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Additional Tax Deadlines Extended to May 17

Cross References

- Notice 2021-21

On March 17, 2021, the IRS extended the filing deadline for individual tax returns to May 17, 2021, due to the ongoing COVID-19 pandemic. At the time, the extended due date only applied to filing and payment deadlines for individual tax returns. The IRS has now expanded the list of tax deadlines that are extended. The following is the complete list of tax deadlines that normally fall on April 15 that are now extended to May 17, 2021:

- Filing and payment deadline for individuals who file one of the Form 1040 series of tax returns [Form 1040, Form 1040-SR, Form 1040-NR, Form 1040-PR, Form 1040-SS, or Form 1040(SP)], including all schedules and forms related to the Form 1040 series, including Schedule H, Schedule SE, Form 965-A, Form 3520, Form 5329, Form 5471, Form 8621, Form 8858, Form 8865, Form 8915-E, and Form 8938, and including any elections that are made on a timely filed Form 1040 series return or attachment,
- IRA contribution deadline for the 2020 tax year (both traditional and Roth IRAs),
- Health savings account (HSA), Archer medical savings account (Archer MSA), and Coverdell education savings account (Coverdell ESA) contribution deadlines for the 2020 tax year,
- Reporting and payment deadline for the 10% additional tax on amounts includible in gross income for 2020 distributions from IRAs or retirement plans,
- The three-year statute of limitations for filing a refund claim for the 2017 tax year,
- Foreign trusts and estates with federal income tax filing or payment obligations who file Form 1040-NR, and
- Application for tax preparers to apply for the Annual Filing Season Program (AFSP).

Individuals do not have to file Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return,* to obtain the extended filing deadline. However, Form 4868 must be filed if the taxpayer wishes to extend the filing deadline beyond May 17. Interest, penalties, or additions to tax for failure to file a return do not begin to accrue until May 18, 2021.

In addition to the above extensions, the due date for filing the Form 5498 series of returns related to IRAs and health savings accounts is extended to June 30, 2021 (Form 5498, Form 5498-ESA, and Form 5498-SA). Penalties for failure to file these forms do not begin to accrue until July 1, 2021.

Tax deadlines that are not extended. Notice 2021-21 did not extend the April 15 due date for making first quarter 2021 estimated tax payments. Notice 2021-21

also did not extend the due date for filing business returns or any other type of taxpayer who files a federal income tax return on forms outside of the Form 1040 series (such as corporations, partnerships, trusts, estates, or payroll tax returns).

IRS to Recalculate Taxes on Unemployment Benefits

Cross References

• IR-2021-71

The IRS has provided additional information on how it will recalculate taxes on unemployment benefits. The IRS will take steps to automatically refund money this spring and summer to people who filed their tax return reporting unemployment compensation before the recent changes made by the American Rescue Plan Act of 2021.

The legislation, signed into law on March 11, 2021, allows taxpayers who earned less than $150,000 in modified adjusted gross income to exclude unemployment compensation up to $20,400 if married filing jointly and $10,200 for all other eligible taxpayers. The exclusion only applies to 2020 unemployment benefits.

Because the change occurred after some people filed their 2020 tax return, the IRS will take steps in the spring and summer to make the appropriate change to their return, which may result in a refund. The first refunds are expected to be made in May and will continue into the summer.

For those taxpayers who already have filed and figured their tax based on the full amount of unemployment compensation, the IRS will determine the correct taxable amount of unemployment compensation and tax. Any resulting overpayment of tax will be either refunded or applied to other outstanding taxes owed.

For those who have already filed, the IRS will do these recalculations in two phases, starting with those taxpayers eligible for the up to $10,200 exclusion. The IRS will then adjust returns for those married filing jointly taxpayers who are eligible for the up to $20,400 exclusion and others with more complex returns.

There is no need for taxpayers to file an amended return unless the calculations make the taxpayer newly eligible for additional federal credits and deductions not already included on the original tax return.

For example, the IRS can adjust returns for those taxpayers who claimed the Earned Income Tax Credit (EITC) and, because the exclusion changed the income level, may now be eligible for an increase in the EITC amount which may result in a larger refund. However, taxpayers would have to file an amended return if they did not originally claim the EITC or other credits but now are eligible because the exclusion changed their income.

These taxpayers may want to review their state tax returns as well.

