2020

YEAR-END TAX PLANNING GUIDE

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Welcome to RKL's
2020 Year-End Tax Planning Guide ›

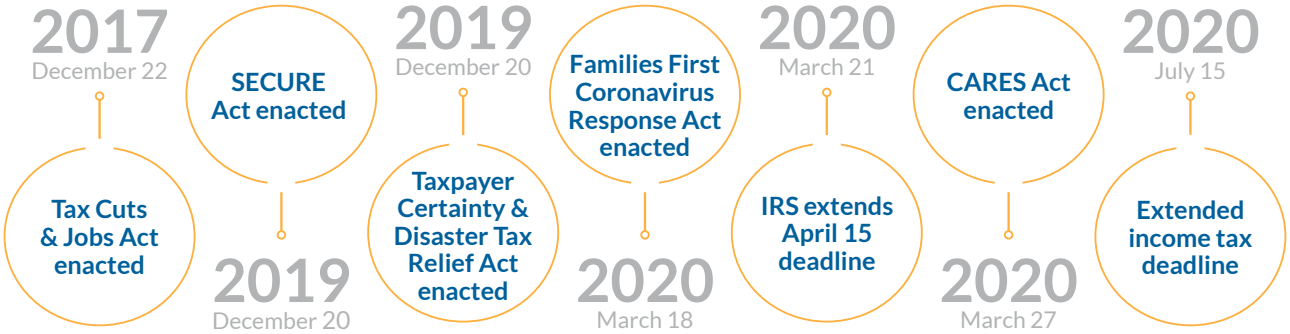
We thought we knew what was in store for 2020 – continued regulatory interpretation and clarifications around tax reform, and education for individuals and business owners on the tax and retirement planning changes passed as part of the SECURE Act in December 2019.

Just three months into the year, we were confronted with an unprecedented event: a global pandemic that ground the economy to a halt and provoked historic levels of government intervention and fiscal stimulus. Faced with this upended reality, some businesses and organizations struggled to maintain financial footing as others tapped into new levels of demand.

As we compiled the major tax-related legislative and regulatory events into the timeline on this page, it really hit home just how rapid and transformative these changes have been. The tax code has been altered in key ways and many traditional practices are now a thing of the past. This guide is intended to provide an overview of timeless tax advice as well as an update on new provisions and opportunities. I hope you'll find it to be a reliable resource during a time of tumult, and use it to spur conversations with your RKL advisor as you move through year-end planning and prepare for 2021.

After all, if we've learned anything from this disruptive year, it is the power of trusted relationships and a proactive approach. We don't know what's next, but we promise to be right there alongside you, helping you advance your financial goals and defending your best interests amidst the ups and downs of business and life.

ROBERT M. GRATALO, CPA, MST
Partner & Leader | Tax Services Group



Quick Guide:
2020 Tax Year Figures & Filings ›

Standard Deduction

Married Filing Jointly	$24,800
Single	$12,400
Head of Household	$18,650
Married Filing Separately	$12,400

IRA Contribution (Traditional & Roth)

$6,000, with additional $1,000 catchup age 50 or over

Federal Estate Tax

40% (maximum rate)

Annual Gift Tax Exclusions

$15,000 or $30,000 if gift-splitting with spouse

Health Savings Account (HSA) Contribution (employer+employee)

Self-only	$3,550
Family	$7,100
Age 55 or older (HSA catch-up contribution)	$1,000

High-Deductible Health Plan (HDHP)

Minimum Deductibles	$1,400 (self-only) $2,800 (family)
Maximum Out-of-Pocket amounts (deductibles, co-payments and other amounts excluding premiums):	$6,900 (self-only) $13,800 (family)

