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Wine Industry: COVID-19 Tax Considerations



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Today's Topics

2020 Deferred Tax Deadlines

COVID-19 Legislation

- Families First Coronavirus Response Act (H.R. 6201)
- Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748)

Impacts for Business Taxpayers

Impacts for Individual Taxpayers

Operating in Uncertain Times



2020 Deferred Tax Deadlines

Deferral of Tax Filing & Payments

Payments and filings due between April 1, 2020 and July 15, 2020 deferred to July 15, 2020 includes:

- Most income tax returns and income payments due, also tax-exempt filings
- 1st and 2nd quarter estimated 2020 income tax payments

Extension request for deferral to July 15th is not required

- Extensions for deferral to October 15th deadline are due on July 15th

Interest and penalties will not accrue until July 15, 2020

Most, but not all, states have conformed to federal due date deferral



Deferral of Time-Sensitive Actions

The following deadlines for filing or actions that are due between April 1, 2020 and July 15, 2020 are extended to July 15, 2020:

- Certain deadlines for like-kind exchanges and involuntary conversions
- 180-day investments for a Qualified Opportunity Zone
- The adoption, election, retention, or change in accounting method or period
- Elections related to net operating loss carrybacks
- Entity classification elections on Form 8832
- Quick refund claims on Form 4466
- Filing an electing small business trust election



COVID-19 Legislation

Relief Legislation

Coronavirus Preparedness and Response Supplemental Appropriations Act (“Round 1”) – Enacted March 6, 2020

Families First Coronavirus Response Act (H.R. 6201) (“Round 2”) – Enacted March 18, 2020

Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748) (“Round 3”) – Enacted March 27, 2020

Round 4???



Families First Coronavirus Response Act

Expands FMLA and paid sick leave requirements

- *We recommend you consult with an attorney specializing in employment law to assess the implications of these changes on your business*

The Act offers payroll tax credits to offset costs for impacted employers



CARES Act

Includes tax provisions impacting business, individual and trust taxpayers

Includes non-tax provisions, including loans for struggling businesses and aid for state and local governments and certain impacted industries



Business Income Tax Provisions



NOL Modifications

NOLs allowed to be carried back up to 5 years

- For NOLs arising in years beginning after December 31, 2017, and before January 1, 2021
- Special rules and elections for Section 965(a) income inclusion years

NOL 80% of income limitation rule deferred

- Rule suspended until years beginning after December 31, 2020
- 100% utilization of NOLs to offset CY income is now allowed

Special rules for REITs and life insurance companies



A silhouette of a person in a dynamic, jumping pose, clearing a hurdle. The background is a warm sunset with a large, bright sun low on the horizon, creating a gradient of orange and yellow. The person is positioned on the left side of the frame, with their arms and legs extended in mid-air.

Considerations

Allows companies to utilize current losses, amend prior year returns, and apply for tax refunds with the goal of increasing cash flow

Increased permanent benefits can be obtained by carrying back losses to a tax year with a higher corporate tax rate

For calendar 2018 NOL, must file by June 30, 2020, if using faster tentative refund claim process



Considerations (cont.)

Consider interplay with other provisions, including tax credits, international tax (GILTI), short tax years, and states (among others)

Technical correction for TCJA drafting error impacts fiscal year-end taxpayers with an NOL in tax year beginning in 2017, ending in 2018 – tentative refund claim for carryback due July 27, 2020



Excess Business Loss Limitation Deferred

Excess business loss (EBL) rules under Section 461(l), enacted in 2018, are now suspended for tax years 2018, 2019, and 2020

- The EBL limitation rule required that losses attributable to a non-corporate taxpayer's trades or businesses cannot exceed \$250,000, or \$500,000 in the case of a joint tax return, with any amount carried forward to future years as a net operating loss carryforward.