According to the U.S. Department of Labor, Office of Employment and Training (ETA), over 23 million U.S. workers nationwide filed for unemployment last year. For the first time, some self-employed workers qualified for unemployed benefits as well. The IRS is working to determine how many workers affected by the tax change already have filed their tax returns.

The new IRS guidance also includes details for those eligible taxpayers who have not yet filed. See our news article: *Exclusion of Unemployment Compensation,* posted on 3/24/2021, for details on how to calculate the exclusion for taxpayers who have not yet filed their 2020 tax return.

Note: This update indicates that the IRS will not be able to properly recalculate all tax returns that were filed reporting unemployment benefits prior to the tax law change. It is our advice that tax preparers wait to see how the IRS recalculates the return, and then file amended returns where applicable to take advantage of additional provisions that were not included in the IRS recalculation.

PPE Deductible as Medical Expenses

Cross References

• Announcement 2021-7

The IRS has ruled that amounts paid for personal protective equipment (PPE), such as face masks, hand sanitizer, and sanitizing wipes, used for the primary purpose of preventing the spread of the Coronavirus Disease 2019 (COVID-19 PPE) are treated as amounts paid for medical care under IRC section 213(d). Therefore, amounts paid by an individual taxpayer for COVID-19 PPE for use by the taxpayer, the taxpayer's spouse, or the taxpayer's dependents that are not compensated for by insurance are deductible as medical expenses under IRC section 213(a) provided that the taxpayer can itemize deductions and total medical expenses exceed 7.5% of AGI.

COVID-19 PPE expenses are also eligible to be paid or reimbursed under health flexible spending arrangements (health FSAs), Archer medical savings accounts (Archer MSAs), health reimbursement arrangements (HRAs), and health savings accounts (HSAs).

Group health plans may be amended to provide for reimbursement of expenses for COVID-19 PPE incurred for any period beginning on or after January 1, 2020. Group health plans may be amended to include COVID-19 PPE retroactive back to January 1, 2020 if:

- The plan is amended no later than the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective,
- No amendment with retroactive effect is adopted after December 31, 2022, and
- The plan is operated consistent with the terms of the amendment, including during the period beginning on the effective date of the amendment through the date the amendment is adopted.

Emergency Aid Granted to Students

Cross References

- IR-2021-70

The IRS has issued frequently asked questions on how students and higher education institutions should report pandemic-related emergency financial aid grants.

Students. Emergency financial aid grants made by a federal agency, state, Indian tribe, higher education institution or scholarship-granting organization (including a tribal organization) to a student because of an event related to the COVID-19 pandemic are not included in the student's gross income.

Students should not reduce an amount of qualified tuition and related expenses by the amount of an emergency financial aid grant. If students used any portion of the grants to pay for qualified tuition and related expenses on or before December 31, 2020, they may be eligible to claim a tuition and fees deduction or the American Opportunity Credit or Lifetime Learning Credit on their 2020 tax return.

Higher education institutions. Because students do not include emergency financial aid grants in their gross income, higher education institutions are not required to file or furnish Forms 1099-MISC reporting the grants made available by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) or the COVID-related Tax Relief Act (COVID Relief Act) and do not need to report the grants in box 5 of Form 1098-T.

However, any amounts that qualify for the tuition and fees deduction or the American Opportunity Credit or Lifetime Learning Credit are considered "qualified tuition and related expenses" and trigger the reporting requirements of IRC section 6050S. Higher education institutions must include qualified tuition and related expenses paid by emergency financial aid grants awarded to students in box 1 of Form 1098-T.

100-Percent Deduction for Business Meals

Cross References

- Notice 2021-25

The IRS has released guidance regarding the temporary 100% deduction for expenses paid or incurred after December 31, 2020, and before January 1, 2023, for food or beverages provided by a restaurant. The guidance explains when the 100% deduction applies and when the 50% limitation continues to apply for purposes of IRC section 274.

In general, a deduction for entertainment, amusement, or recreation is disallowed. A deduction for business meals is generally limited to 50% if the expense is separately purchased from the entertainment activity or the cost of the food or beverages is separately stated from the cost of any entertainment on an invoice, bill, or receipt. [Reg. §1.274-11(b)(1)(ii)]

The Consolidated Appropriations Act, 2021, added IRC section 274(n)(2)(D) to the Internal Revenue Code which provides a temporary exception to the 50% limitation for business meals that are provided by a restaurant.

