Welcome

CARES Act Tax Webinar

Recent State and Federal Tax Changes
and How They Affect Your Business

May 13, 2020

PIERCE ATWOOD LLP

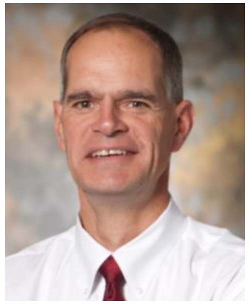
WIPFLI

Your presenters

Cory Vargo

Partner, Wipfli LLP

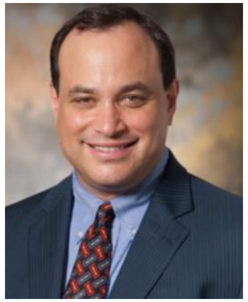
Cory Vargo is a partner who focuses his tax practice on private equity and corporate acquisition and divestiture due diligence, international tax structuring, and tax compliance. He authored an article, “Carried Interest Taxation and Private (and Horizontal) Equity,” in the 2012 edition of Tax Notes that has been cited multiple times by the Congressional Research Service Committee on Private Equity Taxation’s annual report. Cory also participates in national tax policy dialogue and has spoken at various tax events. He is a member of AICPA and Maine Society of CPA.



Robert Ravenelle

Partner, Pierce Atwood LLP

Rob Ravenelle, head of Pierce Atwood’s Federal Income Tax practice, has extensive experience in the planning, negotiation and tax structuring for mergers and acquisitions. Rob works closely with members of the firm’s Business Practice Group to ensure that clients obtain the most economic and tax efficient transaction results possible. Rob's prior experience practicing as a Certified Public Accountant brings unique skills that enhance the value of our services in deal transactions, from mergers to renewable energy tax equity financing to succession planning of closely held businesses.



Jonathan Block

Partner, Pierce Atwood LLP

Jonathan Block practices state and local tax, and represents and advises clients with Maine, New Hampshire, and Massachusetts tax problems. Jon litigates tax cases at the administrative level and through all levels of the court system, advises clients on transactional and multistate tax issues, obtains advance rulings for clients, and does a substantial amount of legislative and government relations work in the tax area. Jon's substantive expertise in state and local tax encompasses corporate and individual income tax, business profits tax, sales and use tax, property tax, excise tax, transfer tax, and other state and local taxes.

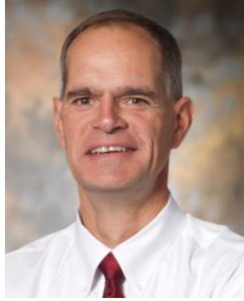
Agenda

- Federal and state filing and payment deadlines
- PPP loan forgiveness/tax deduction update
- Employee retention tax credit
- Deferral of employer payroll tax obligations
- Corporate net operating losses
- Excess business loss limitations (other and non-corp NOLs)
- Accelerated refunds of corporate AMT credits
- Business interest expense limitations
- Qualified improvement property
- Changes affecting retirement plans
- Changes to charitable contribution deduction

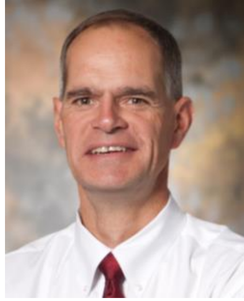
Federal Filing and Payment Deadlines

- In general the IRS has extended the filing deadline for most tax returns due between April 1-July 15 to July 15th. This includes corporate and individual income tax, gift/estate tax, and others, but not payroll tax.
- Extensions can be filed by July 15th, but would only extend the return to the otherwise normal extension date (e.g., Oct 15th for Form 1040).
- US federal tax payment deadlines for April 15th as well as most Q1 and Q2 quarterly estimates have been extended to July 15th.