EBL rules will be applicable for tax years 2021-2026



Considerations

Couple the changes to the excess business loss limitation rules with the changes in the net operating loss rules

Taxpayers who filed 2018 returns may be eligible to amend and request refunds

Technical amendments to statute were also made that will be important when the rules return in 2021



Qualified Improvement Property (QIP)

QIP is any improvement made by a taxpayer to interior nonresidential real property after building is placed in service, with the exception of:

- Enlargement to building
- Any elevator or escalator
- Improvement to internal structural framework of the building

Tax reform technical correction restores Congressional intent

Now, QIP placed in service starting in 2018 eligible for 15-year life and bonus depreciation (ADS life is 20 years, no bonus)



Considerations

May require an amended return or an accounting method change via Form 3115

Taxpayers that made real property trade or business election under Section 163(j), revocation via amended return permitted

QIP classifications since 2018 may require closer scrutiny to confirm requirements are met





Considerations (cont.)

Written binding contract in place prior to September 28, 2017?

- QIP Assets subject to 40% bonus (2018) and 30% bonus (2019) instead of 100%

Tangible property regulations (TPR)
– repairs and partial dispositions

Proper classification of Section 1245 property and scrutiny for larger projects



Section 163(j) Business Interest Limitation

Limitation on deduction increased to 50% of adjusted taxable income (up from 30%)

- Tax years beginning in 2019 and 2020 (for partnerships, 2020 only)

Taxpayers may elect to use 30% instead

Taxpayer can elect to use 2019 adjusted taxable income (ATI) for 2020 limitation computation

- Potentially favorable if ATI in 2019 exceeds ATI in 2020



Partnership Impacts

Partnerships must continue to use 30% for tax years beginning in 2019, but can use 50% for 2020

Excess business interest expense in 2019:

- Partners able to deduct 50% in 2020
- Remaining 50% is subject to Section 163(j) deductibility rules





Considerations

S corporations that filed for 2019 may want to amend return

With an increased limitation in 2019/2020, consider whether real property trade or business election is appropriate given technical correction to QIP



Faster Recovery of Corporate AMT Credit

Corporate AMT repealed by TCJA, with remaining credit recovered over 4 years

Under CARES Act, able to recover any remaining credit in 2019 tax year

Alternatively, election available to take credit in 2018 and file for a tentative refund



Considerations

Special election for the entire 2018 unused credit in a tentative refund claim potentially shortens the refund period, 90 day period for refund once claim made

Tentative refund claim can be made immediately but no later than December 30, 2020



Relief for Amending Partnership Returns

Applies to all partnerships subject to CAR (Centralized Audit Regime)

Allows partnerships to amend Form 1065 and Schedules K-1 for taxable years beginning in 2018 or 2019 rather than file Administrative Adjustment Request (AAR)

Amended returns and Schedules K-1 must be filed on or before September 20, 2020



Small Business Administration (SBA) Loans

SBA Loan – Economic Injury Disaster Loan

Economic Injury Disaster Loans (EIDL) available to businesses in all states:

- Small Business Definition: Based on the industry of the businesses, based on revenue and/or number of employees, and aggregation of affiliated business.
- Up to \$2 million to help meet financial obligations and operating expenses – loan amount will be based on your actual economic injury and needs.
 - Immediate advance of up to \$10,000 can be made within 3 days of successful application



SBA Loan – Economic Injury Disaster Loan

- Interest rate 3.75%.
- Term not to exceed 30 years and depends on your ability to repay the loan
- One year deferment of payments, however interest will accrue
- To apply, applicants must self-certify they are eligible to receive disaster assistance by completing the COVID-19 Economic Injury Disaster Loan Application available on SBA website





SBA Loan - Paycheck Protection Program

- Eligible borrowers can obtain loans from participating lenders in an amount equal to 2.5 times the borrowers average monthly payroll costs, and will not qualify for Employee Retention Credit for Employers, discussed later
- Maximum loan size is \$10 Million with interest rates capped at 4% and maximum maturity is 10 years
- Loan proceeds can be used for the following expenses: payroll, healthcare, insurance, rent and utilities
- A portion of the loan for the above expenses may be forgiven, if requirements are met



