

Client Alert

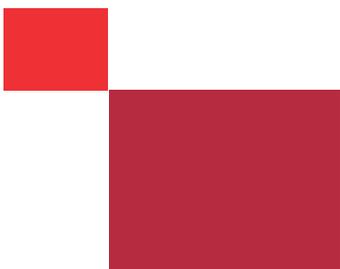
March 31, 2020

Federal Filing and Payment Tax Return Relief in Response to the COVID-19 Pandemic

On March 13, 2020, the U.S. President issued an "Emergency Declaration" in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic, which instructed the Secretary of the Treasury "to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a)." Notice 2020-18 was issued on March 18, 2020, pursuant to the Emergency Declaration and supersedes and expands upon Notice 2020-17 (which was issued on March 13, 2020 per the Emergency Declaration). A further Notice 2020-20 was issued that amplifies Notice 2020-18 and applies to U.S. Federal Gift tax returns and payments (and Generation Skipping Transfer Tax). Notice 2020-18 together with Notice 2020-20 shall be referred to as the "Notice". In a series of Filing and Payment Deadlines Questions and Answers ("FAQs") posted on its website, the IRS provided additional clarifications.

Federal Income Tax Returns and Payments

- Postponement of 2019 Federal Income Tax Returns. 2019 Federal income tax returns of any person (individual, trust, estate, partnership, association, company or corporation) with a Federal income tax return due by April 15, 2020, are automatically postponed to July 15, 2020.
- Postponement of 2019 Federal Income Tax Payments and First Quarter Estimated 2020 Payments. 2019 Federal income tax payments of any person due by April 15, 2020 (including Federal income tax payments and payments of tax on self-employment income, and 2020 estimated Federal income tax payment also including payments of self-employment tax income) are automatically postponed to July 15, 2020. The Notice does apply to section 965 installment payments due on April 15, 2020 where the Federal income tax return filing due date has been postponed from April 15 to July 15, 2020. The Notice does not apply to second quarter 2020 estimated income tax payments, which are still due on June 15, 2020. There is no limit on the amount of the tax payment that may be postponed.
- Federal Tax Forms Impacted (including Postponement of Federal Income Tax Payments). The Notice postpones the filing and payment of Federal income tax reporting on Forms 1040, 1040-SR, 1040-NR, 1040-NR-EZ, 1040-PR, 1040-SS, 1041, 1041-N, 1041-QFT, 1120, 1120-C, 1120-F, 1120-FSC, 1120-H, 1120-L, 1120-ND, 1120-PC, 1120-POL, 1120-REIT, 1120-RIC, 1120-SF, 8960, 8991, and 990-T (if due on April 15). It is not





clear whether Forms 1040-NR and 1120, which are due June 15, 2020 are granted an automatic extension of time to file and pay tax.

- *Federal Tax Forms not Postponed.* The Notice does NOT postpone Forms 990-T that are due on May 15. Also not postponed are returns due on March 16, 2020, which includes Form 1065, 1065-B, 1066, and 1120-S for calendar year taxpayers, or any filing or payment due dates other than April 15 have not been postponed at this time.
- *Applications for Automatic Extensions of Time Not Required to be Filed.* Impacted taxpayers do NOT have to file Forms 4868 or 7004 (applications for automatic extensions of time) to obtain this extension. However, if taxpayers wish to have the 5 or 6 month extension, then it is recommended they file Forms 4868 or 7004.
- *Calculation of Interest, Penalties and Additions to Tax.* The period of April 15, 2020 through July 15, 2020 will be disregarded in the calculation of any interest, penalty or addition to tax for failure to file Federal income tax returns or failure to pay Federal income taxes. Such interest, penalties and additions will begin to accrue on July 16, 2020.

