Lally&Co.
CPAs and Business Advisors

The Evergreen

Quarterly Journal for Clients & Friends

Summer 2020 – Volume XXXII

This Issue:

The Evergreen. Always Growing.

Like the evergreen oak tree, Lally & Co. is always growing. With the support and loyalty of our clients and friends we have grown into a firm of 44 individuals serving clients in many diverse fields. Our growth gives us the ability to better serve our clients and provide effective solutions to their needs. If you have questions about your business or personal tax situation, please contact us. We welcome your call and are always looking for ways to better serve you.

Contact our office or visit our website for more information.

412.367.8190

Dear Clients and Friends,

We trust that you are well and managing your daily activities in a safe and secure manner. We understand that tax and accounting concerns might be the farthest thing from your mind. It is our goal to keep you up to date with timely and informative news happening in our world.

As you read through *The Evergreen*, please do not hesitate to contact us if you have questions regarding an article or regarding your business or personal tax situation. We would be happy to hear from you! This and past issues of *The Evergreen* are available on our website at http://lallycpas.com/newsletters/.

Protective Claims for Net Investment Income Tax

Pending the decision of a Supreme Court case regarding the Affordable Care Act (ACA), you may have an opportunity to apply for refunds associated with the 3.8% net investment income tax and the 0.9% additional Medicare tax. Filing a protective claim could preserve your opportunity for a tax refund.

With the enactment of the Tax Cuts and Jobs Act (TCJA) in 2017, Congress eliminated the individual mandate for monthly health care coverage under the ACA for months after 12/31/2018. After the TCJA was enacted, 20 state attorneys general and governors, and 2 individuals filed a lawsuit claiming the ACA was unconstitutional because the shared responsibility program no longer produced revenue for the Federal Government. The trial court struck down the ACA individual mandate as unconstitutional and the U.S. Court of Appeals for the Fifth Circuit also affirmed this decision.

The Supreme Court has agreed to hear the case, *California v. Texas;* oral arguments will occur later this year. A ruling that the ACA is unconstitutional will have far-reaching implications, potentially including with respect to taxation.

The ACA contains several tax-related provisions, including the 3.8% net investment income tax and the 0.9% additional Medicare tax on earned income.

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"Net investment income" generally includes:

- Capital gain, interest, dividends, certain annuities, royalties, and certain rents
- Income and gains from a business activity in which the taxpayer does not materially participate
- Income and gains from the trading of financial instruments and commodities

The net investment income tax applies to estates and trusts that have undistributed net income and adjusted gross income above $12,400 for 2016 (and a similar inflation-adjusted amount for later years) and individuals who were married filing jointly with an adjusted gross income above $250,000 ($200,000 if filing single). The additional Medicare tax is an additional 0.9% on wages, salaries, and self-employment income greater than $250,000 for individuals who were married filing jointly ($200,000 if filing single).

If the Supreme Court strikes down the ACA as unconstitutional, the Net Investment Income Tax and the additional Medicare tax would be deemed impermissibly levied, and a taxpayer who paid either or both of these taxes may be entitled to a refund of the tax paid if a refund claim is timely filed with the IRS. A claim for a refund can be filed for 2016 and any subsequent year. The claim must be filed within the later of three years from the time the return was filed or two years from the time the tax was paid. For example, the deadline to file a refund claim for 2016 taxes timely filed was 7/15/2020 due to the COVID-19 relief. If the taxpayer filed an extension for 2016, the deadline to file a claim is three years from the date of filing.

A taxpayer's ability to claim a refund will depend upon the Supreme Court's ruling in *California v. Texas.* If the Supreme Court determines that the ACA is constitutional prior to the enactment of the TCJA, the taxpayer's ability to claim a refund would be eliminated for taxes paid for the years 2016 through 2018, but not for 2019 or subsequent years. However, individuals, estates, and trusts that paid significant amounts of these taxes should consider filing protective claims.

A taxpayer may file a protective claim for refund to preserve its right to claim a refund. Protective claims may be informal claims, formal claims, or amended tax returns for a refund that are normally based on expected changes in current litigation, pending legislation, or current regulation. The claim does not need to list a dollar amount or demand an immediate refund.

The IRS will delay acting on the protective refund claim until the contingency affecting the claim is resolved. If the IRS disallows a protective claim for refund at the time of filing, the taxpayer should request additional time to supplement the claim with the legal theories and factual bases supporting the taxpayer's right to claim the refund. Once the contingency is removed, the taxpayer should promptly perfect the protective claim by filing a completed refund claim with an enclosure letter explaining the circumstances and providing proof of timely filing.

