COVID-19 relief: What nonprofits need to know
Notices

The following information is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.
Presenters

Ruth Madrigal, Principal in Charge, Exempt Organizations, Washington National Tax (WNT)

Jennifer Acuna, Principal, Federal Legislative & Regulatory Services, WNT

Robert Delgado, Principal in Charge, Compensation & Benefits, WNT

Tom West, Principal, Passthroughs, WNT

Preston Quesenberry, Managing Director, Exempt Organizations, WNT
Administrative

CPE regulations

- Require that online participants take part in online questions
- Must respond to a minimum of three questions per 50 minutes
- Polling questions will appear on your media player
- Results will be reviewed in the aggregate; no responses will be tracked back to any individual or organization

Ask a question

- Use the “Ask A Question” box in your media player

Technical issues

- Use the ? button in the upper-right corner of your Webcast player to access our online help portal
- If this does not resolve your issue, please submit a question through the Ask a Question box, and you will receive a reply from our technical staff in the Answered Questions box
Agenda and presenters

Welcome
- **Ruth Madrigal**, Principal in Charge Exempt Organizations, Washington National Tax (WNT)

Legislative journey
- **Jennifer Acuna**, Principal Federal Legislative & Regulatory Services, WNT

Employer/employee relief provisions
- **Robert Delgado**, Principal in Charge Compensation & Benefits, WNT

Loan provisions
- **Tom West**, Principal, Passthroughs, WNT

Filing dates, temporary tax provisions
- **Preston Quesenberry**, Managing Director Exempt Organizations, WNT

Conclusion / Q&A
- **Ruth Madrigal**, Principal in Charge Exempt Organizations, Washington National Tax (WNT)
Legislative journey
Emergency Legislation

Common Characteristics
- Bipartisanship
- Budgetary considerations
- Speed

CARES Act

What next?
Employer/employee relief provisions

Liquidity and tax efficiencies

Payroll credits and deferrals, retention, benefits, sick leave, FMLA+, and other considerations
Qualified disaster relief payments – IRC 139

— General requirements:
  - Must be reasonable and necessary expenses incurred as a result of a qualified disaster
  - Cannot be wage/income replacement
  - Cannot be reimbursed by insurance
  - Non-taxable to the recipient, deductible by employer
  - No tax-specific documentation requirements, but documentation of position is recommended

— Examples of potential qualified expenses:
  - Travel expenses incurred to prevent COVID-19 spread
  - Medical expenses related to COVID-19 (not covered by insurance)
  - Childcare/education expenses related to mandatory WHF/quarantine
  - Certain home office items as a result of WFH requirements
  - Sanitization/protective items such as masks, gloves to prevent spread
  - Some expenses will be one-time; others may be ongoing
Summary of COVID-19 provisions affecting compensation, benefits, and payroll

— Retention and leave payroll credits
  – Employee retention credit
  – Emergency sick leave
    - Six triggers
  – FMLA plus (Emergency FMLA)
    - One trigger

— Deferrals, distributions, coverage, and loans
  – Two year 2020 payroll (employer social security) tax deferral
    - Half due December 31, 2021
    - Half due December 31, 2022
  – Permissible plan distribution and repayment
  – Group health plan expanded permissible expense
  – Defined benefit plan contribution extensions
  – Expanded Department of Labor authority to postpone deadlines
  – Payroll protection loans
Payroll tax deferral

“Applicable employment taxes” for the “payroll tax deferral period” are not due before the “applicable date”.

— **Applicable employment taxes**
  - The taxes imposed under IRC Section 3111(a) (social security taxes),
  - So much of the taxes imposed under IRC Section 3211(a) as are attributable to the rate in effect under IRC Section 3111(a), and
  - So much of the taxes imposed under IRC Section 3221(a) as are attributable to the rate in effect under IRC Section 3111(a) (RRTA taxes). CARES Act Section 2302(d)(1)

— **Payroll tax deferral period** = the period beginning on the date of enactment of the CARES Act (March 27, 2020) and ending before January 1, 2021, i.e., December 31, 2020. CARES Act Section 2302(d)(2)

— **Applicable date**
  - December 31, 2021, with respect to 50% of the amounts deferred, and
  - December 31, 2022, with respect to the remaining 50% deferred. CARES Act Section 2302(d)(3)
  - Appears deduction timing rules still apply under Section 461 tied to actual payment

Note: Payroll deferral program not available if SBA loan forgiveness under Section 1106 and 1102 of the CARES Act.
Employer retention credit