Federal Gift Tax Returns and Payments (and Generation Skipping Tax)

- *Postponement of 2019 Federal Form 709 (United States Gift and Generation-Skipping Transfer Tax Return).* 2019 Forms 709 are automatically postponed to July 15, 2020.
- *Postponement of 2019 Federal Gift Tax or Generation-Skipping Transfer Tax.* 2019 Federal gift and generation-skipping transfer tax payments due by April 15, 2020, are automatically postponed to July 15, 2020. There is no limit on the amount of the tax payment that may be postponed. The Notice does not apply to filing and payment of estate taxes.
- *Applications for Automatic Extensions of Time Not Required to be Filed.* There is no requirement to file Form 8892 (Application for Automatic Extension of Time to File Form 709 and/or Payment of Gift/Generation Skipping Transfer Tax) to obtain this benefit. However, if you wish to obtain an extension to file by October 15, 2020, then it is recommended to file Form 8892.
- *Calculation of Interest, Penalties and Additions to Tax.* The period of April 15, 2020 through July 15, 2020 will be disregarded in the calculation of any interest, penalty or addition to tax for failure to file Form 709 or to pay Federal gift and generation-skipping transfer taxes. Such interest, penalties and additions will begin to accrue on July 16, 2020.



Federal Information Forms

The Notice clarified that there is no extension for the filing of any Federal information forms, and the FAQs reconfirmed it.

- Form 3520 and Form 3520-A. Since Forms 3520 and 3520-A are filed separately from income tax returns, the Notice does not apply to them. An automatic 6-month extension of time to file Form 3520-A may be obtained by filing Form 7004 by the 15th day of the 3rd month after the end of the trust's tax year. Form 3520 is due on April 15, 2020. However, if a taxpayer is granted an extension to file an income tax return, the due date for filing Form 3520 is the same date as for the return (October 15, 2020). Thus, unless the IRS provides additional relief, taxpayers should file a request for an extension by April 15, 2020, in order to postpone filing Form 3520.
- FBAR. The Notice does not apply to FinCEN Form 114 (Report of Foreign Bank and Financial Accounts, or "FBAR") either, but FinCEN grants filers missing the April 15 deadline an automatic extension until October 15, 2020, to file FBARs.
- Forms 5471, 5472, 8865 and 8858. The IRS should provide further guidance as to whether the Notice covers information returns that are required to be filed with an income tax return. Such information returns include Form 5471 (Information Return of U.S. Persons With Respect to Certain Foreign Corporations), Form 5472 (Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business), Form 8865 (Return of U.S. Persons With Respect to Certain Foreign Partnerships), Form 8858 (Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)). If relief under the Notice extends to international information returns, they will be due together with income tax returns on July 15, 2020, unless an extension is requested. If the IRS does not clarify whether the Notice applies to international information returns, taxpayers should consider filing by April 15, 2020, a request for an extension to file an income tax return.

State Filing and Payment Requirements

In the FAQs, the IRS advised that state filing and payment requirements are not affected by the federal extensions and taxpayers should check with local state agencies for details regarding any applicable state action. To date, many states (but not all) have tied their state individual income tax filing and payment deadlines to the federal deadline. We have summarized below the action taken by some states in response to the federal tax extensions.

- California: The California Franchise Tax Board is postponing until July 15, 2020 the filing and payment deadlines for all individuals and business entities for:
 - 2019 tax returns and payments