Individuals, estates, and trusts that paid the net investment income tax or the additional Medicare tax should consider filing protective claims for refund with respect to those taxes so as to preserve their right to a refund if the Supreme Court declares the ACA unconstitutional. For taxpayers who earned significant investment income or who are high-income earners, a refund of the net investment income tax or the additional Medicare tax may be substantial.

Guidance and Relief for 2020 RMD Waiver

The IRS has issued guidance and temporary relief for required minimum distribution (RMD) changes in 2020.

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Firm Announcements

Thomas S. Lutz and his wife, Kristen, became first time parents to baby boy, Cooper Charles Lutz, on July 4, 2020.

Matthew M. McClure, CPA and his wife, Kelsie, became first time parents to baby girl, Amelia Grace McClure, on July 24, 2020.

Zachary E. Miles, CPA has been promoted to Manager in the Tax Department

Brian P. Burnett, CPA has been promoted to Supervisor in the Tax Department

Richard G. Aufman has been promoted to Senior in the Tax Department

Amy L. Mitchell has been promoted to Senior in the Tax Department

Important Dates

September 15, 2020 – Extended 2019 Partnership and S-Corp Tax Returns Due

September 15, 2020 – Third Quarter 2020 Individual, C-Corp, and Trust Estimated Tax Payments Due

September 30, 2020 – Extended 2019 Trust Tax Returns Due

October 15, 2020 – Extended 2019 Individual and C-Corp Tax Returns Due

November 15, 2020 – Extended 2019 990 and 990-PF Tax Returns Due

Distributions that would have been RMDs under old law are treated as eligible rollover distributions in 2020. The 60-day rollover period deadline for any 2020 RMDs already withdrawn has been extended to August 31, 2020.

SECURE and CARES Acts

The new guidance addresses RMD issues arising from recent unexpected changes in the rules.

The Setting Every Community Up for Retirement Enhancement Act (SECURE) of 2019 changed the required beginning date for RMDs for individuals turning age 70-1/2 in 2020. The Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted in March 2020, waived the RMD requirements for 2020.

Plans, administrators, and individuals were taken by surprise. Some plans and participants treated distributions as RMDs even though they were not under new rules then in effect. The SECURE Act provided no relief. However, the CARES Act allowed plans and participants to treat would-be RMDs as eligible rollover distributions. Under these rules, individuals have 60 days to recontribute distributions. This can only be done once in a 12-month period. That left individuals who took early distributions twisting in the wind, not to mention people taking monthly RMD installments.

60-Day Deadline Extended

Under the COVID-19 relief, any distribution already disbursed in 2020 that would have been an RMD under the old rules has a 60-day recontribution deadline of no later than August 31. For example, if someone took a distribution in January 2020 that would have been an RMD under the old rules (either sets of old rules), they have until August 31 to recontribute it to an eligible plan or IRA.

For an IRA owner or beneficiary who has already received a distribution that would have been an RMD in 2020 but due to the 2020 RMD waiver under the CARES Act or the change in the required beginning date under the SECURE Act, the recipient may repay the distribution to the distributing IRA, even if the repayment is made more than 60 days after the distribution. This rule is provided if the repayment is made no later than August 31, 2020. The repayment will be treated as a rollover but will be subject to the one rollover per 12-month period limitation or the restriction on non-spousal beneficiary rollovers.

SECURE Act Relief

Distributions that were intended as RMDs but in fact are not due to the SECURE Act change in required beginning date are treated as eligible rollover

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distributions. RMDs do not have to satisfy rules regarding mandatory withholding, the option of a direct rollover, and notice of that right. Under this relief, individuals and plans can still treat these as eligible rollover distributions.

2020 Waiver Guidance

The IRS has clarified that the CARES Act relief applies for 2020 distributions that would have been RMDs, had it not been for the 2020 RMD waiver. These include distributions to a plan participant paid in 2020 (or paid in 2021 for the 2020 calendar year in the case of an employee who has a required beginning date of April 1, 2021) if the payments equal the amounts that would have been RMDs in (or for) 2020 had it not been for 2020 RMD waiver. They also include distributions that are one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the participant's life or life expectancy, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least 10 years.