Deadlines for Key 2020 Tax Filings

Tax Type	Due Date (for calendar year entities)
Partnerships (Form 1065) S Corporations (Form 1120S)	March 15, 2021
Individuals (Form 1040) C Corporations (Form 1120) Foreign Bank and Financial Reporting Form (FBAR) FinCEN Report 114 Trusts and estates (Form 1041)	April 15, 2021
Tax-exempt nonprofit organizations (Form 990)	May 17, 2021
Extended return filing: Partnerships (Form 1065) S Corporations (Form 1120S)	September 15, 2021
Extended return filing: Trusts and estates (Form 1041)	September 30, 2021
Extended return filing: Individuals (Form 1040) Foreign Financial Reporting (FBAR) C Corporations (Form 1120)	October 15, 2021
Extended return filing: Tax-exempt nonprofit organizations (Form 990)	November 15, 2021


1065
1120
U.S. Corporation Income Tax Return
1040
U.S. Individual Income Tax Return
2019
Sign Here
Paid Preparer Use Only

Individual **Tax Planning**

Key Individual Considerations: Tax Year 2020

STIMULUS PAYMENT RECONCILIATION

Under the CARES Act, payments in the amount of $1,200 (single) or $2,400 (married filing jointly) were distributed to eligible Americans, plus $500 for each child under the age of 17 (subject to adjusted gross income limitations). These one-time payments are not taxable. They are an advance payment of a credit that will be recomputed on the 2020 Form 1040. If the recomputed credit is higher based on changes in income or qualifying children, the taxpayer will get additional credit on the 2020 Form 1040. If it is lower, repayment of the excess amount is not expected, but the IRS has not yet officially confirmed or released further guidance. Stay tuned to RKLcpa.com or follow RKL on LinkedIn for updates.

CONDUCT A PAYCHECK CHECKUP

Personal federal withholding checkups have long been recommended, but the disruption associated with the pandemic makes this best practice even more vital. With so many individuals and families experiencing personal, residential and financial changes due to COVID-19, it is critical to review information on Form W-4 to avoid any surprises at tax time. Form W-4 may be changed at any time. Employers are required to update withholdings by the start of the first payroll period ending the 30th day from the date received. The IRS offers a Tax Withholding Estimator tool to assist taxpayers with completing the Form W-4.

USE OF RETIREMENT FUNDS FOR CORONAVIRUS COSTS

The CARES Act permits individuals under the age of 59½ to withdraw up to $100,000 from retirement funds during 2020 for coronavirus costs without triggering the usual 10 percent early withdrawal penalty under Section 72(t). There will be income tax on any coronavirus-related withdrawals, but it can be spread over three years starting in 2020. If you repay the withdrawal to the account within three years, you can avoid the income tax. The loan limit from retirement plans doubles from $50,000 to $100,000 for the 180 days after CARES Act enactment (March 27, 2020). Learn more CARES Act retirement planning impacts and considerations on page 16.

2020 Personal Income
Tax Rates & Brackets ›

Rate	Single	Head of Household	Married Filing Jointly	Married Filing Separately
10%	$0 to $9,875	$0 to $14,100	$0 to $19,750	$0 to $9,875
	Tax Owed 10% of taxable income	**Tax Owed** 10% of taxable income	**Tax Owed** 10% of taxable income	**Tax Owed** 10% of taxable income
12%	$9,876 to $40,125	$14,101 to $53,700	$19,751 to $80,250	$9,876 to $40,125
	Tax Owed $987.50 plus 12% of the excess over $9,875	**Tax Owed** $1,410 plus 12% of the excess over $14,100	**Tax Owed** $1,975 plus 12% of the excess over $19,750	**Tax Owed** $987.50 plus 12% of the excess over $9,875
22%	$40,126 to $85,525	$53,701 to $85,500	$80,251 to $171,050	$40,126 to $85,525
	Tax Owed $4,617.50 plus 22% of the excess over $40,125	**Tax Owed** $6,162 plus 22% of the excess over $53,700	**Tax Owed** $9,235 plus 22% of the excess over $80,250	**Tax Owed** $4,617.50 plus 22% of the excess over $40,125
24%	$85,526 to $163,300	$85,501 to $163,300	$171,051 to $326,600	$85,526 to $163,300
	Tax Owed $14,605.50 plus 24% of the excess over $85,525	**Tax Owed** $13,158 plus 24% of the excess over $85,500	**Tax Owed** $29,211 plus 24% of the excess over $171,050	**Tax Owed** $14,605.50 plus 24% of the excess over $85,525
32%	$163,301 to $207,350	$163,301 to $207,350	$326,601 to $414,700	$163,301 to $207,350
	Tax Owed $33,271.50 plus 32% of the excess over $163,300	**Tax Owed** $31,830 plus 32% of the excess over $163,300	**Tax Owed** $66,543 plus 32% of the excess over $326,600	**Tax Owed** $33,271.50 plus 32% of the excess over $163,300
35%	$207,351 to $518,400	$207,351 to $518,400	$414,701 to $622,050	$207,351 to $311,025
	Tax Owed $47,367.50 plus 35% of the excess over $207,350	**Tax Owed** $45,926 plus 35% of the excess over $207,350	**Tax Owed** $94,735 plus 35% of the excess over $414,700	**Tax Owed** $47,367.50 plus 35% of the excess over $207,350
37%	$518,401+	$518,401+	$622,051+	$311,026+
	Tax Owed $156,235 plus 37% of the excess over $518,400	**Tax Owed** $154,793.50 plus 37% of the excess over $518,400	**Tax Owed** $167,307.50 plus 37% of the excess over $622,050	**Tax Owed** $83,653.75 plus 37% of the excess over $311,025

