

The Kiplinger Tax Letter

CIRCULATED BIWEEKLY TO BUSINESS CLIENTS SINCE 1925

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Dear Client:

Washington, April 17, 2020

Readers are interested in the stimulus law... Judging by the number of your questions.

Do I have to pay tax on my stimulus payment?
No. The tax rebate is an advance payment of a special 2020 tax credit...so it is nontaxable.

I owe back taxes. Will my rebate be reduced?
No. IRS will not apply the stimulus payment to offset past-due taxes or other federal or state debt, except for delinquent child support owed by a person.

My wife and I had a baby in Feb. Will we get an extra \$500 tax rebate?
Yes, assuming you otherwise qualify...but not this year. On your 2020 return, which you will file next year, you will reconcile the rebate money that you received with your actual tax situation. If you otherwise qualify for the tax rebate break, you get an extra \$500 refundable credit for your newborn on your 2020 Form 1040.

I just got my rebate. What if my 2020 AGI ends up being too high to qualify? Do I have to repay the money? **No.** Rebates generally don't need to be repaid. For more on stimulus payments, see www.kiplinger.com/letterlinks/checks. It has answers to lots of queries and includes a description of two new IRS web tools: One is for people who would qualify for a stimulus payment but didn't file a 1040 for 2018 or 2019 because their income was under the threshold amount to file a return. The other is for people to enter bank account information to get their rebates faster through direct deposit, and for individuals to check on the status of their payment.

I took a required minimum distribution from my traditional IRA in Feb. Now that Congress has waived RMDs for 2020, can I put it back into the IRA?
Yes, and it will be treated as a tax-free rollover, provided you return the funds to the IRA by July 15, and you don't violate the one-rollover-every-12-months rule. Normally, you have 60 days to do a tax-free rollover, but IRS extended the time period for rollovers otherwise due between April 1 and May 15 of this year to July 15.

If you took an RMD in Jan., you're out of luck...at least for now.
You can't redeposit the funds back into the IRA and treat it as a tax-free rollover. But tax practitioners tell us they expect the Revenue Service to issue guidance on the new RMD waiver, and that those rules may provide broad rollover relief.

My small business is applying for a Paycheck Protection Program loan. If my firm gets the loan and it is forgiven, is the canceled debt taxable? **No.** The stimulus law says that loan amounts forgiven under the PPP are nontaxable.

Are unemployment benefits taxable? Yes, for federal income tax purposes. State taxation is a mixed bag. 33 states and D.C. fully tax the income. Ind. and Wis. tax them in part. Ala., Calif., Mont., N.J., Pa. and Va. don't tax them. Alaska, Fla., Nev., N.H., S.D., Tenn., Texas, Wash. and Wyo. have no income tax.

HIGHLIGHTS

Filing Season More extensions

Education 529 accounts

Business Taxes Amended returns

Losses Securities traders

Payroll Taxes Deferral of tax

IRS No live telephone assistance

FILING SEASON

IRS broadly extends most tax return filing and payment deadlines to July 15.
The relief generally applies to all taxpayers with a filing or payment deadline that is otherwise due on or after April 1 and before July 15. Individuals, Americans living abroad, trusts, estates, corporations, exempt organizations and others qualify for the additional time. Among the federal tax returns extended: Forms 1040, 1040-SR, 1040-NR, 1041, 1120, 990-T, 706, 709, 5500 and many more.

Also extended are estimated tax payments for individuals and corporations, so estimated payments for the first and second quarters are now due by July 15.

Taxpayers have more time to file Tax Court petitions and refund claims.
Filings otherwise due April 1 through July 14 are now extended to July 15.
See Notice 2020-23 for details on the extended tax filings, payments and actions.

EDUCATION

Keep this rule in mind if you use 529 funds for your kid's college education...
And you got a refund from the school for canceled classes or housing as a result of the school's closing its physical campus because of coronavirus concerns. Tax legislation enacted in 2015 waives tax and penalties if, after a distribution is made from the account, the student gets a refund from the college or university. To qualify for relief, you generally must redeposit the funds into a 529 account for the same beneficiary within 60 days. The recontribution is treated as principal.