PPP Loan Forgiveness – Expense Deductibility



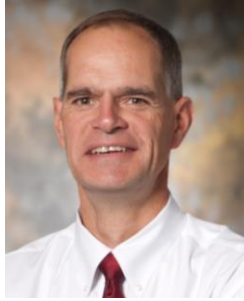
- On April 30th the IRS announced in Notice 2020-32 its position that PPP loan principal forgiveness is a class of tax-exempt income subject to Section 265 of the Code and related authority. Therefore, costs incurred to generate that tax-exempt income will not be deductible for US federal income tax purposes.
- This means that expenses used to claim PPP loan forgiveness will not be deductible, even though such costs may be ordinary and necessary business expenditures.
- Individual members of Congress have commented that they intend to reverse this decision through law changes in a subsequent round of relief measures.
- A decision to return PPP loan proceeds may be made by May 14, 2020. Returning the proceeds may lead to more claims for the Employee Retention Tax Credit.



Employee Retention Tax Credit

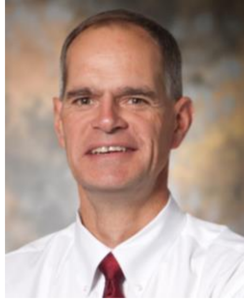
- Refundable payroll tax credit equal to 50% of “qualified” wages paid between March 13, 2020 and December 31, 2020, capped at $10,000 per employee
- Eligible Employer is any employer (including tax-exempt organizations) in business during 2020 whose operation or business is
  - Fully or partially suspended due to a COVID-19 shutdown order, or
  - Gross receipts during any quarter of 2020 declined by more than 50% when compared to the same quarter in the prior year (not applicable to tax-exempt)
- “Qualified” wages
  - Employers with more than 100 full-time employees in 2019 – only wages paid to employees when they are <u>not providing services</u>
  - Employers with 100 or fewer full-time employees - <u>all wages</u>

Employee Retention Tax Credit



Additional Notes

- Credit not available for wages paid under FMLA or as sick leave
- Credit not available to the extent payroll tax credits claimed under the FFCRA – no double dip
- Employer not eligible if a PPP loan was received
- Full-time employee is defined per IRC Section 4980H as at least 30 hours per week (same as Affordable Care Act)



Deferral of Employer Payroll Tax Obligations

- Available to all employers without size restriction
- Employers and self-employed individuals can defer their payment of the employer share of social security tax or self-employment tax attributable to the period from March 27, 2020 through December 31, 2020
- The deferred payroll taxes are payable as follows –
  - 50% required to be paid by December 31, 2021, and
  - 50% required to be paid by December 31, 2022
- Does not apply if taxpayer has had PPP loan forgiven

Modifications to Corporate Net Operating Losses

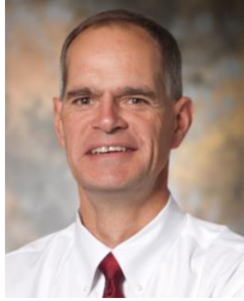
- Prior law – NOLs generated after 2017 can only offset 80% of taxable income and cannot be carried back, although they can be carried forward indefinitely
- Under the Act,
    - NOLs arising in tax years beginning in 2018, 2019, or 2020 can be carried back for five years (Where you may have been in a higher tax bracket than going forward)
    - The 80% limitation is removed for tax years 2018 through 2020 (including for carrybacks), but returns again in 2021

Modifications to Corporate Net Operating Losses

- Taxpayers who choose not to take advantage of the new NOL carryback must affirmatively elect to forego the carryback period
- Special rules apply for NOLs related to fiscal years that started in 2017 and ended in 2018 – they can now be carried back two years
- Deadline for filing Forms 1045 or 1139 for 2018 extended to July 27, 2020.