Taxable **Income**

Individual taxpayers often derive income from multiple sources during the year. The common income sources cited below, along with any others, contribute to a taxpayer's adjusted gross income (AGI) for 2020, which is then reduced by deductions.

- **Salaries and wages**
- **Interest and dividends**
- **Capital gains or losses**
  - Short-term capital gains/losses (assets held for less than one year)
    - Taxed at ordinary tax rates (see page 5)
  - Long-term capital gains/losses (assets held for more than one year)
    - Generally taxed at lower capital gains rates (see page 14)
    - Qualified dividends are also taxed at capital gain rates
- **Business income, rental income and royalties from sole proprietorships, partnerships, S Corporations, trusts and estates**
- **Pensions and IRAs**
  - Under the SECURE Act of 2019, the age for taking required minimum distributions (RMDs) was pushed back from 70½ to 72.
  - CARES Act changes:
    - All 2020 RMDs were deferred
    - If a taxpayer had taken an RMD prior to the passage of the CARES Act, they were allowed to rollover this distribution
    - Delaying or rolling over RMDs would reduce overall taxable income and result in a lower tax rate
- **Income from a trust or estate**
- **Social Security** (see page 17 for more detail on taxability)
- **Unemployment compensation:** These benefit payments have received greater attention in 2020 due to the pandemic. All unemployment compensation, including the additional $600 payment, is taxable on your federal return. This compensation may also be taxable in some states.
- **Net operating losses:** Under the CARES Act, a taxpayer with a net operating loss (NOL) generated during 2018, 2019 or 2020 can carryback the loss for five years. The taxpayer can also elect to waive the carryback period and apply the NOL to future taxable years. Learn more on page 37.

Common Adjustments to **Taxable Income**

Moving expenses: Available only to members of the Armed Forces (or their spouses or dependents) who are active duty and required to move by military order related to a permanent change of station.

Alimony and child support: For divorce or separation instruments executed after December 31, 2018, alimony payments will no longer be included in taxable income. Additionally, the payments are not deductible by the payor. This treatment of alimony payments also applies to divorce or separation decrees that are modified after December 31, 2018, if the modification specifically states that the new treatment of alimony payments now applies. For individuals who must pay alimony, this change may be costly. Child support payments remain non-deductible by the payor.

Self-employed deductions: There are a few deductions that only apply to individuals who are self-employed. Particularly, these include a deduction for health insurance premiums, a deduction for 50 percent of self-employment tax paid and contributions to retirement plans.

Question: ***I've been working remotely during COVID-19. Can I take a home office tax deduction?***

Answer: The answer for the majority of taxpayers is no. The Tax Cuts and Jobs Act suspended miscellaneous itemized deductions through tax year 2025. This category of deduction includes unreimbursed employee business expenses, such as costs associated with a home office. Exceptions include partners in a partnership and taxpayers who report income/loss on a Schedule C. Also, states and localities may have different rules governing this deduction so double check rules for eligibility.