For a plan participant with a required beginning date of April 1, 2021, distributions paid in 2021 that would have been an RMD for 2021 had it not been for the CARES Act are treated as eligible rollover distributions. However, a plan participant with a required beginning date of April 1, 2021, must still receive an RMD for the 2021 calendar year by December 31, 2021. If the employee receives a distribution during 2021, that distribution is an RMD for the 2021 calendar year to the extent the total RMD for 2021 has not been satisfied even if the distribution is made on or before April 1, 2021, and accordingly, is not an eligible rollover distribution. However, to the extent the RMD for 2021 has been satisfied, subsequent amounts distributed in 2021 that would otherwise not be eligible rollover distributions may be rolled over.

Extended Deadlines Due to 2020 Waiver

If a plan permits an employee or beneficiary to elect whether the 5-year rule or the life expectancy rule applies in determining RMDs, then the deadline for making that election typically would be the end of calendar year following the calendar year of the employee's death. For example, if a 50-year-old employee in a plan providing the election died in 2019 with his sister as his designated beneficiary, the plan provision would require the election by the end of 2020. However, that type of plan may be amended to permit the extension of the election deadline to the end of 2021.

The RMD waiver extends the time for making a direct rollover for a non-spouse designated beneficiary if the participant died in 2019. A special rule provides that if the 5-year rule applies to a benefit under a plan, the non-spouse designated beneficiary may determine the amount that is not eligible for rollover because it is an RMD using the life expectancy rule in the case of a distribution made prior to the end of the year following the year of death. This special rule is modified so that if the employee's death occurred in 2019, the non-spouse designated beneficiary has until the end of 2021 to make the direct rollover and use the life expectancy rule.

Plan Amendments

The guidance provides a sample plan amendment for defined contribution plans that plan sponsors may adopt to implement waiver rules. Any plan amendment must be adopted no later than the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024, for governmental plans), and must reflect operation of the plan beginning with the effective date of the plan amendment. Timely adoption of the amendment must be shown by a written document signed and dated by the employer (including an adopting employer of a pre-approved plan). IRAs do not need to be amended.

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Relief for Retirement Plan Distributions

On June 19, 2020, The IRS released Notice 2020-50 to help retirement plan participants affected by the COVID-19 coronavirus take advantage of the CARES Act provisions providing enhanced access to plan distributions.

Coronavirus related withdrawals of up to $100,000 from qualified retirement plans and IRAs during 2020 may receive special tax treatment under the CARES Act.

A coronavirus-related distribution is not subject to the 10% additional tax that would otherwise typically apply to distributions made before an individual reaches the age of 59½. A coronavirus-related distribution can be included in income in equal installments over a three-year period. Taxpayers have three years to repay a coronavirus related distribution to a plan or IRA, thus avoiding tax consequences of the distribution.

Notice 2020-50 also expands the definition of who is considered a qualified individual. This takes into account additional factors such as reductions in pay, rescissions of job offers, and delayed start dates, as well as adverse financial consequences to an individual arising from the impact of COVID-19 on their spouse or household member.

As expanded under Notice 2020-50, a qualified individual is anyone who:

- Is diagnosed, or whose spouse or dependent is diagnosed with the virus SARS-CoV-2 or COVID-19 by a test approved by the CDC; or,
- Experiences adverse financial consequences as a result of the individual, the individual's spouse, or a member of the individual's household (that is, someone who shares the individual's principal residence) being quarantined, furloughed, or laid off or having work hours reduced due to COVID-19, being unable to work due to lack of childcare because of COVID-19, closing or reducing hours of a business that they own or operate due to COVID-19, having pay or self-employment income reduced due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19.

The guidance clarifies that administrators can rely on an individual's certification that they are a qualified individual, but also reiterates that an individual actually needs to be qualified in order to receive favorable tax treatment.

Guidance on Reporting COVID-19 Qualified Sick and Family Leave Wages

The IRS has issued guidance to employers on the requirement to report the amount of qualified sick and family leave wages paid to employees under the Families First Coronavirus Response Act (Families First Act). This reporting provides employees who are also self-employed with information necessary for properly claiming qualified sick leave equivalent or qualified family leave equivalent credits under the Families First Act.

Background

Under the Families First Act, many employers with fewer than 500 employees must provide paid leave to employees due to circumstances related to COVID-19. Certain employers must provide an employee with up to 80 hours of paid sick leave if the employee cannot work or telework because he or she:

1. Is subject to a federal, state or local quarantine or isolation order related to COVID-19;

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2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Is caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
5. Is caring for a son or daughter if the child's school or place of care has been closed, or the child's care provider is unavailable, due to COVID-19 precautions; or
6. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of the Treasury and Labor.

