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COVID-19 IMPACT INITIAL TAX MEASURES

As the impacts of the spread of COVID-19 continue to influence dramatic changes, businesses and individuals face increasing uncertainty and difficulties. Steps have been taken to ease the administrative burden of filing tax return and paying taxes due. Additionally, aid, in the form of tax credits, has been provided to assist employers.

Filing and Payment Deadlines Deferred

The IRS has established a policy that provides the following to all taxpayers, that means all individuals, trusts, estates, partnerships, associations, companies or corporations regardless of whether or how much they are affected by COVID-19:

1. For a taxpayer with a Federal income tax return or a Federal income tax payment due on April 15, 2020, the due date for filing and paying is automatically postponed to July 15, 2020, regardless of the size of the payment owed;

2. The relief is for (A) Federal income tax payments (including tax payments on self-employment income) and Federal income tax returns due on April 15, 2020 for the person's 2019 tax year, and (B) Federal estimated income tax payments (including tax payments on self-employment income) due on April 15, 2020 for the person's 2020 tax year;

3. No extension has yet been provided for the payment or deposit of any other type of Federal tax (e.g. estate or gift taxes) or the filing of any Federal information return;

4. As a result of the return filing and tax payment postponement from April 15, 2020, to July 15, 2020, no interest or penalties are due for the filing and payment of taxes on July 15th. However, interest, penalties and additions to tax will begin to accrue again on July 16, 2020;

5. The FATCA deadline for filing Form 8966 from March 31, 2020 to July 15, 2020; and

6. Certain compliance programs have been deferred. For Offers in Compromise, payments can be suspended until July 15, 2020 and pending application documentation has been deferred to July 15, 2020. Levies and lien activities will not be initiated during this period, but high-income non-filers will still be pursued. Generally, new audits will not be begun during the suspension period, but certain audits may be undertaken when circumstances require immediate action. Notwithstanding the foregoing, the IRS will take action during the suspension period if the statute of limitations would affect the government's ability to assess a tax or collect on a liability.

Favorable Treatment for COVID-19 Payments from Health Savings Accounts

Health savings accounts (HSAs) have both advantages and disadvantages relative to Flexible Spending Accounts when paying for health expenses with untaxed dollars. One disadvantage is that a qualifying HSA may not reimburse an account beneficiary for medical expenses until those expenses exceed the required deductible levels. However, the IRS has announced that payments from an HSA that are made to test for or treat COVID-19 do not affect the status of the account as an HSA (and don't cause a tax for the account holder) even if the HSA deductible has not yet been met. Vaccinations continue to be treated as preventative measures that can be paid for without regard to the deductible amount.

Tax Credits and a Tax Exemption to Lessen Burden of COVID-19 Business Mandates

On March 18, President Trump signed into law the Families First Coronavirus Response Act (the Act, PL 116-127), which eased the compliance burden on businesses. The Act includes the four tax credits and one tax exemption:

1. *Payroll tax credit for required paid sick leave.* The Emergency Paid Sick Leave Act (EPSLA) division of the Act generally requires private employers with fewer than 500 employees to provide 80 hours of paid sick time to employees who are unable to work for virus-related reasons (with an administrative exemption for less-than-50-employee businesses that the leave mandate puts in jeopardy). The pay is up to $511 per day with a $5,110 overall limit for an employee directly affected by the virus and up to $200 per day with a $2,000 overall limit for an employee that is a caregiver. The tax credit corresponding with the EPSLA mandate is a credit against the employer's 6.2% portion of the Social Security (OASDI) payroll tax (or against the Railroad Retirement tax). The credit amount generally tracks the $511/$5,110 and $200/$2,000 per-employee limits described above. The credit can be increased by (A) the amount of certain expenses in connection with a qualified health plan if the expenses are excludible from employee income and (B) the employer's share of the payroll Medicare hospital tax imposed on any payments required under the EPSLA. Credit amounts earned in excess of the employer's 6.2% Social Security (OASDI) tax (or in excess of the Railroad Retirement tax) are refundable.

2. *Income tax sick leave credit for the self-employed (self-employed sick leave credit).* The Act provides a refundable income tax credit (including against the taxes on self-employment income and net investment income) for sick leave to a self-employed person by treating the self-employed person both as an employer and an employee for credit purposes. Thus, with some limits, the self-employed person is eligible for a sick leave credit to the extent that an employer would earn the payroll sick leave credit if the self-employed person were an employee. Accordingly, the self-employed person can receive an income tax credit with a maximum value of $5,110 or $2,000 per the payroll sick leave credit. However, those amounts are decreased to the extent that the self-employed person has

insufficient self-employment income determined under a formula or to the extent that the self-employed person has received paid sick leave from an employer under the Act.

3. *Payroll tax credit for required paid family leave (the payroll family leave credit).* The Emergency Family and Medical Leave Expansion Act (EFMLEA) division of the Act requires employers with fewer than 500 employees to provide both paid and unpaid leave (with an administrative exemption for less-than-50-employee businesses that the leave mandate puts in jeopardy). The leave generally is available when an employee must take off to care for the employee's child under age 18 because of a COVID-19 emergency declared by a federal, state, or local authority that either (A) closes a school or childcare place or (B) makes a childcare provider unavailable. Generally, the first 10 days of leave can be unpaid and then paid leave is required, pegged to the employee's pay rate and pay hours. However, the paid leave can't exceed $200 per day and $10,000 in the aggregate per employee. The tax credit corresponding with the EFMLEA mandate is a credit against the employer's 6.2% portion of the Social Security (OASDI) payroll tax (or against the Railroad Retirement tax). The credit generally tracks the $200/$10,000 per employee limits described above.

4. *Income tax family leave credit for the self-employed (self-employed family leave credit).* The Act provides the self-employed a refundable income tax credit (including against the taxes on self-employment income and net investment income) for family leave similar to the self-employed sick leave credit discussed above.

5. *Exemption for employer's portion of any Social Security (OASDI) payroll tax or railroad retirement tax arising from required payments.* Wages paid as required sick leave payments because of EPSLA or as required family leave payments under EFMLEA aren't considered wages for purposes of the employer's 6.2% portion of the Social Security (OASDI) payroll tax or for purposes of the Railroad Retirement tax.

Whiteman Osterman & Hanna LLP can assist with these issues and more, as you and your business work to navigate the novel and difficult decisions arising from the COVID-19 pandemic. For assistance with tax issues, please contact one of our tax attorneys:

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