Student loan interest deduction: Borrowers can deduct education loan interest up to $2,500 per tax year, subject to annual income limitations of $85,000 (single) and $170,000 (married filing jointly).

NOTE: The CARES Act suspended federal loan payments and halted interest accumulation through September 30, 2020. These provisions were extended through December 31, 2020, via a presidential memorandum signed on August 8, 2020.

Educator expense deduction: Teachers who buy supplies for their classrooms at their personal expense can deduct up to $250 of purchases.

Qualified business income deduction (Section 199A): Many individuals who earn income from pass-through entities, real estate properties or other business ventures may be eligible for the qualified business income deduction, also known as Section 199A. This deduction allows eligible taxpayers to reduce taxable income from their business by up to 20 percent. Please refer to page 40 of this guide for more information on Section 199A.

New for 2020: Final estate/trust deduction

The IRS recently issued proposed regulations that allow taxpayers to take a deduction for the expenses passed through to an individual from the termination of an estate or trust. These expenses can be deducted either as an adjustment to income or an itemized deduction, depending upon the character of the expense. See page 21 for more detail on this topic.

Standard **Deduction**

Many taxpayers who previously itemized deductions will now find the standard deduction more beneficial. Although there is less to track, taxpayers should continue to document itemized deductions.

2020 Filing Status	2020 Standard Deduction
Single/Married Filing Separately	$12,400
Married Filing Jointly/Surviving Spouse	$24,800
Head of Household	$18,650

Adjusted for inflation using the Chained Consumer Price Index for All Urban Consumers (C-CPI-U)

Dependent filers: The standard deduction amount for an individual who may be claimed as a dependent by another taxpayer cannot exceed the greater of $1,100 or the sum of $350 and the individual's earned income up to $12,400.

Additional standard deduction: If a taxpayer is age 65 or older and/or blind on the last day of the tax year, he or she is entitled to take an additional standard deduction. This additional deduction amount equals $1,300 and increases to $1,650 for unmarried taxpayers.

Common Itemized **Deductions**

Taxpayers who choose to itemize may be eligible for the popular deductions outlined below, along with a few changes that took effect in 2020. All changes made to individual tax deductions are temporary and generally expire after 2025.

Medical expenses: For 2020, taxpayers may deduct medical expenses in excess of 10 percent of adjusted gross income (AGI). This is an increase in the threshold that was at 7.5 percent for the past two years.

Charitable contributions: This popular deduction remains available for taxpayers, and will have significant changes for the 2020 tax year only due to the CARES Act. The income limitation for cash donations to public charities was removed, and individuals may now deduct charitable contributions up to 100 percent of adjusted gross income (AGI). However, noncash contributions remain limited to 50 percent of AGI, and capital gain property donations, like appreciated stock, remains capped at 30 percent of AGI. This deduction will be reported as an itemized deduction. Additionally, the IRS is allowing a $300 charitable contribution deduction for cash contributions to public charities for those who do not itemize their deductions. At the time this guide went to print, the IRS guidance is still unclear about whether taxpayers who file jointly may take a $600 deduction.

Property tax and state and local income tax deductions: These deductions are cumulatively capped at $10,000 for married filing jointly and single taxpayers and $5,000 for married filing separately taxpayers. Foreign real estate property taxes are not deductible unless the property is used in a trade or business.

Mortgage interest: The deduction for mortgage interest is limited to debt of up to $750,000 incurred after December 15, 2017. For debt incurred before December 15, 2017, the debt limit is $1,000,000.

Home equity loan interest: Home equity loan interest remains deductible, subject to usage criteria. Interest from home equity loans and lines of credit may be deductible, provided the loan proceeds are used to "buy, build or substantially improve" the home that secures the loan. Any other use is not permitted for the deduction.