The employee is entitled to paid sick leave at his or her regular pay rate (or if higher, the applicable federal, state, or local minimum wage), up to:

1. $511 per day ($5,110 in the aggregate) if the employee cannot work for reasons listed in (1), (2), or (3), above;
2. $200 per day ($2,000 in the aggregate) if the employee cannot work for reasons listed in (4), (5), or (6) above.

The Families First Act also amends the Family and Medical Leave Act of 1993 to require employers to provide expanded paid family and medical leave to employees who cannot work or telework for reasons related to COVID-19. An employee can receive up to 10 weeks of paid family and medical leave at two-thirds the employee's regular rate of pay, up to $200 per day ($10,000 in the aggregate) if the employee cannot work because he or she is caring for a son or daughter whose school or place of care is closed, or whose child care provider is unavailable, for reasons related to COVID-19.

Eligible employers may receive a refundable payroll credit for required qualified sick leave wages or qualified family leave wages paid to an employee, plus allocable qualified health plan expenses. An equivalent credit is available to self-employed individuals carrying on a trade or business if the self-employed individual would be entitled to receive paid leave if he or she were an employee of an employer (other than himself or herself). The refundable credits apply to qualified leave wages paid with respect to the period beginning on April 1, 2020, and ending on December 31, 2020.

Reporting Qualified Leave Wages

In addition to reporting qualified sick leave wages paid and qualified family leave wages paid in Boxes 1, 3 (up to the social security wage base), and 5 of Form W-2, employers must report to the employee the following types and amounts of the wages that were paid, with each amount separately reported either in Box 14 of Form W-2 or on a separate statement:

1. The total amount of qualified sick leave wages paid for reasons (1), (2), or (3) above, labelled as "sick leave wages subject to the $511 per day limit" or in similar language;
2. The total amount of qualified sick leave wages paid for reasons (4), (5), or (6) above, labelled as "sick leave wages subject to the $200 per day limit" or in similar language; and
3. The total amount of qualified family leave wages paid, labeled as "emergency family leave wages" or in similar language.

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If a separate statement is provided and the employee receives a paper Form W-2, the statement must be included with the Form W-2 provided to the employee.
If the employee receives an electronic Form W-2, the statement must be provided in the same manner and at the same time as the Form W-2.

Self-Employed Individuals

Self-employed individuals who are claiming qualified sick leave equivalent or qualified family leave equivalent credits, and who are also eligible for qualified sick leave and qualified family leave wages as employees, must report the qualified leave wage amounts described above on Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals, included with their income tax returns. They also must reduce (but not below zero) any qualified sick leave or qualified family leave equivalent credits by the amount of these qualified leave wages.

Paycheck Protection Program Loan Forgiveness

On June 5, 2020, President Trump signed a new bill into law to expand the Paycheck Protection Program (PPP) loan forgiveness rules.

With the new bill, borrowers now have the option to extend the 8-weeks to 24-weeks for payroll costs to retain and rehire employees. Current PPP borrowers can choose to extend the 8-week period to 24 weeks or remain at the original 8-week period. New PPP borrowers will have a 24-week covered period; however, the covered period cannot extend beyond December 31, 2020.

This flexibility was designed to make it easier for more borrowers to reach full, or almost full, forgiveness. Borrowers can use the 24-week period to restore their workforce levels and wages to pre-pandemic levels required for full forgiveness. This must be done by December 31, 2020, an extension of the previous deadline of June 30, 2020.

Additionally, the payroll expenditure requirement was reduced from 75% to 60% under the new bill. Borrowers must spend at least 60% of the loan on payroll or none of the loan will be forgiven. This allows many business owners to use these loans for rent, utilities, and other monthly expenses while still qualifying for full forgiveness.

The legislation includes new exceptions that will allow borrowers to achieve full PPP loan forgiveness even if they are unable to fully restore their workforce. Previous guidance allowed borrowers to exclude from the forgiveness calculations employees who turned down good faith offers to be rehired at the same hours and wages as before the pandemic. The new bill allows borrowers to adjust the forgiveness calculation because they were unable to find qualified employees or were unable to restore business operations to February 15, 2020 levels due to COVID-19 related operating restrictions.

New borrowers now have 5 years to repay the PPP loan instead of 2 under the new bill. Existing PPP loans can be extended up to 5 years if the lender and borrower agree. The interest rate remains at 1%.