SBA Loan - Paycheck Protection Program

- Eligible employers:
 - 500 or fewer employees, or
 - SBA employee-based or revenue-based size standard corresponding to primary industry, or
 - “Alternative size standard”
- Affiliation rules under 13 C.F.R. 121.301(f) apply in determining eligibility
- “Seasonal business” rules
- Lenders are relying on the borrower to determine eligibility – consult with legal counsel to confirm eligibility requirements and ensure completeness and accuracy on application



SBA Loan - Paycheck Protection Program

- Still uncertainty surrounding this program; guidance is being released regularly
- Consider benefits of this program and potential loan forgiveness against other incentives available
- Work with lender to apply
 - Application can be found on Treasury's website
 - Additional information will be required by lender



Other SBA Loans & Programs

SBA Express Bridge Loans

- Enable small businesses with SBA Express Lender relationship to access up to \$25,000 quickly

SBA Debt Relief

- Provides financial reprieve (such as SBA making principal payments for SBA loans and microloans) for period of time

Discuss these alternatives with your SBA lender



Considerations

Keep detailed records of loan proceeds and expenses paid – consider opening a separate account or maintaining a separate ledger.

Uncertainty remains surrounding loan forgiveness calculations – consult with your tax advisor for assistance



Payroll & Excise Tax Provisions

Payment of Payroll Taxes Extended

Deposits of employer portion of Social Security taxes (6.2%) originally due between 3/27/20 and 1/1/21 may be deferred

For self-employed individual, employer portion of Social Security taxes (6.2%) may be deferred, but employee portion still due with 2020 tax return

Amounts deferred repaid over two years:

- 50% due on 12/31/21
- 50% due on 12/31/22



IRS FAQs on Payment of Payroll Taxes Extended

Form 941 will be revised for 2nd quarter 2020

No special election to defer required

Can defer payment of payroll taxes up until the employer determines whether they are entitled to the paid leave credits or the employee retention credit

Amounts deferred up until the date a loan is forgiven under the Paycheck Protection Program (PPP) can remain deferred



Employee Retention Credit

For a qualifying employer, credit equal to 50% of wages paid to employee, in each qualifying quarter, up to a total of \$10,000 of wages per employee for all quarters

Maximum credit per employee is \$5,000

Credit offsets FICA taxes due – any excess is refundable



Employee Retention Credit

Qualifying businesses must have experienced either:

- 1) Partial or full suspension of operations due to governmental orders that limited commerce, travel, or group meetings due to COVID-19
- 2) A significant decline in gross receipts (GR), which begins with the quarter in which GR are less than 50% of the GR of the same prior calendar year quarter and ends with the quarter where GR are at least 80% of the GR for the same prior calendar quarter



Employee Retention Credit

Eligible wages include regular wages paid plus health plan expenses allocable to the qualified wages under an employer-sponsored plan

- Businesses with 100 or less employees? Credit is allowed on all eligible wages paid to employees regardless of whether they are performing services
- Businesses with greater than 100 employees? Credit is based solely on eligible wages paid to employees who are not providing services due to COVID-19



Considerations

The same wages cannot be used to calculate both the employee retention credit and the work opportunity tax credit (WOTC)

Retention credit cannot be used in conjunction with the SBA loans or paid sick & family leave credits





Considerations (cont.)

Tax-exempt employers are eligible for the credit

IRS has released draft Form 7200 to be used to file for COVID-19 related credit claims

Penalty relief provided for failure to deposit



Payroll Tax Credits

Credit for paid sick and family leave provided under Families First Coronavirus Response Act

Available for small and mid-size employers

Employer reimbursement for employers who are required to comply with new rules



Paid Sick Leave Credit

Credit is available to employers with 500 or less full-time and part-time employees who are required to comply with the new rules

- *Employers should consult with a employment law attorney to confirm eligibility*

Applies to wages paid for employees who need to take a paid leave as a result of COVID-19 beginning April 1, 2020, through December 31, 2020

Credit may be used against employers social security taxes equal to 100% of the qualified wages paid; excess credit may be refunded