The new IRS guidance explains that the term "restaurant" means a business that prepares and sells food or beverages to retail customers for immediate consumption, regardless of whether the food or beverages are consumed on the business's premises. However, a restaurant does not include a business that primarily sells pre-packaged food or beverages not for immediate consumption, such as a grocery store, specialty food store, beer, wine, or liquor store, drug, store, convenience store, newsstand, or a vending machine or kiosk. The 50% limitation continues to apply for the purchase of food or beverage from any of these non-restaurant businesses provided the expense is otherwise allowable under the business meal rules.

In addition, the IRS guidance provides that an employer may not treat as a restaurant:

1) Any eating facility located on the business premises of the employer and used in furnishing meals excluded from an employee's gross income under IRC section 119, or
2) Any employer-operated eating facility treated as a de minimis fringe under IRC section 132(e)(2), even if such eating facility is operated by a third party under contract with the employer.

Note: Notice 2021-25 appears to lack specifics in cases where a grocery store or a convenience store includes a restaurant in the same building under the same ownership that is not separated by walls or barriers. How is it determined what the primary business of the business is when the business is in both businesses under the same roof?

PPP Extension Act of 2021

Cross References

- Public Law 117-6

Signed into law on March 30, 2021, the PPP Extension Act of 2021 extends the covered period and the funding period for the Paycheck Protection Program (PPP) from March 31, 2021 to June 30, 2021. The Small Business Administration (SBA) is not allowed to accept any new lender applications during the period starting June 1, 2021 through June 30, 2021.

The PPP was first enacted under the CARES Act to provide SBA loans to eligible businesses as a result of the economic hardships caused by COVID-19. The loans are designed to provide a direct incentive for small businesses to keep their workers on the payroll. SBA will forgive the loan if employees are kept on the payroll during a "covered period" and the money is used for payroll, rent, mortgage interest, or utilities. If loan proceeds are not used for these expenses, the business is required to repay a portion or all of the loan. Any amount that is forgiven is not taxable.

On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 was signed into law, which provided additional funding for PPP loans, extended the "covered period," and allowed more money to be spent on non-payroll costs, such as mortgage interest, rent, and utilities. To be eligible for loan forgiveness, at least 60% of the loan proceeds must be used for payroll costs and no more than 40% for mortgage interest, rent, or utilities.

The Consolidated Appropriations Act, 2021, extended the PPP to March 31, 2021, and provided an additional $806.5 billion in funding. The law also allowed additional expenses to be added to the 40% category, such as certain operational expenses, property damage costs, supplier costs, and certain worker protection expenditures. The law also allowed for a second draw PPP loan for smaller and harder-hit businesses with a maximum loan amount of $2 million. The law also allows for a tax deduction for expenses paid for with loan proceeds, even if the loan is forgiven and the loan forgiveness is not taxable.

The new law does not change any of these previous provisions, other than extending to June 30, 2021 the covered period and the ability for SBA to provide funds for loan applicants.

Employee Retention Credit Guidance for First and Second Quarters of 2021

Cross References

- Notice 2021-23

On March 8, 2021, TTB posted the news article, *Employee Retention Credit Guidance,* based on IRS Notice 2021-20, which provided updated guidance based upon the Consolidated Appropriations Act, 2021. The IRS notice addressed the Employee Retention Credit for qualified wages paid after March 12, 2020, and before January 1, 2021. The IRS has now released guidance to address changes made by the Consolidated Appropriations Act, 2021, for qualified wages paid during the first and second calendar quarters of 2021. Notice 2021-23 does not address changes made by the American Rescue Plan Act of 2021 for qualified wages paid after June 30, 2021. Those changes will be addressed in future guidance.

Decline in gross receipts. An employer may qualify for the Employee Retention Credit if there is a significant decline in gross receipts. Under the CARES Act, a significant decline was defined as the first calendar quarter in 2020 in which gross receipts were less than 50% of gross receipts for the same calendar quarter in 2019. The significant decline period ended with the earlier of January 1, 2021, or the first calendar quarter in 2020 where gross receipts were greater than 80% of gross receipts for the same calendar quarter in 2019.

