COVID-19 DEVELOPMENTS FOR TAX-EXEMPT ORGANIZATIONS/NON-PROFITS

Hodgson Russ Tax-Exempt Organizations Alert
March 30, 2020

In response to the COVID-19 pandemic (the "Coronavirus"), a variety of relief efforts have been enacted, many of which may impact tax-exempt organization and non-profit clients. This update will discuss certain of these relief efforts, detailing their status as of Monday, March 30, 2020.

1. Non-Extension of Form 990 and 990-PF Filing Deadlines **UPDATE: The IRS has now issued extensions. See subsequent alert HERE.**

In Notice 2020-18 and Notice 2020-20, the full text of which can be found here, the IRS extended the deadline for filing of certain Federal returns as well as the payment of Federal income, gift, and generation-skipping transfer tax liability. Generally, if included, the deadline for filing certain Federal returns has been moved from April 15, 2020 to July 15, 2020. Additionally, the deadline for payment of all Federal income tax liabilities was extended to the same July deadline.

Unfortunately, many return types are not specifically included in Notice 2020-18. In a Q&A released on the IRS website, the IRS confirmed that Notice 2020-18 is not applicable to Forms 990 or 990-PF. As such, these Forms retain the applicable due date (15^{th} day of the 5^{th} month after the organization's year-end), which is generally May 15^{th} for calendar year entities. Note that the due dates for both Forms are still eligible to be extended by filing Form 8868 (Application for Automatic Extension of Time to File), as they were before Notice 2020-18 was released.

The IRS Q&A does note, however, that if the organization is filing a Form 990-T (the form used to report $1,000 or more of gross income from an unrelated business) that is due on April 15, that deadline is extended to July 15. If the organization's Form 990-T is due May 15, however, then no deadline extension is granted under Notice 2020-18. The full IRS Q&A on Notice 2020-18 can be found here.

2. Reminder Regarding Certain E-Filing Requirements and Opportunities

Forms 1023

In a previous client alert, we detailed new requirements for the filing of Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code. As a reminder, as of January 31, 2020, the IRS is now requiring that Form 1023 applications be submitted electronically online. Despite the January 31

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effective date, the IRS also provided a 90-day grace period from that date during which the IRS will continue to accept paper-filed Form 1023 applications. Organizations may want to consider electronically filing Form 1023 despite the 90-day grace period as this may expedite the review process of the application.

For a detailed discussion of the recent changes to the Form 1023 filing process, please see our previously posted client alert here.

Forms 990 and 990-PF

During the turbulence created by COVID-19, especially given that many are working from home and have limited to no access to their internal mailing room services, it is important to remember that Forms 990 and 990-PF are eligible to be filed electronically through the use of an IRS Authorized e-File Provider.

3. Employer Credits Under the Families First Coronavirus Response Act

On March 18, 2020, President Trump signed into law H.R. 6201, titled the "Families First Coronavirus Response Act" ("FFCRA"). Generally, the FFCRA provided employers with a variety of credits as follows.

One part of the FFCRA, titled the Emergency Family and Medical Leave Expansion Act ("EFMLEA"), requires employers with fewer than 500 employees to provide both paid and unpaid public health emergency leave to certain employees through December 31, 2020. In many instances, however, employers providing paid leave under the EFMLEA can receive 100 percent credit against the employer's share of FICA and Medicare ("Payroll Taxes") for each affected employee, limited to $200 per day, or a total of $10,000 per employee.

Another portion of the FFCRA, titled the Emergency Paid Sick Leave Act ("EPSLA"), requires that private employers with fewer than 500 employees and public employers of any size provide 80 hours of paid sick time to full-time employees who are unable to work (or telework) for specified virus-related reasons. Again, however, employers paying sick leave wages under the EPSLA can receive a tax credit, claimed on a quarterly basis, equal to 100 percent of the amount of sick leave wages paid. An employee who takes sick leave to attend to his or her own health must be compensated at his or her regular rate, up to a maximum of $511 per day ($5,110 total). Employees caring for another individual must receive two-thirds of their regular rate, up to a maximum of $200 per day ($2,000 total).

