 2019-158 addresses provides important guidance for taxpayers who wish to claim a deduction for worthless investments, specifically__________?
   a. Incorrect. The IRS had historically taken the position that a worthlessness deduction was not allowed without abandonment of the underlying partnership interest.
   b. Incorrect. The IRS had historically taken the position that a worthlessness deduction was not allowed without abandonment of the underlying partnership interest. Premised on the idea that only worthless securities would qualify for such a deduction, this position ran contrary to some prior court decisions.
   c. Correct. The taxpayer's subjective determination of worthlessness must be accompanied by a reasonable showing that the asset was in fact essentially valueless at the time selected by the taxpayer, as confirmed by objective evidence.
   d. Incorrect. Both a & b are correct. In arriving at this conclusion, the court emphasized that the determination of worthlessness is based on a mix of objective and subjective criteria.

2. The Federal Program which contains unemployment payments for independent workers including up to 39 weeks of benefits is called?
   a. Correct. This was one of several new programs established by the CARES Act to help alleviate some of the economic pain caused by COVID-19.
   b. Incorrect. The Paycheck Protection Program (PPP) was established to provide small businesses with funds for up to eight weeks of coverage for cash outlays connected with payroll costs including benefits.
   c. Incorrect. Payments made under this program are technically an advance refunds of a 2020 tax credit. Individuals will receive a tax credit of $1,200 ($2,400 for joint filers) plus $500 for each qualifying child under the age of 17.
   d. Incorrect. The Federal Pandemic Unemployment Compensation (FPUC) program was one of several new programs established by the CARES Act to help alleviate some of the economic pain caused by COVID-19. The FPUC program helps unemployed business owners, self-employed individuals, and independent contractors who have limited work history, and others not usually eligible for regular state UI benefits who are out of business or services are significantly reduced as a direct result of the pandemic.

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CE IRS-APPROVED CONTINUING EDUCATION PROVIDER

NATIONAL REGISTRY OF CPE SPONSORS QAS QUALITY ASSURANCE SERVICE

Final Exam

1. The Families First Coronavirus Response Act authorizes tax credits for employers who provide payments to employees during instances where the employee must care for a child as a result of a school closure resulting from a public health emergency. This provision represents an expansion of the ___________.
    a. CARES Act
    b. Family Medical Leave Act
    c. Middle Class Health Benefits Tax Repeal Act
    d. Paycheck Protection Act

2. Which of the following statements is not true concerning eligibility requirements for the Paycheck Protection Program?
    a. Sole-proprietors are eligible to apply for this loan.
    b. Borrowers must meet pre-determined collateral requirements in order to qualify.
    c. Credit requirements were eliminated as a requirement for obtaining a loan.
    d. None of the above.

3. The CARES Act represents one of the largest relief packages in the modern history of the United States. Which of the following was a key element of this relief legislation?
    a. Provide financial assistance to support key elements of the American healthcare system.
    b. Provide businesses with lending designed to keep individuals employed during a period of economic shutdown.
    c. Deliver direct relief payments to individuals in the form of advance tax rebates.
    d. All of the above.

4. The Paycheck Protection Program (PPP) was established to provide small businesses with funds for cash outlays connected with payroll costs including benefits. Which of the following statements is true in connection with application fees under this program?
    a. The federal government will charge a fee directly to the applicant.
    b. The lender will charge a fee directly to the applicant.
    c. Small business applicants will not be charged a fee when obtaining a loan thru this program.
    d. Applicant fees vary based on which lender loan proceeds are obtained from.

5. Eligible borrowers under the Paycheck Protection Program (PPP) may include which of the following?
    a. Small businesses with less than 500 employees.
    b. Businesses with more than 500 employees satisfying the applicable statutory and regulatory definition of a "small business concern".
    c. Both A & B.
    d. None of the above.

6. Janet has a seasonal ice cream business and is considering a loan under the Paycheck Protection Program. You correctly advise her that _______ .
    a. Seasonal businesses may only be able to apply for a loan under this program if they can prove payroll costs during tax year 2019

b. Seasonal businesses may apply for loan proceeds using average monthly payroll costs for the first two months of calendar year 2020
c. Seasonal businesses cannot apply for loans under the Paycheck Protection Program
d. Seasonal businesses must demonstrate that they were in business between the periods of Feb 1, 2019 and June 30, 2019

7. The Paycheck Protection Program provides employers with the ability to forgive loans, in part, based on the borrower's payroll costs over a specific period of time. Guidance based on this *original* legislation stated that this __________ week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower.
   a. 8
   b. 24
   c. 36
   d. 52