Paid Sick Leave Credit

Employees who must self-isolate, obtain a diagnosis or comply with a self-isolation recommendation with respect to COVID-19

- Qualified sick wages are paid at 100% rate of normal pay and are capped at \$511 per day for up to an aggregate total of 10 days or \$5,110 in wages

Employees who have to care for a family member or child whose school or place of care has been closed

- Qualified sick wages are paid at 2/3 rate of normal pay and are capped at \$200 per day for up to an aggregate total of 10 days or \$2,000 in wages



Paid Family Leave Credit

In addition to the paid sick leave credit, employers may take an additional credit for employees who have to care for a family member or child whose school or place of care has been closed

- Qualified wages are paid at 2/3 rate of normal pay and are capped at \$200 per day and up to an aggregate total of an additional 10 weeks or \$10,000 in wages



Considerations

Employers should document as much as possible. This includes, but is not limited to, approach for determination of qualification, eligible employees, payroll paid, etc.

IRS has released draft Form 7200 to be used to file for COVID-19 related credit claims





Excise Tax Exemptions

Hand sanitizer produced by distillers between 12/31/19 and 1/1/21 is exempt from excise tax

Exemptions for certain aviation excise taxes through 2020



Texas Response to COVID-19



Texas Response to COVID-19

Franchise Tax Deadline

- Reports or Extensions now due 7/15, same extension rules apply

Sales Tax

- Delayed filing is on a case by case basis

Reopening Texas

- “Retail-to-Go” starting April 24, 2020 – specific guidelines to how this will look should be followed
- May 1 – Reopening of non-essential retail, shopping malls, restaurants, and movie theatres at 25% capacity



Individual Income and Trust Tax Provisions

“Recovery Rebates” For Individuals

\$1,200 tax credit – paid in advance – for each qualifying individual (\$2,400 for married couples)

- Does not include nonresident aliens, individuals that can be claimed as a dependent by another taxpayer, and estates/trusts

Additional \$500 tax credit for each qualifying child

- To qualify, child must qualify for the child tax credit (generally, those under age 17)





Adjusted Gross Income Limitations

Applies to the combined credit for the taxpayer(s) and any qualifying children, subject to phase out

Filing Type	AGI Threshold
Single Filers	\$75,000
Married Filing Joint	\$150,000
Head of Household Filers	\$112,500



Credit Phase Out

The credit is phased out by 5% for every dollar over AGI threshold

Examples:

Taxpayer	# of Children	Credit Phased-out if AGI Exceeds:
Single Taxpayer	0	\$99,000
Single Taxpayer	1	\$109,000
MFJ Taxpayer	0	\$198,000
MFJ Taxpayer	2	\$218,000
HOH Taxpayer	1	\$146,500
HOH Taxpayer	2	\$156,500



“Recovery Rebates” = Advance Refund

IRS will automatically pay out the applicable credit

Calculation based on 2019 tax return (if filed) or 2018 tax return

- If neither filed, based on amounts reported on Form SSA-1099 and Form RRB-1099

Refund received via direct deposit (if reported on latest tax return) or by mailed check

Credit will be recalculated on 2020 return using 2020 AGI. Any excess rebate received will not need to be repaid though additional amounts due may be claimed.



Charitable Contributions

\$300 above the line deduction available in 2020 for taxpayers who do not itemize in 2020

Charitable contribution deduction limitation raised to 100% of AGI for cash contributions made in 2020

Contributions must:

- Not be made to a Section 509(a)(3) supporting organization or donor advised fund



Retirement Funds Provisions

Maximum \$100,000 distribution available through 12/31/20

- For coronavirus related distributions
 - Yourself, spouse or dependent diagnosed with Covid-19 or experiencing adverse financial consequences from reduced work hours, laid off or furloughed.
- 10% early withdrawal penalty waived, but still may be included in income
 - Income inclusion of distribution can be spread over 3 years
 - Income inclusion waived if distributed amount re-contributed within 3 years

Maximum loan amount raised to \$100,000, repayment rules extended one year

Required minimum distributions are not required for 2020





Expansion of Employer Student Loan Payments

Employers can pay up to \$5,250 of employee's educational expenses tax-free

CARES Act permits student loan repayment to count as educational expenses for 2020, up to overall \$5,250 limit, for amounts paid after enactment of CARES Act



Considerations

If 2019 income exceeds 2018, consider filing 2019 return later if you are eligible for recovery rebates

Consider skipping the required minimum distribution payout for 2020 to the extent it isn't needed for finances, which could help you qualify for the tax credit if you didn't already qualify.

