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COVID-19 Resource Center

On your road to recovery, lean on Sax for up-to-date information relevant to your state and business.

COVID-19 Tax Provisions

Accelerating Cash Flow for Owners & Operators

May 13, 2020

This slide deck contains information on the COVID-19 related Loan Options & Forgiveness Strategies and is the most up-to-date as of **May 13, 2020**.

Changes are constant and additional guidance is on-going. We will keep you posted on changes through our weekly webinar updates and COVID-19 resource center. You can also reach out to your Sax advisor for the most recent information.

Please visit our Resource Center at www.saxllp.com for on-going updates, or email covid19@saxllp.com with questions.

Our firm provides the information in this webinar presentation for general guidance only, and does not constitute the provision of legal advice, tax advice, accounting services, investment advice, or professional consulting of any kind.

The information provided herein should not be used as a substitute for consultation with professional tax, accounting, legal, or other competent advisers.

Before making any decision or taking any action, you should consult a professional adviser who has been provided with all pertinent facts relevant to your particular situation.

Today’s Presenters

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Today's Discussion Points

- Postponement of filing certain Tax Filings and Payments
- Postponement of performing certain "time-sensitive actions" for tax purposes
  - *Like Kind Exchange identification and investment relief*
  - *Qualified Opportunity Zone relief – both investors and Qualified Opportunity Funds*
- Changes to tax law provide immediate cash flow to your operations
  - *Net Operating Loss (NOL) carrybacks*
  - *Qualified Improvement Property – "retail glitch" fix*
  - *Business Interest Limitation consideration*
- Other non-tax items to consider that may impact your cash flow

Postponement of Filing and Payments

- On April 11, 2020, President Trump approved major disaster declarations for all 50 states, the District of Columbia, and U.S. territories (except for American Samoa) regarding the COVID-19 pandemic. First time ever for all 50 states at the same time.

- Notice 2020-23, April 9, 2020 - Extension of time sensitive deadlines for income tax filing, payments, and certain “time-sensitive actions” for tax purposes.

- Filing and Payment - postponing the due date from April 15, 2020, until July 15, 2020.

- Performance of certain time sensitive acts due by April 1, 2020 and before July 15, 2020 are due by July 15, 2020.

Postponement of Filing and Payments until July 15, 2020

Partial List:

- Individual Income Tax Returns
- Corporation Income Tax Return – calendar year or fiscal year
- Estates and Trusts Filings
- 2019 Tax + 2020 1st and 2nd Quarter Payments

What is <u>Not</u> Covered:

March 16, 2020 deadlines were NOT extended:

- Partnership
- S-Corporation

Exception:

Fiscal year partnership or S-corporation due date on or after April 1, 2020, and before July 15, 2020 has been postponed to July 15, 2020.

Postponement of Filing and Payments until July 15, 2020

State Response

All states with a 2019 personal income tax have extended their original April 15, 2020 due dates; mostly to July 15.

New York

Personal income tax and corporation tax returns and fiduciaries (estates and trusts) extended to July 15.

New York City

Unincorporated Business Tax, and General Corporation Tax filing and payment extended to July 15. However, interest is due from 04/15 until filed.

New Jersey

Extends filing and payment Individual Gross Income Tax, Partnership, and Corporation Business Tax to July 15, 2020 - 1st quarter payment.

Connecticut

Extends filing and payment Individual Partnership, and Corporation to July 15, 2020 - 1st & 2nd quarter payments.

Postponement of Performing Certain “Time-Sensitive Actions”

Partnership subject to CPAR:

Partnerships subject to Centralized Partnership Audit Regime (CPAR) has the option to file an amended return on or before **September 30, 2020** instead of Administrative Adjustment Request (AAR) for 2018 and 2019 taxable years.

Section 1031-Like Kind Exchanges:

45-day identification period and 180-day exchange period due between April 1st and July 15 extended to July 15.

Section 1033 - involuntary conversion of property:

If the deadline falls between April 1st and July 15, the deadline is July 15.

Postponement of Performing Certain “Time-Sensitive Actions”

Investing in a Qualified Opportunity Fund (QOF)

- Investors must invest capital gain in QOF within a 180-day window to receive any Opportunity Zone tax benefits. The 180-day window for investment which expires on or after April 1, 2020, and before July 15, 2020 has been postponed to July 15, 2020.