For the first two quarters of 2021, the new law provides that a significant decline in gross receipts means gross receipts are less than 80% of gross receipts for the same calendar quarter in 2019. Notice 2021-23 provides that the determination of whether an employer is an eligible employer based on a decline in gross receipts is made separately for each calendar quarter in 2021 and is based on an 80% threshold. In addition, if the employer was not in existence as of the beginning of the same calendar quarter in 2019, the 80% test is applied by comparing gross receipts in the same calendar quarter of 2020 to the first or second calendar quarter of 2021.

The new law also allows an employer to elect to use an alternative quarter to calculate gross receipts. Under this election, the decline in gross receipts test is met for a calendar quarter in 2021 by comparing gross receipts for the immediately preceding calendar quarter with those for the corresponding calendar quarter in 2019 (or 2020 if the employer did not exist as of the beginning of that quarter in 2019).

Thus, for the first calendar quarter of 2021, an employer may elect to use its gross receipts for the fourth calendar quarter of 2020 compared to those for the fourth calendar quarter of 2019 to determine if the decline in gross receipts test is met. If an employer was not in existence as of the beginning of the fourth calendar quarter of 2019, then this alternative quarter election is not available for the first calendar quarter of 2021.

For the second calendar quarter of 2021, an employer may elect to use its gross receipts for the first calendar quarter of 2021 compared to those for the first calendar quarter of 2019 to determine if the decline in gross receipts test is met. If an employer was not in existence as of the beginning of the first calendar quarter of 2019, then the employer may elect to use its gross receipts for the first calendar quarter of 2021 compared to those for the first calendar quarter of 2020.

An election to use an alternative quarter to calculate gross receipts is made by claiming the employee retention credit for the quarter using the alternative quarter to calculate gross receipts.

Maximum credit. The Consolidated Appropriations Act, 2021 increased the credit for the first and second quarter of 2021 to 70% of up to $10,000 of qualified wages per employee per quarter. Thus, the maximum credit per employee per quarter is $7,000.

Qualified wages. Wages that qualify for the credit depend in part on whether an employer is a small employer or a large employer. For large employers, qualified wages are wages paid to an employee for time that the employee is not providing services due to either:

1) A full or partial suspension of an employer's business operations due to a governmental order, or
2) The business experiencing a significant decline in gross receipts.

For small employers, qualified wages are wages paid to any employee during any period in the calendar quarter in which the business operations are fully or partially suspended due to a governmental order or during any calendar quarter in which the business is experiencing a significant decline in gross receipts. Thus, for small employers, the credit also applies to wages paid to employees who continue to provide services for the employer.

The Consolidated Appropriations Act, 2021, increased the average number of full-time employee threshold from 100 to 500 employees for purposes of determining whether an employer is a small or large employer. Thus, for 2021, a small eligible employer is an employer that had an average number of full-time employees during 2019 of 500 or less.

The new law also removed the limitation on large employers that qualified wages could not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the full or partial suspension of operations, or the calendar quarter in which the employer experienced a significant decline in gross receipts. Thus, this rule does not apply for determining the employee retention credit for the first and second calendar quarters of 2021.

Advanced payment of the Employee Retention Credit. As under prior law, employers claim the Employee Retention Credit on an applicable payroll tax return (for example, Form 941). Employers may continue to access the credit for the first and second calendar quarters of 2021 prior to filing their employment tax returns by reducing employment tax deposits in anticipation of the credit.

If reducing employment tax deposits is not enough to cover the entire anticipated credit, the employer may apply for an advance payment of the credit. The new law limits the advance payment of the Employee Retention Credit for 2021 to small eligible employers only. Any advance payment is limited to 70% of the average quarterly wages paid in calendar year 2019.

The new law does not define the term "average quarterly wages." The IRS has determined that for purposes of this 70% rule, average quarterly wages generally means wages defined under IRC section 3121(a) or section 3231(e) without regard to the Social Security wage base, paid in each calendar quarter in 2019 (Form 941, line 5c, taxable Medicare wages & tips).

Special rules also apply for seasonal workers. Small eligible employers that employ seasonal workers may elect to determine the average quarterly wages based on the wages for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates rather than the average quarterly wages paid in calendar year 2019.

See Notice 2021-23 for additional information for employers requesting an advance payment who were not in existence for all of 2019 or 2020.