For a more in-depth review of the FFCRA, please see our previous alert here. The Government also issued informal guidance on the FFCRA, describing how employers could take advantage of the new credits. Our coverage of that guidance can be found here.

4. The Coronavirus Aid, Relief, and Economic Security Act

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. The CARES Act, commonly known as "Phase Three" of Coronavirus economic relief, contains a variety of provisions that would provide stimulus for tax-exempt/non-profit organizations. Some of these changes are outlined below.

New Above-the-Line Charitable Contribution Deduction for Non-Itemizers

Section 2204 of the CARES Act amends the charitable deductions rules. Normally, charitable contributions are itemized deductions, which can only be utilized by taxpayers who do not utilize the standard deduction (in 2019, $12,400 for a single taxpayer and $24,800 for joint returns). Typically, only a very small percentage of taxpayers itemize. Section 2204 of the CARES Act provides that individuals can make charitable contributions and get a deduction for this contribution, even if the individual does not itemize. While there are certain restrictions (the contribution must be made in cash, the new deduction cannot exceed $300 and is only available to taxpayers who do not itemize), this new law represents a significant change from the previous rule.

Increased Charitable Contribution Deduction for Individual Itemizers and Corporations

The CARES Act also provides a charitable benefit to those taxpayers who do itemize their deductions. Previously, individual taxpayers who itemized could only utilize charitable deductions for cash contributions in the amount of 60% of their adjusted gross income. Section 2205 provides that for individual taxpayers, 2020 charitable cash contributions may be deducted in the amount of 100% of the taxpayer's adjusted gross income for 2020 (with any excess amount eligible for a carryforward of 5 years). For corporate taxpayers, Section 2205 increases the 2020 charitable deduction limit to 25% of taxable income for cash contributions, as opposed to the previously applicable 10% limit.

Increased Limits on Contributions of Food Inventory

The CARES Act also provides a deduction for certain contributions of food inventory to charitable organizations who will use the food to care for ill persons. The deductible amount for such deduction is equal to the cost of the food plus half the gain that would be realized on the sale of the food (capped at twice the cost of the food). For corporations, this deduction cannot exceed 15% of the corporation's income. For non-corporate taxpayers, this deduction cannot exceed 15% of the taxpayer's aggregate net income for that year for all trades or businesses from which the contributions were made.

Emergency Unemployment Relief for Non-Profit Organizations

Section 2103 of the CARES Act provides that the Department of Labor will make payments to states to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur through December 31, 2020 to pay unemployment benefits. While the specific amount of support is not defined by the current version of the Act, it notes that the amount will be "such sums as the Secretary of Labor estimates to be necessary."

5. Nonprofit Contracts in the Time of Coronavirus

Quarantines, self-isolation, and mandatory social distancing have given rise to canceled conferences and events, postponed fundraisers, discontinued and reduced non-profit services and empty public spaces, all of which have created significant uncertainty and massive disruption for non-profits of all types and sizes. Some of the more immediate situations organizations are dealing with is where performance under current agreements has been rendered difficult or not economically reasonable. Whether these agreements are for in-person consultant services, vendor contracts for non-essential in-person grant services, conference or fundraising venues and event planning services, or other matters that have now faced significant disruption or nonperformance, the question arises: how should organizations assess their contractual options and risk? For a more in-depth review of these and related contractual issues (across all industries), please see our previous alert here.

DISCLAIMER: Please note that the situation surrounding COVID-19 is evolving and that the subject matter discussed in these publications may change on a daily basis.

The professionals at Hodgson Russ LLP will continue to monitor this relief and publish updates as information becomes available. Please contact Marla Waiss or Patricia Sandison for any questions you may have regarding how this relief may impact your organization.

Please check our Coronavirus Resource Center to view many other alerts our attorneys in various practice areas have published on topics related to the pandemic.

If you received this alert from a third party or from visiting our website, and would like to be added to any of our mailing lists, please visit us at: https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications..html.