- Properly structured QOFs utilizing "working capital safe harbor" can claim an additional 24 months to deploy its working capital on top of its 31-months.

- Should a QOF fail to meet the 90% investment standard, QOF is imposed a nondeductible penalty for each month until it is cured. If QOF can document execution delay due to COVID-19 then QOF should consider applying reasonable cause exception; **legal advisor should be involved with this analysis and proper planning.**

Changes to Tax Law Provide Immediate Cash Flow

Net Operating Losses (NOLs) – Individuals (including Estate and Trusts) & Corporations

- CARES Act allows Individuals & Corporations that incur an NOL during a taxable year after December 31, 2017 and before December 31, 2020 can be carried to each of the five taxable years preceding the year of the loss.

- Suspends the 80% of taxable income limitation for NOL carryovers arising in taxable years 2018, 2019, or 2020.

- Elimination of NOL carryback and 80% NOL limitation on carryovers is reinstated for taxable years beginning after December 31, 2020.

Modifications for Net Operating Losses (NOLs)

Prior Law – TCJA	CARES Act
Losses arising in tax years beginning after 12/31/2017: • No carryback • Indefinite carryforward	Losses arising in tax years 2018, 2019, or 2020: • Can carryback 5 tax years • Indefinite carryforward • 2021 and years after – can only carryforward
Losses arising in tax years beginning after 12/31/2017: • Limited to 80% of taxable income	Losses arising in tax years 2018, 2019, 2020 • Allowed up to 100% of taxable income • 2021 and years after – limited to 80% of taxable income

Example – NOL Carryback – not considering any QIP

Year:	2016	2017	2018	2019	2020
Taxable Income/ (Loss)	300,000	350,000	400,000	600,000	(1,000,000)
NOL Carryback to 2017, 2018 & 2019	(300,000)	(350,000)	(350,000)		
* Tax Rates for 2017 were higher than post-TCJA					
NOL Claim	300,000	350,000	350,000		
Highest Tax Rate at this time	39.60%	39.60%	37.00%		
Refund Claim made in 2021 for 2020 Tax Losses	118,800	138,600	129,500	-	**386,900**

Forms 1045 & 1139 can now be *faxed* to the IRS.

Starting April 17, 2020 and until further notice, the IRS will accept eligible refund claims submitted via Fax:

Form 1139 – 844-249-6236

Form 1045 – 844-249-6237

QIP Retail Glitch Fix

Technical Correction in relation to Qualified Improvement Property (QIP) under CARES Act "retail glitch"

- Prior to technical correction - QIP was 39 year depreciable asset
- Technical correction - 15-year recovery period and eligible for bonus depreciation <u>only applies to improvements made by the taxpayer.</u>
- QIP = any interior improvement to a <u>nonresidential</u> building, excludes the following:
  - improvements related to elevators and escalators;
  - internal structural framework,
  - enlargement of the building;
- Correction – retroactive to 2018 tax year
- CAVEAT – some states DO NOT follow Federal treatment

Example - QIP/Bonus Depreciation & NOL Carryback
Option #1

- No QIP analysis is done.
- 2020 Projected loss of $1,000,000 & carryback 2016 – 2018 to claim NOL refunds

Year:	**2016**	**2017**	**2018**	**2019**
Taxable Income/ (Loss)	300,000	350,000	400,000	600,000
NOL Carryback to 2017, 2018 & 2019	(300,000)	(350,000)	(350,000)	
* Tax Rates for 2017 were higher than post-TCJA				37.00%
Tax Due For 2019 Tax year paid by July 15				**222,000**

NOL Carryback	**2016**	**2017**	**2018**	**Total Benefit**
NOL Claim	300,000	350,000	350,000	1,000,000
Highest Tax Rate at this time	39.60%	39.60%	37.00%	
Refund Claim made in 2021 for 2020 Tax Los	118,800	138,600	129,500	386,900

Total Net Benefit	164,900	<---- (386,900 - 222,000)

Example - QIP/ Bonus Depreciation & NOL Carryback

Option #2

Year:	2016	2017	2018*	2019	2020 Projected
Taxable Income/ (Loss)	300,000	350,000	400,000	600,000	(1,000,000)
QIP Bonus Depreciation			(200,000)	(350,000)	
Decrease in Depreciation Expense				25,000	25,000
Modified Taxable Income after Bonus Depreciation				75,000	(975,000)