If IRA distributions are needed to cover financial needs, consider repaying them over 3 years to avoid income inclusion



Excess Business Losses

Excess business loss (EBL) rules for non-corporate taxpayers are postponed until years beginning after 2020

- Since 2018, no excess business loss over \$250,000 (single) or \$500,000 (joint taxpayers) was allowed. The excess converted to an NOL and was carried forward.
- This rule has been suspended until 2021, retroactive to 2018. Look for opportunities to file amended returns.



NOL Carryback Restored, Limitation Rule Deferred

NOLs allowed to be carried back up to 5 years

- For NOLs arising in years beginning in 2018, 2019, or 2020
- Special rules for Section 965(a) income inclusion years

Tax reform-enacted rule limiting NOL carryovers to 80% of income deferred

- Does not apply until years beginning after December 31, 2020
- Until then, 100% utilization of NOL carryovers to offset CY income is allowed



Other Business-Related Provisions

Partners who are allocated excess business interest expense (EBIE) for 2019 can deduct 50% of the amount in 2020. Remaining 50% follows normal 163(j) rules

Business interest limitation has generally been increased from 30% to 50% of adjusted taxable income for 2019 and 2020 (partnerships, only for 2020).

Qualified improvement property (“retail glitch”) fixed

- Qualified improvement property is now assigned a 15 year life and eligible for bonus retroactive to 2018; however, if real property trade or business election under Section 163(j) was made, QIP is depreciated over ADS life (20 years).





Considerations

Look for net operating losses generated in 2018 that may now be carried back

Look for opportunity to amend 2018 returns for excess business loss limitations that are no longer limited

Look for opportunity to catch-up depreciation for qualified improvement property that may now be subject to bonus but keep in mind real property trade or business election under Section 163(j)



Operating in Uncertain Times



Navigating Through Financial Planning

While we understand that any loans from the EIDL SBA Program or the SBA Loan Program under the CARES Act may take some time to fund, the following are some immediate actions that you can put in place to assist with your cash flow needs:

- Prepare weekly cash flow budgets for the next 90 days.
- Recast financial projections for 2020.
- Review head count and consider the need for salary reductions, layoffs or furloughs.
- Talk to your landlords about reduction or abatements in lease payments. Reductions could be added to the back end of the lease or amortized.





Navigating Through Financial Planning

- Work with your lender to possibly defer payments such as interest, term loan payments and increased availability on credit facilities such as short term over advance facilities.
- Eliminate all discretionary spending that you deem appropriate.
- Make sure all bank accounts are reconciled daily.
- Prepare daily factor availability reconciliations and bank borrowing base calculations.
- Review business interruption or other insurance in place.
- Talk to your lenders re your financial covenants and also potentially delaying the delivery of your 2019 audit report, if needed.



A vertical image on the left side of the slide showing a person swimming underwater. The person is seen from below, with their arms and legs spread out, creating a star-like shape. Bubbles are rising from their mouth. The water is a deep blue color.

Operating in Uncertain Times

- Consider offering deep discounts on your e-commerce distribution channel to attract more consumers, this may be your only source of revenue for some time.
- Talk to your influencers, to the extent that you can, to help drive business to your website now more than ever.
- Review the supply chain and negotiate extended payment terms.
- Proactively work with your supply chain to cancel or delay orders where appropriate.





Plan for the Future

- Tone at the Top
- Agility is necessary – lots of “wait and see”
- Shifting consumer demands & volatility
- Long-term shifts in business model considerations
- “What if” analyses
- Balance sheet management
- Continuity planning



We are here to help



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