8. Cash compensation eligible for PPP loan forgiveness based on each individual employee may not exceed an annual salary of __________ as prorated for the covered period.
   a. $75,000
   b. $100,000
   c. $150,000
   d. $200,000

9. Loan forgiveness provisions for the PPP under the CARES Act spell out that a percentage of loan proceeds must be used towards "Payroll Costs". Which of the following is not considered an eligible "Payroll cost"?
   a. Vacation Pay
   b. Commissions
   c. Separation payment
   d. None of the above

10. The calculation of full-time equivalency is just one factor used in calculating loan forgiveness in connection with PPP lending. Your client has two employees. The first employee works on average 45 hours per week during the covered period. The second employee works 30 hours per week on average during the covered period. FTE's using the "simplified method" for your client would total?
    a. 1.0
    b. 1.5
    c. 1.75
    d. 2.0

11. Sarah is your client and has filed an individual tax return for tax year 2018 but does not plan to file her duly extended 2019 tax return until October 15, 2020. She has no dependents or children. Her adjusted gross income shown on her 2018 tax return is $70,000. Her 2019 projected adjusted gross income is expected to be double the amount shown on her 2018 tax return. You correctly advise her that ___________.
    a. She is entitled to receive an economic impact payment of $1,200
    b. She is entitled to receive an economic impact payment of $2,400
    c. Her economic impact payment will be partly reduced based on phaseout limitations

   d. She is not entitled to receive an economic impact payment because her 2019 income is projected to exceed phase out limits for individual taxpayers

12. IRS Notice 2020-18 issued by the IRS states that in response to the COVID-19 outbreak individuals and businesses will receive an automatic postponement of the April 15 deadline until July 15. As a result, federal estimated tax payments normally due June 15, 2020 (second installment) will be due on?
    a. April 15, 2020
    b. June 15, 2020
    c. July 15, 2020
    d. October 15, 2020

13. Edgar is 51 years old and has initiated and received a withdrawal from his IRA account totaling $30,000 on May 1, 2020. He requested this distribution to cover medical costs associated with COVID-19. Edgar would be eligible to ratably include this distribution as income over a _________ year period beginning in tax year _________.
    a. 3, 2020
    b. 5, 2020
    c. 3, 2021
    d. 5, 2021

14. The CARES Act updates select provisions of income taxation relating to charitable donations. Which of the following is not a change that originated with passage of this Act?
    a. Individual taxpayers can claim a $300 above the line tax donation for charitable contributions starting with tax year 2020.
    b. The limitation for charitable contributions has been raised to 100% of AGI for individuals.
    c. Changes resulting from the CARES Act apply for tax years beyond 2020.
    d. Substantiation rules from a charity supporting a taxpayer donation are unaffected by passage of the CARES Act.

15. Which of the following statements is true in connection with repeal of the Sec. 461(l) excess loss limitation upon passage of the CARES Act?
    a. This repeal provision will extend thru 2026.
    b. Taxpayers who experienced a disallowed excess business loss in 2018 should consider filing an amended return.
    c. Taxpayers should file Form 461, Limitation on Business Loss for tax year 2020 only.
    d. None of the above.

16. Which of the following provisions of federal tax law were modified upon passage of COVID-19 based legislation in 2020?
    a. Automatic postponement of the April 15th deadline associated with individual income tax returns.
    b. Increase in the Sec. 163(j) business interest expense limitation.
    c. Changes to non-residential qualified improvement property and related bonus depreciation eligibility.
    d. All of the above.

17. The Employee Retention Credit is a fully refundable tax credit for employers and is equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that eligible employers pay their employees. Employers who have received a Paycheck Protection Program loan _______________.
    a. May claim the Employee Retention Credit without restriction
    b. May claim the Employee Retention Credit only if the loan forgiveness provisions under the PPP were met
    c. May defer this credit in the year following the year in which PPP loan proceeds are received
    d. May not claim the Employee Retention Credit

18. According to the author, what impact does a rising National Debt have on annual federal budgets?
    a. Higher budget deficits are likely because of higher interest payments.
    b. Higher budget deficits are likely because of lower interest payments.
    c. Lower budget deficits are likely because of higher interest payments.
    d. Lower budget deficits are likely because of lower interest payments.