Excess Business Loss Limitations

- Prior law due to TCJA –
  - Losses of pass-thru businesses and sole proprietors subject to excess business loss limitation of $250,000 (single) / $500,000 (married) at the individual investor level
  - Any excess carries forward to following tax year as an NOL
- Under the Act, this excess business loss limitation is removed for tax years 2018, 2019 and 2020 (opportunity for amended returns if limitation applied)
- This change may allow some taxpayers to create an NOL in those years that can be carried back under the changes discussed on the prior slide



Accelerated Refunds of Corporate AMT Credits

- Current law – The Tax Cuts and Jobs Act (TCJA) repealed the corporate alternative minimum tax (AMT), and made AMT credits refundable over several years
- Under the CARES Act –
  - The deduction of any remaining refundable AMT credits is accelerated to the tax year beginning in 2019, or
  - Taxpayer can elect to claim the entire refundable AMT credit in tax year beginning in 2018. A tentative refund claim must be filed by December 31, 2020

Business Interest Expense Limitations

- Prior law – TCJA limited the deductibility of business interest expense to 30% of adjusted taxable income (ATI). Any excess expense carries forward to future years.
- Under the Act, this 30% limitation is increased to 50% of ATI for tax years beginning in 2019 and 2020, thus, giving taxpayers an opportunity to deduct some additional interest expense that may have otherwise been disallowed. Can elect out of increase.

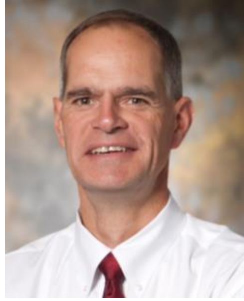
Business Interest Expense Limitations

- For tax years beginning in 2020, taxpayers may elect to calculate the limitation based upon their ATI for their tax year beginning in 2019, a likely favorable change given that most taxpayers are expected to have higher taxable income in 2019 than 2020.
- Partnerships cannot use the new 50% limit for 2019. Instead, interest at the partnership level is passed out to the partners and carries over to 2020. Under the Act, in 2020 half of that interest will be fully deductible by the partners while the other half will remain suspended until the partnership allocates excess taxable income to the partners.

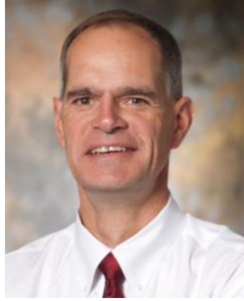
Qualified Improvement Property Fix

- Prior law– Due to a drafting error in the TCJA legislation, qualified improvement property (QIP) was subject to a 39-year depreciable life and not eligible for bonus depreciation
- Under the CARES Act, this glitch is fixed to retroactively allow for a 15-year depreciable life on qualified improvement property and allow taxpayers to claim bonus depreciation on such property
- Due to the retroactive nature of this provision, taxpayers will either –
  - Amend prior year return(s)
  - File an automatic Form 3115, request for change in accounting method in lieu of amending prior year returns and claim a cumulative catch-up deduction for the additional depreciation on the qualified improvement property

Changes Affecting Retirement Plans



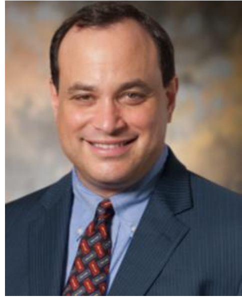
- Retirees do not have to take any portion of their required minimum distribution in 2020
  - Not a push-off to 2021 – the 2020 RMD will never have to be made
  - Gives retirees a chance for markets to recover
- 401k loans may be made up to $100,000 for loans made between March 27, 2020 and September 23, 2020. Loan repayment period extended to six years for such loans
- Account holders under 59 ½ years old may take a distribution up to $100,000 without incurring the 10% penalty if family member diagnosed with COVID-19 or have suffered financially from layoff, furlough and related COVID-19 causes



Changes to Charitable Contribution Deductions

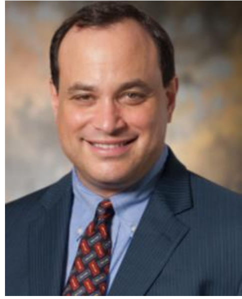
- $300 above the line charitable contribution deduction permitted for non-itemizers
- The 60% of AGI charitable contribution limitation is increased to 100% for 2020
- Up to $100,000 charitable contribution may still be made directly from an IRA in 2020 even if no RMD is taken