PREPARERS

IRS isn't processing third-party authorizations on Forms 2848 or 8821 for the time being because of the coronavirus-related closing of its offices. The 2848 is the power-of-attorney document used for audits and other inquiries, and the 8821 lets the Revenue Service disclose tax information to a third party.

Harsh punishment for a preparer convicted of filing false returns for clients.
The returns he and his firm prepared claimed phony business income and expenses, took bogus education credits, and misclassified earnings from household help. At the government's request, a court enjoined him from preparing returns, and ordered that he permanently shutter his tax return preparation business. He also owes \$545,000 in restitution to the U.S. for repeatedly making false claims on clients' returns and charging a fee based on the inflated refunds (Harris, D.C., Fla.).

The Service wants to again charge for preparer tax identification numbers.
It's proposing a \$35.95 cost for PTIN renewals and first-time applications...
\$21 for the user fee and \$14.95 for the amount owed to the third-party contractor that helps to administer the agency's PTIN program. The fee has been suspended since 2017, as a result of litigation. However, an appeals court sided with IRS and ruled the fee valid in March 2019, overruling a 2017 decision by a lower court, and the Supreme Court declined to take the case last Oct. The fee would apply to PTIN applications or renewals filed 30 days after the proposed regs become final.

FOREIGN ACCOUNTS

Penalties for failing to report overseas accounts are stiff. \$13,481 apiece for nonwillful violations...the larger of \$134,806 or 50% of the highest balance in the account for willful failures. Be sure you comply with the reporting rules, because increasing taxpayer compliance in this area is a key IRS enforcement priority.

The standard for willfulness includes reckless conduct or willful blindness.
A man living in Mich. failed to report Canadian accounts he had for several years. IRS slapped him with a penalty of nearly \$1 million. According to a district court, the following factors demonstrate reckless disregard of the reporting requirements: The man didn't review Schedule B of his 1040, which asks about foreign accounts. He didn't bother to ask his preparer about his obligations to disclose the accounts. He had all correspondence on the accounts sent to his sister's address in Canada. Additionally, he had lots of money stashed overseas (Ott, D.C., Mich.).



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BUSINESS TAXES

Your tax home isn't always where you live. A self-employed consultant lived in Ga. but worked at his client's offices in N.J. four days each week. He deducted his travel to and from N.J. as a business expense on his Schedule C. He argued his tax home was in Ga., where he resided. The Tax Court shot that down, saying his tax home was in N.J., in part because his business income was derived from his N.J. client and his contract with that client was indefinite...not temporary. Last month, an appeals court affirmed the Tax Court's decision (Brown, 11th Cir.).

Partnerships subject to the new IRS audit regime can file amended returns... For 2018 and 2019...to claim the retroactive tax benefits in the stimulus law.

Under the audit program, IRS audits the partnership's return and collects tax from the partnership unless the firm chooses to push out the tax to its partners. Firms with 100 or fewer partners can opt out of the program. As a general rule, firms subject to this regime can't amend their Forms 1065. But IRS is giving relief, allowing them to amend 2018 and 2019 returns and issue new K-1s before Sept. 30. The amended returns aren't limited to stimulus law changes (Rev. Proc. 2020-23).

Businesses get limited relief from IRS on filing claims for quick refunds.

Firms can temporarily send refund claims relating to net operating loss changes to IRS via fax instead of mail. The federal stimulus law requires taxpayers with NOLs arising in 2018, 2019 or 2020 to carry the loss back to each of the preceding five years, unless the taxpayer waives the carryback. Eligible refund claims filed on Form 1139 can be faxed to 844-249-6236. Those filed on Form 1045 are faxed to 844-249-6237.

Butane doesn't qualify for the alternative-fuel excise tax credit, a court says.

An oil and gas firm that mixes butane and gasoline and sells the mixture to customers claimed the 50¢-per-gallon credit for the butane that it blends with the gasoline. Butane is a taxable fuel, not an alternative fuel, under a federal tax statute and IRS regulations, so no credit is allowed (U.S. Venture v. U.S., D.C., Wis.).

TAX DISPUTES

You don't have to entirely win your case to recover attorney fees from IRS.