Dependent **Credits**

Child Tax Credit: The Child Tax Credit remains $2,000 for each qualifying child under the age of 17. The definition of qualifying child has also remained the same. The Child Tax Credit starts to phase out by $50 for each $1,000 of modified adjusted gross income (MAGI) over $400,000 for married filing jointly taxpayers and $200,000 for other filing statuses. The majority of the Child Tax Credit is refundable and will be indexed for inflation. **For 2020, the refundable amount is $1,400 per eligible child.** If you are claiming the nonrefundable and refundable portion of the Child Tax Credit, dependent Social Security numbers (SSN) are required and must be issued prior to the due date of the tax return including extensions.

Other Dependent Credit: This $500 credit applies to any dependents who are not qualifying children under age 17. There is no age limit for the $500 credit but the tests for dependency must be met. **This credit is nonrefundable and begins to phase out at MAGI of $200,000 ($400,000 if married filing jointly).** A SSN is not required to claim the Other Dependent Credit, but an Individual Taxpayer Identification Number is.

Kiddie Tax Update

The Tax Cuts and Jobs Act (TCJA) changed the way unearned income (typically from investments) of children and young adults was taxed. It switched from the parent's marginal federal income tax rate (if higher than the child's) to the rates paid by trusts and estates. The SECURE Act of 2019 reverts Kiddie Tax rates to pre-TCJA levels. This change is effective for tax year 2020, but there is an option to amend returns for 2018 or 2019 returns impacted by the TCJA rates.

Education **Credits**

American Opportunity Tax Credit: Taxpayers with MAGI of under $90,000 (single) or $180,000 (married filing jointly) may be eligible for a maximum credit of $2,500 for qualified tuition, fees and course material expenses paid during the tax year for themselves or their dependents who have not completed the first four years of post-secondary education. The credit is per eligible student.

Lifetime Learning Credit: This credit is capped at $2,000 per tax return and phases out for taxpayers with adjusted gross income above $68,000 (single filers) and $136,000 (married filing jointly). This credit is available to offset expenses related to tuition, fees and course-related books, supplies and equipment for all years of higher education, including additional courses to acquire or improve job skills.

529 Plans

Funds saved in a 529 account can be used at most colleges and trade schools, and may be used to cover up to $10,000 of educational expenses for designated beneficiaries enrolled at a public, private or religious elementary or secondary school. Refer to page 24 for more information on 529 plans.

Additional **Taxes**

Alternative Minimum Tax

Alternative Minimum Tax (AMT) is calculated using a different set of tax rules than those used for regular tax, and some traditional deductions are not permitted. Certain income and expenses are also recognized under different rules for AMT. If the AMT calculation of tax is higher than regular tax, the taxpayer must pay the additional AMT tax, which is levied at two rates: 26 percent and 28 percent. In 2020, the 28 percent AMT rate applies to incomes of $197,900 or higher for all taxpayers ($98,950 and above for married couples filing separate returns).

Filing Status	2020 AMT Exemption Amount
Married Filing Jointly/Surviving Spouse	$113,400
Single/Head of Household	$72,900
Married Filing Separately	$56,700

Net Investment Income Tax

Certain individuals may be subject to a 3.8 percent tax on net investment income (NII), which includes interest, annuities, dividends, net capital gain, rents and passive business or trade income. There are several options to lesson NII exposure, which can be evaluated in the context of your unique financial circumstances with your RKL advisor, such as shifting taxable investments to tax-free vehicles, offsetting the income with deductions, and grouping similar categories of investment income activities.

NII is calculated as the lesser of (1) net investment income, or (2) excess of modified adjusted gross income (MAGI) over the applicable threshold amount, as seen in the chart below.

Filing Status	Tax Imposed When MAGI Exceeds:
Married Filing Jointly	$250,000
Married Filing Separately	$125,000
All Other Filers	$200,000

Additional Medicare Surtax

Higher-income salaried or self-employed individuals must also pay a 0.9 percent additional Medicare tax on any wages, compensation or self-employment income exceeding the threshold amount of $250,000 (married filing jointly), $125,000 (married filing separately) or $200,000 (single). For wage earners, this tax may be withheld by employers.

