

STATE TAX ISSUES DUE TO THE COVID-19 PANDEMIC

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Agenda

- Due Dates – are we settled?
- CARES Act – State Conformity
- Potential Nexus Issues
- State Tax Withholding – how is it impacted?
- What's ahead



Polling question #1

Where are you currently working?

- A. In the office
- B. Remotely from your home office
- C. From your beach house
- D. Prefer not to say

Due Dates



Due Dates – Income Taxes – All Settled?

- A majority of states and DC extended the tax filing and payment due dates for corporations and individuals to July 15, 2020. Most waived interest and penalties.
- Extensions generally have applied to Q1 2020 payments; mixed results with Q2 2020 payments. Some extended to 7/15, some still due 6/15.
- Not all states have followed suit with the IRS: our own VA – Corporate and Pass Through Entity Returns due 4/15; Individual and Trust returns due 5/1 but payments allowed by 6/1 without interest/penalty. If extended, pay by 6/1 but not file until extended due date.

Due Dates – Other Taxes

- › State Gross Receipts Taxes (CAT, B&O, etc.)
- › Trust Fund Taxes
 - › Sales tax - different approaches but mostly limited relief
 - › Meals/Lodging Taxes – limited relief
 - › Withholding – little to no payment relief
- › State Unemployment Contributions
- › Local Taxes – limited relief
 - › Richmond Metro Area – extended due dates



CARES ACT: STATE CONFORMITY

CARES Act – Key Provisions

Paycheck Protection Program – loans forgiven and excluded from federal income tax

Excess Business Losses - Modification of limitation on losses (excess business losses) –for tax years 2018 - 2020

Depreciation of Qualified Improvement Property (QIP) – QIP placed in service after 12/31/2017 may be classified as 15-year MACRS

NOL Carrybacks – Carryback of NOLs from tax years beginning 2018 through 2020 for up to five years

Interest Limitation Increase (IRC Section 163(j))



CARES Act – States' Response

- › States' Responses largely dependent upon state conformity to the IRC and whether state legislature has been in session to address federal changes.
- › Some states have announced guidance based upon current IRC conformity; some still silent on the issues.
- › Important to note that conformity to some/all of CARES provisions will be costly for the states.

Conformity to Key CARES Act Provisions

- › Conformity to Key Provisions – Corporate Tax:
 - › Loan Forgiveness – 21 states Tax; 25 states Not Tax
 - › 163j Provisions – 22 states conform; 24 states do not
 - › NOL Carryback – 38 states do not conform; 8 conform or have modified carryback provisions
- › 5 states do not have a corporate income tax
- › Similar results for individual tax

Virginia Fixed Date Conformity

- › VA has conformed to the Federal IRC as of 12/31/2019, no CARES conformity yet
 - › Some key provisions VA deconforms to: bonus depreciation, Interest limitations, exclusions of COD income
- › Historically Virginia has not conformed to the 5 year NOL Carry back
- › Look out for VA legislation with a new fixed date to conform or deconform to provisions of CARES Act

State Tax Considerations on Conformity

- › If filing amended returns or method change, what to do about state when a state has not formally addressed CARES
 - › File it under current tax law or hold the filing of amended
- › If filing a 2019 return and the state has not addressed CARES
 - › File under current tax law or take a chance, may amend
- › Considerations for NOL Carry backs
 - › States following federal NOL, such as VA, and do not conform- consider federal proforma return with correct NOL for state purposes



Polling Question #2

How many states does your company or you individually file an income tax return?

- A. Only one or two states
- B. In three to ten states
- C. In eleven to twenty states
- D. Over 20 states



NEXUS ISSUES

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Impact of Teleworking – Income Tax Nexus

- › Nexus typically created due to a physical presence in a state, with limited income tax exceptions due to federal law, PL 86-272.
- › With employees teleworking now, physical presence has been created in states where a business may not have traditionally had it.
- › Survey by CCH, as of June 2, 14 tax agencies have issued formal guidance creating temporary income tax nexus waivers due to mandatory COVID-19 stay at home orders: AL, DC, GA, IN, IA, MD, MA, MN, MS, NJ, ND, PA, RI, SC.
- › No state has said teleworking will create nexus – not yet anyway.
- › Some states indicated they will proceed on a case-by-case basis or to wait until they have enabling legislation – (HI, ID, IL, TX)

Teleworking – Impact on Apportionment Factors

- › States with property and payroll apportionment factors: obviously have possible change in factors
- › Impact on sales factor, particularly with cost of performance states (where the focus is on where the service is performed) vs. market-based sourcing where focus is on the customer/where benefit is received.
- › As of June 1, a few states have said teleworking will not affect apportionment – AL, MD, MA, MS, ND, RI, SC

Teleworking – Sales Tax Nexus

- › Wayfair – focus on economic nexus but physical nexus still very real.
- › Few states issued guidance that temporary presence of employees in-state due to pandemic will not create sales/use tax nexus – provided seller didn't otherwise have nexus.
- › As of June 2, MA, MN, NY, PA, RI announced no sales tax nexus due to telecommuters
- › Sellers should still be aware that the presence of a single telecommuter in a state may create sales/use tax obligations in some states.



STATE TAX WITHHOLDING

State Income Tax Withholding – How is it impacted?

- › State income tax withholding: typically wages are taxable to employees in the state in which **services are performed**, not employee's state of residence.
- › Exceptions to consider:
 - › De Minimis Rules
 - › Reciprocal Agreements example VA and MD
- › Issue arise for businesses with traveling employees who are working in other states. E.G, traveling salesperson, attorneys, CPAs.
- › Now an issue with telecommuting due to the pandemic?



State Income Tax Withholding

- › Approximately 12 states have indicated that state withholding requirements will not result from workers telecommuting from their states only due to the COVID-19 pandemic.
- › Some states (i.e., MA) have taken the position that if a business normally withheld for employees in that state but due to the virus those employees were not there, the state still expects withholding for those employees.
- › Other states have not issued guidance.



Polling Question #3

Which of the issues already discussed are of most concern to your business?

- A. CARES Act conformity at the state level
- B. Possible income/sales tax nexus issues created by telecommuting employees
- C. Possible state withholding requirements created by telecommuting employees
- D. None of the above



WHAT'S AHEAD...

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What's Ahead

- › State/local revenue shortfalls - special legislative sessions
- › COVID Targeted Relief
- › CARES Conformity
- › Amnesty programs
- › Shift to gross receipts taxes
- › Broadening of sales tax base and/or higher rates
- › More audit activity

Things To Consider

- › If decide to delay/defer payment of taxes: remember potential officer/director liability. A responsible person is any corporate officer who participates directly in preparing and filing returns
- › How the business may have changed, if any, to survive/adapt during the pandemic, and potential tax implications

Polling question #4

What do you think states will do to make up for revenue losses?

- A. Raise the sales tax rate or broaden the base
- B. Raise income tax rates
- C. Ask Congress for more money
- D. All of the above

Questions?

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