** File 3115 Change of Accounting For QIP/ Bonus Depreciation Claim on 2019 Tax Return*

Additional Deduction Claimed on 2019 Tax Return	(525,000)

Tax Year 2019 Additional Deductions	525,000
Highest Tax Rate at this time	37.00%
Additional Cash Savings in 2020 claimed on 2019 Tax Return	194,250

Tax Due For 2019 Tax year paid by July 15	(Original Tax 222,000 - QIP Bonus Depre 194,250) -->	**27,750**

NOL Carryback	2016	2017	2018	Total Benefit
NOL Claim	300,000	350,000	325,000	975,000
Highest Tax Rate at this time	39.60%	39.60%	37.00%	
Refund Claim in 2021 for 2020 Tax Return	118,800	138,600	120,250	377,650

Total Net Benefit	349,900	<---- (377,650 - 27,750)

Comparison - QIP/ Bonus Depreciation & NOL Carryback

Comparison	No QIP	QIP	Difference
Tax Due for 2019 Tax Year Paid by 7/15/20	222,000	27,750	**-194,250**
Refund Claim in 2021 for 2020 Tax Return	-386,900	-377,650	**9,250**
Net Cash Savings	-164,900	-349,900	**-185,000**

Changes to Tax Law Provide Immediate Cash Flow

Business Interest Limitation - Sec. 163(j)
- Prior to the CARES Act:

- Starting 2018, all taxpayers deduction for business interest expense is capped at 30% of its “Adjusted Taxable Income” (ATI) for that year
  - ATI = Earnings before interest, taxes, and amortization (EBITA);
  - Disallowed Interest Expense is carried forward to succeeding taxable years.

Changes to Tax Law

Business Interest Limitation Sec. 163(j) – CARES Act changes

Tax years 2019 & 2020 increase of 30% of ATI limitation to 50% <u>except for partnerships</u>

Tax Year	Partnership Level	Partner Level
2019	Partnership continues to use 30% of ATI limitation and EBIE (disallowed interest) is passed to the partners	No changes in terms of 30% ATI limitation
2020	*Partnership uses 50% of ATI limitation *Partnership can elect 30% of ATI limitation instead of 50% *Partnership may elect to substitute tax year 2019 ATI on its 2020 Partnership return	*Can treat 50% of 2019 carried over EBIE allocated from such partnership as automatically paid or accrued on the partner's 2020 tax year *The remaining 50% of 2019 EBIE is subject to the "normal" testing rules for EBIE at the partner level

Example – Business Interest Limitation

163(j) Limitation - Partnership	Year 2019
Taxable Income	100,000
(+) Interest expense	100,000
(+) Depreciation	50,000
ATI	250,000
163(j) limitation 30%	75,000
Interest disallowed	25,000
Interest deduction	75,000

- In 2020, the partner will be able to deduct $12,500 ($25,000 X 50%) of the 2019 interest expense that was disallowed
- The remaining $12,500 will be allowed to the extent of allocated excess taxable income or excess interest income to the partner.

How can Sax assist you?

- Review of Fixed Assets to determine your Accelerated write off options
- Give options of which method is best for you in terms of obtaining these benefits: i.e. amended return vs. AAR
- Late election or revoke a elections
  - ADS election
  - Election out of bonus depreciation
  - Claim bonus depreciation at 50% rather than 100%
- State Tax Treatment – “automatic” conformity vs. “static” conformity

Other Items That May Impact Cash Flow

1. As a result of reduced rent/ cash flow, consider contacting your lender to ensure that you have not violated any loan covenants and discuss deferral options are available to you.
2. If you going through a loan/ mortgage modification, please contact your Sax number#1 advisor for possible tax deferrals.
3. As tenants request landlords for rent deferral, have you considered requesting the tenant to provide current financial information to substantiate that their financial condition has been negatively affected due to COVID-19.
4. Have you contacted your insurance broker to review your P&C policy?
5. Have you contacted your your Sax number#1 advisor to see if you are eligible for Paycheck Protection Payment Loan or other COVID-19 relief program?

Questions & Answers

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- **For additional questions:** Email Covid19@saxllp.com

- Visit **Sax's COVID-19 Resource Center** found on Saxllp.com to register and for on-going information and resources.

Upcoming Webinars

- *Thursday, May 14 @ 10AM* - **Preparing for Forgiveness – Updates on Loan Options & Forgiveness Strategies**