Maine Filing Deadlines



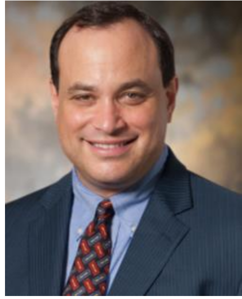
- April 15th filing and payment deadlines extended to July 15
  - Applies to: 1040ME, 1041ME, 1120ME, 1120B-ME, 2020 Estimated Payments
  - Does not apply to other tax types
- June 15th Q2 estimated tax payment deadline extended to July 15
  - Includes estimated and final income and franchise tax payments originally due April 16th through June 15th
- Automatic 6-month extension still available for income and franchise tax returns
  - E.g. with 6-month extension, return that was originally due 4-15 would be due 10-15.
    - Not an extension to pay; must pay at least 90% of tax owed by July 15 to avoid penalties and interest.

Maine Non-Conformity



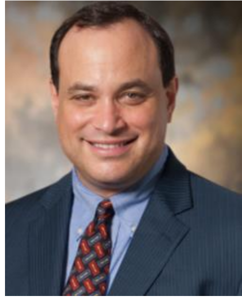
- Maine has not conformed to the CARES Act tax provisions, and it is unknown if it will do so
  - CARES Act tax benefits not available to reduce state income tax
  - Complicates Maine tax filings
  - Forgiveness of PPP indebtedness may be subject to Maine income tax

Nexus and Remote Employee Issues

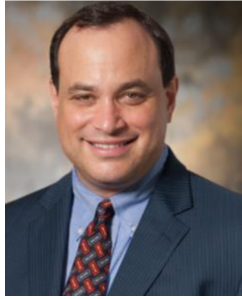


- Employee working from home may create tax nexus for employer
- Withholding on employees working in remote locations
- Residency:
  - Nonresident spending with permanent place of abode and spending more than 183 days in Maine creates statutory residency

Maine Education Opportunity Tax Credit



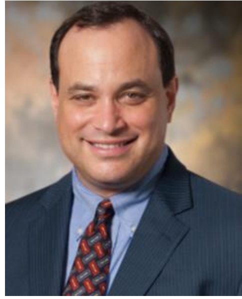
- CARES Act allows optional temporary suspension of certain federal student loan payments.
- If taxpayer opts out of the temporary suspension, taxpayer can continue to claim Maine EOTC for monthly loan payments made to the lender during the suspension period (subject to normal eligibility requirements)
- If taxpayer does not opt out, required loan payments will be $0, and no Maine EOTC will be available for payments made during the suspension period
- Per MRS, Taxpayer must continue to be employed at least part time (at least 16 hours per week) in order to maintain eligibility



Property Tax Issues

- Following application deadlines extended to municipal tax commitment date (varies by municipality), or 30 days after state of emergency terminated, whichever occurs first:
  - Property tax exemption for institutions and organizations
  - Veterans exemption
  - Solar and Wind Energy Equipment exemption
  - Homestead exemptions
  - Business Equipment Tax Exemption (BETE)
  - Farm & Open Space Program
  - Tree Growth Program
  - Working Waterfront Program

Property Tax Issues



- Significance of April 1, 2020 valuation date
- Sweet v Auburn, Maine Supreme Court case, 1935 (Great Depression):

  "Assessors are not, however, obliged to follow the fleeting, speculative fancy of the moment; they should recognize that the true value of a fixed asset such as real estate is fairly constant and must be gauged by conditions not temporary and extraordinary, but by those which over a period of time will be regarded as measurably stable. "

- Shawmut Inn v. Inh. of Kennebunkpurt, Maine Supreme Court, 1981

  "Stability in municipal income is a factor which must always be considered. To require owners of property which is not income-producing to pick up the deficiency resulting from reducing the tax burden of income property owners each time there is a temporary downward trend in the economy, would surely not be either feasible or equitable…

  The assessors ought not be required to treat this plaintiff differently because his property is not for the time being producing the rate of return on his investment which was anticipated."

Q&A

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