

MORE COVID-19 SALT UPDATES: JUNE 15 ESTIMATED TAXES AND NYC DECOUPLING

Hodgson Russ State & Local Tax Alert
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I. New York Estimated Tax Payment Due June 15:

While the Federal government has extended most filing and payment deadlines until July 15, New York has extended only those filings and payments due on April 15 (see New York Department of Taxation and Finance Notice N-20-2 here). So, on June 15, there are no Federal individual estimated tax payments due, but estimated taxpayers will still need to file and pay their New York State and City second quarter estimated payments.

Taxpayers might think that the amount needed to be paid on or before June 15 is only 25% of their 2020 required annual payment. However, we're not so sure. The instructions to Form IT-2105 (available here) require that 50% of the required annual payment be made on or before June 15 if it is "the first installment." Even taxpayers using the "annualized income method" for computing their estimates seem required by regulation to have paid-in 45% of the tax by June 15 (20 NYCRR 185.3 [a][5]).

Of course, there are different interpretations that might apply because of the extraordinary circumstances. One of our lawyers who is an estimated taxpayer called the Tax Department's Personal Income Tax Information Center and asked what percentage of the 2020 tax is required to be paid by estimated taxpayers on or before June 15, and was told that information had to come from their accountant. We have also reached out to our contacts in the Tax Department's upper echelons but have not received a response that clearly answers the question of how big of a New York estimated tax payment is due on June 15, 2020. The clearest guidance came in response to a call placed to the Tax Department's Tax Practitioners' Hotline, and was, that the June 15, 2020 payment should "be based on whatever your second quarter income is." However, that response seems less than reliable since most of us won't know what our second quarter income is until June 30.

In light of the uncertainty, and unless the Tax Department provides more guidance between now and then, even though we think there is a reasonable basis for paying a 25% estimate, very conservative taxpayers may want to have 50% of their annual 2020 New York tax liabilities paid in estimates on or before June 15.

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II. Decoupling Legislation in NYC:

New York City's initiative to decouple its business taxes from the Federal Coronavirus Aid Relief, and Economic Security (CARES) Act (P.L. 116-136) passed both houses of the New York Legislature on Wednesday, May 27, 2020. Assuming the Governor signs it, the Bill (A. 10519/S. 8411) will impose several restrictions on New York City business taxpayers' ability to access the benefits provided by the CARES Act.

A. Interest Expense Limits: The changes contained within the Bill would amend the Business Corporation Tax (BCT), the Unincorporated Business Tax (UBT), the General Corporation Tax (GCT), and the Banking Corporation Tax (BTX), further limiting taxpayers' ability to access increased federal IRC § 163(j) interest expense deductions, IRC § 172 Net Operating Loss (NOL) expansions, and IRC § 461(l) relaxed excess business loss limitations.

To recap, the CARES Act made taxpayer-favorable changes to IRC § 163(j), including (among other provisions) an increase in the federal business interest expense deduction cap from 30% to 50% of adjusted taxable income ("ATI"). In early April, the State Legislature decoupled from the cap-expansion provision of the CARES Act for all State and most City business taxpayers, but left other CARES Act interest expense amendments unaffected. The April decoupling left open the possibility that partnerships might still get the benefit of the CARES Act cap-expansion under the UBT. The Bill would modify the UBT, GCT, BCT and BTX so that City businesses will not benefit from any of the IRC § 163(j)(10) CARES Act changes through 2020. If the Bill becomes law, the resulting amendment limits the amount of business interest expense deduction available to 30% of the taxpayer's ATI, and not 50% of ATI as permitted by the CARES Act for UBT, GCT, BCT and BTX purposes. As a result, UBT taxpayers would clearly be prohibited from taking advantage of the 50% increased cap for UBT purposes, and all City business taxpayers would no longer be able to elect to use their 2019 ATIs in computing their 2020 City interest expense limitations.

B. Net Operating Losses: The CARES Act also loosened the restrictions on the utilization of NOLs. Under the 2017 Tax Cut and Jobs Act (TCJA), NOL carrybacks under IRC § 172 were eliminated and the use of NOL carryforwards (post-December 31, 2017) were limited to 80% of deduction-year taxable income. Under the CARES Act, taxpayers are permitted to carry back NOLs from 2018, 2019, and 2020 for five years, and the 80% utilization limit for tax years before January 1, 2021 is eliminated. But the Bill decouples from these CARES Act changes for UBT, GCT, BCT and BTX filers by introducing a fixed conformity date of March 1, 2020, with respect to the language of IRC § 172 (*i.e.* the post-TCJA but pre-CARES Act version). So, if the Bill becomes law, City business taxpayers will be compelled to follow the TCJA no-carryback regime.

C. UBT Excess Business Losses: Lastly, the Bill would decouple the UBT from the relaxed federal IRC § 461(l) excess business loss limits available to non-corporate taxpayers under the CARES Act. This change would also manifest itself in a fixed conformity date of March 1, 2020 for the version of IRC § 461(l) to be applied.

D. And What About Next Year?: One thing to keep in mind, as New York City and State work their ways through the changes in the CARES Act and attempt piecemeal decoupling legislation, is what will happen in 2021 and down the road.

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With most of the operative decoupling changes set to expire at the end of 2020, query how the City and State will treat the excess deductions accelerated into pre-2021 tax years for federal—but not City and State—income tax purposes. Will the City and State never allow the deductions for City and State tax purposes? Or will the City and State allow taxpayers to file post-2020 returns in a way that allows them to recognize a deferred benefit from the CARES Act deductions allowed for federal—but not City or State—purposes pre-2021? The way the decoupling provisions are drafted makes it difficult to determine whether the deductions claimed federally are intended to be forever excluded or merely deferred.

For questions on The CARES Act Decoupling Bill and how your business may be impacted, contact Chris Doyle (716.848.1458), Tim Noonan (716.848.1265) or any member of our SALT Practice.

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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