19. The IRS recently announced that tax-exempt organizations with gross receipts below _____ are exempt from filing ____________.
    a. $50,000, Form 990-N
    b. $50,000, Form 990
    c. $100,000, Form 990-N
    d. $100,000, Form 990

20. Which of the following best summarizes the concern that transportation providing networks such as Uber and Lyft have over categorizing their drivers as employee's and not independent contractors?
    a. As employees, the drivers would be ineligible to receive direct relief payments under the CARES Act.
    b. Having drivers categorized as employees would be in direct conflict with California law AB 5 passed in 2019.
    c. A recategorization of drivers from independent contractors to employees may expose these companies to substantial liabilities for unpaid unemployment insurance.
    d. IRS guidance regarding "gig employees" is only available for independent contractors.

CPElite

EXAM INSTRUCTIONS, ANSWER SHEET & COURSE EVALUATION

SUMMER 2020, VOLUME XXX, NUMBER 2, TAXATION

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There are 20 EXAM questions included in this course. Choose the best answer based on each question and record your answer below. Indicate your responses in the course for your personal records and **complete the "Course Evaluation" below.**

You must score 70% to receive continuing professional education credit for this course. After you successfully complete the exam, your exam results, and a certificate of completion will be emailed to you within 10 working days of our receipt of your answer sheet. If a score of less than 70% is achieved, you may retake the exam without additional cost. This course must be completed no later than JULY 15th, 2021. We appreciate your business and hope that you are satisfied with this quarter's newsletter.

ANSWER SHEET

4 HOURS OF CPE: FEDERAL TAX LAW UPDATE

DELIVERY METHOD – QAS SELF STUDY

Please record your answers below to the exam questions. **For non-online customers, please send your answer sheet by mail, fax, or email. CPElite, P O Box 571, Chapin, SC, 29036, Fax 1-877-796-0471, support@cpelite.com.** FOR NONSUBSCRIBERS, please be sure to include your check for $40 payable to CPElite or supply credit card information (below).

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3. ________	7. ________	11. ________	15. ________	19. ________
4. ________	8. ________	12. ________	16. ________	20. ________

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COURSE EVALUATION

(*Answer Yes, No, or N/A)*

1. After completing this CPE program, did you feel that the stated learning objectives were met? _______
2. Were the stated prerequisite requirements appropriate and sufficient for this CPE program?_________
3. Were the program materials, including the qualified assessment (final exam) relevant and did they contribute to the achievement of the learning objectives?________________________
4. Was the time allotted for this learning activity appropriate?________________________
5. Additional Comments?________________________

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This course will examine the principal rules, duties and restrictions applicable to enrolled agents in their professional activities. Course learning objectives focus on instructing enrolled agents and other professionals to understand their ethical responsibilities in representing their clients before the IRS and in preparing tax returns in accordance with Circular 230.

BUNDLE [1]

AFFORDABLE CARE ACT – EMPLOYER RIGHTS AND RESPONSIBILITIES - 3 CPE Credit – [Overview]

The Patient Protection and Affordable Care Act (PPACA) has brought about the most significant change in healthcare since the passage of the 1965 legislation that authorized Medicare. It imposes healthcare-related requirements on health plans, health insurers, employers and individuals. This course will review the principal coverage provisions of the law and will examine its tax impact on employers.

EARNED INCOME CREDIT - 3 CPE Credit – [Overview]

Upon completion of this course, practitioners will be able to apply the earned income credit rules to determine if a taxpayer is eligible for the tax credit; identify the common errors committed in connection with the earned income credit; describe the consequences of the IRS' disallowance of the earned income credit; and recognize the tax return preparer's EIC due diligence requirements.

BUNDLE [2]

2020/2019 EASY UPDATE & INFLATION ADJUSTMENTS - 6 CPE Credit – [Overview]

This course examines key individual, business, retirement, and estate tax provisions recently enacted or indexed for inflation. The emphasis is on quick access to major tax changes having special meaning to the tax practitioner and return preparer.

BUNDLE [3]

CORPORATE TAXATION OVERVIEW - 2 CPE Credit – [Overview]

This course examines and explains the basics of corporate taxation. The focus is on regular or C corporations, their formation, and operation under tax law.

PARTNERSHIP TAXATION OVERVIEW- 2 CPE Credit – [Overview]

This course will examine tax issues relating to the formation and operation of partnerships. Participants will gain a familiarity with basic areas of partnership taxation so as to recognize a problem and have at hand some practical knowledge for its solution.

S CORPORATIONS OVERVIEW - 3 CPE Credit – [Overview]

In this course, the intricacies of setting up and terminating an S corporation are detailed and taxation is discussed. The numerous advantages and disadvantages of this entity are identified to help practitioners determine whether the S corporation is most suitable for their clients

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