You need only substantially prevail on the issues. Here's an example. IRS originally assessed \$170,000 in fines against a preparer arising from 34 returns he prepared or approved. The penalty was ultimately whittled down to \$15,000, covering three returns. He then sued IRS for his costs and attorney fees, subject to a \$50,000 cap. The court granted his request (Lowery, D.C., N.C.).

TAX DEBTS

Revoking a tax delinquent's passport doesn't violate the U.S. Constitution.

A man who owed \$250,000 in back taxes was ordered to give up his passport by the State Dept. after IRS certified that he had a seriously delinquent tax debt. He claimed this violated his constitutional right to travel. A court tossed the case, saying that collecting tax debts is a legitimate government interest (Maehr, D.C., Colo.).

LOSSES

Losses incurred by stock traders are generally short-term capital losses.

But there's a way they can fully deduct losses: Make a Section 475(f) election. Traders who so elect must recognize gains and losses as if they'd sold their holdings for fair market value on the last day of the tax year. While the election is in effect, the deemed gains and losses are treated for tax purposes as ordinary income and loss. The election can only be made prospectively. An election for the current year is required to be done by the due date of the tax return for the preceding year. Once made, the election continues for each year. It can't be revoked unless IRS agrees.

The deadline to make an election for the 2020 tax year is July 15.

If you want to elect and haven't done so previously, you must attach a statement to your 2019 return, or with your request for an extension if filing your 1040 later.

The Service generally doesn't like to approve late 475(f) elections.



PAYROLL
TAXES

Businesses should take note of this easing in the federal stimulus law: Employers may defer payment of their 6.2% share of Social Security tax, otherwise required to be made from March 27 through the end of the year. Half of the deferred amount is due Dec. 31, 2021, and the other 50% on Dec. 31, 2022. Self-employed individuals can defer payment of up to 50% of their SECA tax.

Special rules apply to employers that receive paycheck protection loans under the new program for small firms administered by the Small Business Admin. Employers who get a paycheck protection loan may defer deposit and payment of their share of Social Security tax, without penalty, through the date that the lender issues a decision to forgive the loan. Once an employer receives that decision, the employer is no longer eligible for the payroll tax deferral on an ongoing basis. However, the amount that was previously deferred will continue to be deferred through the end of 2021 and 2022, IRS says in a set of frequently asked questions.

IRS disagrees with a 2017 district court case favorable to payroll agents.

The court allowed an agent to seek a refund for overpaid employment taxes.

A firm contracted with a business to provide all employer payroll functions. The agent used its own bank account to pay wages to the employees and taxes to IRS and sought automatic reimbursement from the business. There was no guarantee that at the time the agent paid the employees, it would get reimbursed by its client. After the agent paid too much Social Security tax, it filed Form 941-X to seek a refund. IRS denied the claim, arguing the agent wasn't the employer. The district court said the agent is treated as a co-employer and could proceed with its refund suit.

IRS says it won't follow the court's holding in cases involving other taxpayers.

IRS

IRS's job just got busier as a result of the tax changes in the stimulus laws. Among its additional duties: Determining which Americans are entitled to direct payments of tax rebates and monitoring the program. Issuing guidance on new tax provisions. Revising tax forms and instructions and developing new ones. IRS has already published rules on net operating loss changes (Rev. Proc. 2020-24 and Notice 2020-26) and the cap on business interest write-offs (Rev. Proc. 2020-22).

Need an answer to your tax question this filing season? Don't call IRS.

You won't be able to reach a live person. The agency's offices are closed, as are its service centers, because of states' coronavirus-related stay-at-home orders.

IRS says this won't affect the administration of the tax rebate payments...

Or the processing of electronically filed returns, issuance of tax refunds via direct deposit or the acceptance of tax payments done by electronic transfer.

But processing of paper returns is suspended until offices reopen.

The Service is urging people with queries to use the resources on its website.

IRS has temporarily put on hold its Income Verification Express Service.

Individuals can use IRS's online Get Transcript tool to get immediate access to their tax transcripts. This includes people who need previous-year tax information to verify their income for mortgage applications or for other reasons. Remember, a tax transcript is a summary of key data on a tax return and not an actual copy.

Yours very truly,

The Kiplinger Editors
THE KIPLINGER WASHINGTON EDITORS

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