Eligible employers receive 50% credit for qualified wages up to $10,000 ($5,000 maximum credit per employee)

- Wages paid to employees after March 12, 2020 and before January 1, 2021
  - Includes allocable health expenses
- Credit against Social Security taxes
  - Precludes double benefits under work-opportunity tax and leave credits
- Excess refunded or applied against other taxes
- Controlled group under Sections 52 and 414

Qualified Wages =
- Up to $10,000 for each employee
- Up to $10,000 for each employee unable to provide services due to COVID-19

Eligible Employer

- Operations suspended (full or partial) result of government order or
- Over 50% reduction in quarterly receipts measured year over year
- Look to each organization for certain Section 501(c)(3) Tax-Exempts
- Governmental employers NOT eligible for the credit

100 or Fewer Employees

More than 100 Employees

Note: Not eligible if receiving a loan under a Payroll Protection Program loan under Section 1102 of the CARES Act

© 2020 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved. N00S 816386
Paid leave provisions

Applies to:
— Private employer with fewer than 500 employees,
— Public agency, and
— (For EPSL only) any other entity that is not private

Note: Count number of employees on date of leave

Obligation to provide, but also receive corresponding credit. EXCEPT NO credit for government employer

Note that an employer may receive an advanced credit prior to the expense.

Emergency Paid Sick Leave (EPSL)
— Employees eligible day one
— Up to 80 Hours (Basically, first 10 days)
— Six Triggers
— Full or 2/3rd pay depending on trigger
  - Full pay capped at $511 daily and $5,110 in aggregate, or
  - 2/3rd pay capped at $200 and $2,000 in aggregate

Emergency Paid FMLA (FMLA +)
— Employees eligible with 30 calendar days on payroll
— Up to 12 Weeks
  - First two weeks may be unpaid
— One trigger
— 2/3rd pay capped at $200 and $10,000 in aggregate
Paid leave provisions – Triggers

The following reasons trigger paid leave provisions to apply to employers with fewer than 500 employees:

<table>
<thead>
<tr>
<th>EPSL = Employee unable to work (or telework) because:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee subject to quarantine or isolation order related to COVID-19</td>
</tr>
<tr>
<td>Employee advised by healthcare provider to self-quarantine because of COVID-19</td>
</tr>
<tr>
<td>Employee experiencing symptoms of COVID-19 and seeking a diagnosis</td>
</tr>
<tr>
<td>The employee is caring for an individual subject to or advised to quarantine or isolate</td>
</tr>
<tr>
<td>The employee is caring for a son or daughter whose school or place of care is closed or unavailable due to COVID-19 precautions</td>
</tr>
<tr>
<td>The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FMLA+ = Employee unable to work (or telework) because:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee is unavailable to work or telework to care for a minor child if the child's school or place of child care has been closed or is unavailable due to a public health emergency</td>
</tr>
</tbody>
</table>

Blue triggers = Full pay trigger capped at $511 and 10 days ($5,110)

Other triggers are 2/3rd pay capped at $200 per day for the paid benefit period
Additional CARES act compensation and benefit provisions

— **Student loan assistance:** Employers may contribute up to $5,250 tax free toward the student loans of employees under a non-discriminatory arrangement

— **Plan distributions:** Required minimum distributions for defined contribution plans and IRAs suspended for 2020

— **Plan withdrawals and repayments:** For certain taxpayers personally impacted by COVID-19, plan withdrawals up to $100,000 permitted without early withdrawal penalty

— **Plan loan limit:** Qualified plan loan limit for 180 days from enactment is increased to $100,000

— **Funding:** Required funding of qualified plans extended through December 31, 2020
## General employee-related issues

<table>
<thead>
<tr>
<th>Immediate (1-4 weeks)</th>
<th>Short-Term (1 – 3 months)</th>
<th>Mid-Term (3 – 6 months)</th>
<th>Long-Term (6 months &amp; beyond)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account for employee whereabouts, safety and security</td>
<td>Estimate/quantify costs</td>
<td>Re-evaluate bonus targets and equity retention value in light of stock price deterioration</td>
<td>Modify/enhance WFH policies</td>
</tr>
<tr>
<td>Implement WFH protocols</td>
<td>Understand tax exposure and other compliance obligations</td>
<td>Tax planning for terminations</td>
<td>Review T&amp;E policies in light of crisis – modify/update as necessary</td>
</tr>
<tr>
<td>Evaluate potential IRC 139 payments</td>
<td>Evaluate immigration changes</td>
<td>Consider charitable options for employee support</td>
<td></td>
</tr>
<tr>
<td>Evaluate income replacement/wage continuation options</td>
<td>Tax planning for terminations</td>
<td>Evaluate new tax incentives, relief and other COVID-related legislation</td>
<td></td>
</tr>
<tr>
<td>Consider employee fairness/legal obligations, unique needs, essential business operations</td>
<td>Consider charitable options for employee support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unique overtime tracking needs</td>
<td>Evaluate new tax incentives, relief and other COVID-related legislation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Immediate** (1-4 weeks):
- Account for employee whereabouts, safety and security
- Implement WFH protocols
- Evaluate potential IRC 139 payments
- Evaluate income replacement/wage continuation options
- Consider employee fairness/legal obligations, unique needs, essential business operations
- Unique overtime tracking needs