Baker McKenzie North America Tax

Chicago
+1 312 861 8000

Dallas
+1 214 978 3000

Houston
+1 713 427 5000

Miami
+1 305 789 8900

New York
+1 212 626 4100

Palo Alto
+1 650 856 2400

San Francisco
+1 415 576 3000

Toronto
+1 416 863 1221

Washington, DC
+1 202 452 7000

- 2020 first and second quarter estimate payments
- 2020 LLC taxes and fees
- 2020 non-wage withholding payments
- **Connecticut**: The Connecticut Department of Revenue Services announced that the deadline for filing and paying state personal income taxes has been extended to July 15, 2020. This extension also applies to Connecticut estimated income tax payments for the first and second quarters of 2020. The following business returns also have postponed filing dates and payment deadlines:
 - 2019 Form CT-1065/CT-1120 SI (Connecticut Pass Through Entity Tax Return): Filing date extended to April 15, 2020; payment deadline extended to June 15, 2020
 - 2019 Form CT-1120 and CT-1120CU (Connecticut Corporation Business Return): Filing date extended to June 15, 2020; payment deadline extended to June 15, 2020
- **District of Columbia**: The District of Columbia extended the deadline to July 15, 2020, for taxpayers to file and pay their 2019 District of Columbia individual and fiduciary income tax returns, partnership tax returns, and franchise tax returns. The Office of Tax and Revenue announced on March 26, 2020 that the deadlines for individual and business taxpayers to file their 2020 estimated tax payments remain unchanged. The first quarter payments are due April 15, 2020, and the second quarter payments are due June 15, 2020.
- **Florida**: Florida has no individual income tax. The Florida Department of Revenue will offer flexibility on the deadlines of other taxes due, including sales taxes and corporate income taxes. The governor announced that some corporate income tax payments can be deferred until the end of the fiscal year.
- **Illinois**: The Illinois Department of Revenue announced that all individuals, trusts, and corporations that would normally file and pay by April 15, 2020, now have an automatic extension until July 15, 2020, with penalties starting to accrue on July 16. However, this does not impact the first and second installments of estimated payments for 2020 taxes that are due April 15 and June 15.
- **New Jersey**: No decision has been made yet on any filing and payment date change. The New Jersey General Assembly has sent legislation to the governor, for approval, which would automatically extend the time to file and pay state gross income tax or corporation business tax returns (due on or before April 15) if the federal government extends the filing or payment due date for federal returns, but the extended due date will be no later than June 30.
- **New York**: Extended filing and payment until July 15, 2020, for New York state personal income tax and corporation tax returns and fiduciaries (estates and trusts) originally due on April 15, 2020. Taxpayers can defer installments of estimated taxes for the 2020 tax year, due on April 15, 2020, to July 15, 2020, without penalties and interest, regardless of the



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For additional information please contact the authors of this Client Alert or any member of Baker McKenzie's North America Tax Practice Group.

Authors:

Cecilia Hassan
+1 305 789 8939
cecilia.hassan@bakermckenzie.com

Pratiksha Patel
+1 305 789 8984
pratiksha.patel@bakermckenzie.com

Olga Sanders
+1 212 626 4100
olga.sanders@bakermckenzie.com

Additional Contacts:

Simon P. Beck
+1 212 626 4751
simon.beck@bakermckenzie.com

David Berek
+1 312 861 8184
david.berek@bakermckenzie.com

Paul F. DePasquale
+1 212 626 4230
paul.depasquale@bakermckenzie.com

Debra M. Doyle
+1 312 861 2820
debra.doyle@bakermckenzie.com

Glenn G. Fox
+1 212 626 4689
glenn.fox@bakermckenzie.com

Jack W. Newlin
+1 312 861 2844
jack.newlin@bakermckenzie.com

David Pope
+1 212 626 4289
david.pope@bakermckenzie.com

Rodney W. Read
+1 713 427 5053
rodney.read@bakermckenzie.com

amount owed. The state did not extend its sales tax payment deadline of March 20, 2020 but will waive penalties and interest for filers who were unable to file or pay on time.

- - [New York City](#): Granting a waiver of penalties for [DOF-administered business and excise taxes](#) due between March 16, 2020, and April 25, 2020. Taxpayers may request to have the penalties waived on a late-filed extension or return, or in a separate request. If an extension or return is filed, or a tax payment is made, in accordance with these rules, the filer will not be subject to any late filing, late payment, or underpayment penalties. While late filing and late payment penalties are waived, interest, where applicable, at the appropriate underpayment rate, must be paid on all tax payments received after the original due date calculated from the original due date to the date of payment.
 - [Texas](#): Texas has no individual income tax. The Texas Comptroller Office is offering assistance to those businesses that are struggling to pay the full amount of sales taxes. For businesses that find themselves in this situation, the Comptroller is offering short-term payment agreements and, in most instances, waivers of penalties and interest. Further, the Comptroller is providing an extension of up to 90 days past the original due date to pay motor vehicle tax due on purchases.

Further information on COVID-19 related State tax matters can be found by visiting our SALT SAVVY blog post, [State and Local Tax Responses to COVID-19](#) and the corresponding [webinar](#).

Baker McKenzie has put together a global resource center for all key insights and upcoming webinars as a central repository to assist our clients understand, prepare and respond quickly to the significant legal and business challenges posed by COVID-19. Please use the following link to visit the [Coronavirus Resource Center](#) for additional resources. Baker McKenzie understands that these times are challenging for all our clients and we want to assure you we are here to assist.

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