**Short-Term** (1 – 3 months):
- Estimate/quantify costs
- Understand tax exposure and other compliance obligations
- Evaluate immigration changes
- Tax planning for terminations
- Consider charitable options for employee support
- Evaluate new tax incentives, relief and other COVID-related legislation

**Mid-Term** (3 – 6 months):
- Re-evaluate bonus targets and equity retention value in light of stock price deterioration
- Continue to monitor and evaluate COVID-related legislation

**Long-Term** (6 months & beyond):
- Modify/enhance WFH policies
- Review T&E policies in light of crisis – modify/update as necessary
Paycheck Protection Program (PPP) and other loan provisions
SBA programs to assist small business

Paycheck Protection Program – $349B

— Eligible companies
  - Generally businesses (and certain “nonprofits”*) with under 500 employees and/or
  - Meet current SBA standards
  - Special eligibility for food service and accommodations industries
* Note: “nonprofits” defined as organizations described in 501(c)(3) (charities) and (c)(19) (veteran’s orgs)

— Loan terms
  - Amount is 2.5x average monthly payroll costs (up to maximum of $10M)
  - Interest rate capped at 4%
  - No collateral and nonrecourse, 100% guaranteed by the SBA
  - Deferral on payments for first 6 months to 1 year
    - Loan forgiveness: Companies may apply for loan forgiveness for amounts used to pay for qualified payroll, rent, mortgage, and utility expenses for 8-week period

Other programs

— Existing SBA express loan program has expanded and certain disaster injury loans can be either combined with the new PPP or granted 6 month deferrals
Purpose

- Treasury to provide financing through Federal Reserve programs to make loans, loan guarantees and “other investments” to U.S.-based businesses, non-profits, and state and local governments
- Guidance and/or regulations will be forthcoming that sets many of the terms, conditions, and definitions needed to navigate these new programs

Loans and guarantees available to specific industries

- $25B to passenger airlines and support industries
- $17B to businesses “critical to national security”
- $4B for cargo airlines

$454B for support for businesses, non-profits and state and local governments

- Loans, and/or
- Purchase of obligations or other interest directly from issues or on secondary market

Generally loan recipients must agree to the following conditions during the term of the loan + 12 months

- No stock buybacks and no dividends on common stock
- No raises for highly-compensated employees and certain compensation caps on other officers and employees
Filing guidance, UBIT calculations, Charitable giving
Evolving filing and payment guidance

— Stafford Act Emergency Declaration (3/13/20)

— IRS Notice 2020-17 (3/18/20)

— IRS Notice 2020-18 (3/20/20)

— IRS Filing and Payment Questions and Answers (3/25/20)

— IRS Notice 2020-20 (3/27/20)

— Additional guidance is likely
Tax return filing deadline extensions

— Income tax returns (not information returns or excise tax returns) with an initial due date or extended due date of April 15, 2020 are now due July 15, 2020
  – For tax-exempts, this postponement only applies to Forms 990-T due April 15, 2020

— State income tax returns with an initial or extended due date of April 15, 2020 may or may not follow federal for postponed due date purposes (varies by state)

— Tax-exempts that paid significant estimated taxes in tax years (TYs) ending in 2019 and now think they are owed a refund may want to file Form 990-T sooner to get a refund
  – E.g., “parking tax” repealed at the end of 2019

— Calendar year tax-exempts that overpaid estimated taxes in 2019 and want a quick refund before filing Form 990-T must file Form 4466 by April 15, 2020
Net operating losses and interest expense deductions

**Five-year carryback period for 2018, 2019, and 2020 NOLs**

- Applies to NOLs arising in TYs beginning after 12/31/2017 and before 1/1/2021
  - Can create rate benefit for carrybacks to 2013-2017
- Interplay with 512(a)(6) – Can NOLs generated from separate/'siloed' trade/business activities be carried back?
  - If a TY19 organization has negative UBTI generated from separate/'siloed' trade/business activities on its 2018 Form 990-T that it does not use in computing aggregate UBTI, can it carry those losses back 5 years?

**Suspension of NOL limitation of 80% of taxable income for 2018-2020**

**Softening of interest expense disallowance**

- Limitation on interest expense deductions increased from 30% to 50% of adjusted taxable income (plus business interest income and floor plan financing interest expense)
CARES Act charitable giving incentives

Individuals
— Provides a new “above the line” charitable contribution deduction of up to $300 to individuals who do not itemize their deductions
— For itemizers, permits a charitable contribution deduction of up to 100% of adjusted gross income

Corporations
— Permits a deduction of 25% of taxable income (up from 10%)

Requirements for all
— Contributions must be made in cash, in 2020, and to a public charity or operating foundation described in section 170(b)(1)(A) – but contributions made to a supporting organization or a donor-advised fund do not qualify
Charitable Operations
Employee assistance programs for a particular employer that are operated by a section 501(c)(3) organization must meet the following requirements:

— **There must be a charitable class.** The class of potential beneficiaries of the program must be large or indefinite.

— **The recipients must be selected based on an objective determination of need.** The organization must maintain adequate records to demonstrate the recipients’ need for the disaster assistance.

— **The recipients must be selected by an independent selection committee or an adequate substitute.** A selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.
Employee assistance by charitable organizations (2/2)

**Employer Sponsored Private Foundation**
- Payments may be made only to employees affected by “qualified disasters”
- Payments may not be made to “disqualified persons”

**Employer Sponsored Donor Advised Fund (DAF)**
- Can make payments to employees if the single identified purpose of the fund is providing relief from “qualified disasters”
- Payments must not be made to any director, officer or trustee of the charity sponsoring the fund or any member of the fund’s selection committee

**Employer Sponsored Public Charity**
- Often employees contribute to help other employees, thus it can meet the “public support test”
- Broader employee assistance possible – not limited to assistance related to a “qualified disaster”
- If employer is a funder, care must be taken to ensure the program is not a DAF
Q&A
Wrap up –
Key takeaways
For further information

Development & Exempt Organizations (DEO) Tax Practice

Mark Fitzgerald
National Practice Leader, DEO
Tel: (703) 286 6577
Email: markfitzgerald@kpmg.com

Marilyn Farley
Higher Education Lead, DEO
Tel: (518) 427 4805
Email: mfarley@kpmg.com

Phil Bartlett
Exempt Healthcare Lead, DEO
Tel: (614) 249 2343
Email: pbartlett@kpmg.com

Higher Education, Research & Other Not-for-Profits (HERON) Audit Practice

David Gagnon
National Industry Leader
Tel: (617) 988 1326
Email: dgagnon@kpmg.com

Rosemary Meyer
Deputy National Industry Leader
Tel: (410) 949 8425
Email: rameyer@kpmg.com
<table>
<thead>
<tr>
<th>Presenter contacts</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ruth Madrigal</td>
<td>+1 202-533-8817</td>
<td><a href="mailto:ruthmadrigal@kpmg.com">ruthmadrigal@kpmg.com</a></td>
</tr>
<tr>
<td>Robert Delgado</td>
<td>+1 858-750-7133</td>
<td><a href="mailto:rdelgado@kpmg.com">rdelgado@kpmg.com</a></td>
</tr>
<tr>
<td>Jennifer Acuna</td>
<td>+1 202-714-7410</td>
<td><a href="mailto:jenniferacuna@kpmg.com">jenniferacuna@kpmg.com</a></td>
</tr>
<tr>
<td>Preston Quesenberry</td>
<td>+1 202-533-3985</td>
<td><a href="mailto:pquesenberry@kpmg.com">pquesenberry@kpmg.com</a></td>
</tr>
<tr>
<td>Tom West</td>
<td>+1 202-533-3212</td>
<td><a href="mailto:tomwest@kpmg.com">tomwest@kpmg.com</a></td>
</tr>
</tbody>
</table>
Thank you for joining us

The player will now refresh to display an exit survey. 
Feel free to complete this survey and click the Submit button. 
Please send any questions to us-taxwatch@kpmg.com.

For additional webcasts and KPMG updates and insights on the impact of COVID-19, visit: 
https://tax.kpmg.us/content/tax/en/index/insights/covid19-tax-impacts.html

To view TaxNewsFlash-Exempt Organizations recent articles, visit: 
Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.