Foreign Financial Account & Asset **Reporting Requirements**

Two of the most common triggers for annual reporting of foreign financial accounts and assets are ownership of foreign bank accounts or assets and signature authority for a company's foreign bank account. Other reportable foreign financial accounts include investment or retirement assets held in foreign jurisdictions and foreign trusts. Your RKL advisor can assess and navigate the complex calculations and reporting requirements for these types of foreign asset holdings, which are reported to the IRS and the U.S. Department of Treasury using Form 8938 and Form FinCEN 114.

Form 114, Reports of Foreign Bank and Financial Accounts (FBAR)

Taxpayers who own or have signature authority over foreign accounts with balances that total in excess of $10,000 must electronically file an FBAR. The IRS defines "authority" as the ability to initiate account withdrawals, and its definition of "financial account" includes, but is not limited to:

- Traditional bank accounts and other accounts held with a financial institution
- Brokerage or commodities accounts
- Insurance and annuity policies with a cash value
- Mutual funds

The $10,000 figure is the aggregate of all accounts, and each account is measured at its maximum balance during the year. Whether or not a foreign account produces taxable income has no bearing on the FBAR filing requirement.

Filing Deadline:

FBARs are due April 15 following the calendar year reported. Taxpayers are automatically granted a six-month extension until October 15 (no extension request needed).

Penalties:

Non-willful failure to file an FBAR can trigger penalties of up to $10,000 per foreign account. Willful non-filers can be penalized up to $100,000 or 50 percent of the account value, and may also face criminal charges (depending on facts and circumstances).

Form 8938, Statement of Specified Foreign Financial Assets

Under the Foreign Account Tax Compliance Act (FATCA), taxpayers who hold certain levels of foreign assets during or at the end of a tax year must report these holdings on Form 8938. Foreign financial accounts (reported via FBAR) and foreign assets held directly (i.e. foreign stock, securities or debt) are included in FATCA's definition of specified foreign financial assets. Filing Form 8938 does not relieve taxpayers of filing responsibility for FBAR (Form 114).

The chart below details the reporting thresholds for various tax filing statuses. Generally speaking, only individuals and specified domestic entities (closely held entities which derive at least 50 percent of their income from passive activities) must file Form 8938, but your RKL advisor can help determine whether you have a filing requirement.

FATCA Reporting Thresholds

Taxpayer Type	Amount on last day of year exceeding:		Amount at any time during year exceeding:
Unmarried, living in U.S.	$50,000		$75,000
Married Filing Separately, living in U.S.	$50,000	OR	$75,000
Married Filing Jointly, living in U.S.	$100,000		$150,000
Unmarried, living abroad	$200,000		$300,000
Married Filing Separately, living abroad	$200,000		$300,000
Married Filing Jointly, living abroad	$400,000		$600,000

Filing Deadline:

Form 8938 is attached to a taxpayer's annual return and must be filed by the due date, including extensions, for that return. For individuals and calendar-year C Corporations, this would be April 15 with a six-month extension available upon request.

Penalties:

Failure to file Form 8938 can result in a $10,000 penalty. Continued failure after IRS notification can result in additional penalties of up to $50,000 and a 40 percent penalty on an understatement of tax attributable to non-disclosed assets.

Quick Guide: Wealth Management Facts & Figures

Traditional & Roth IRA Contribution Limits	$6,000 under age 50 (same as 2019 limit) $1,000 additional catchup contribution for ages 50+ (same as 2019 limit)
Roth IRA Contribution Income Limits	Based on Modified Adjusted Gross Income (MAGI) Single & HOH filers MAGI must be under $124,000 to contribute full amount • Phase out contribution from $124,000 – $139,000 Married Filing Joint filers MAGI must be under $196,000 to contribute full amount • Phase out contribution from $196,000 – $206,000
401(k), 403(b) and 457 Plan Elective Deferral Limits	$19,500 under age 50 $6,500 additional catchup contribution for ages 50+ (may not apply to all 457 plans)
SIMPLE IRA Elective Deferral Limits	$13,500 under age 50 $3,000 additional catchup contribution for ages 50+
Profit Sharing & SEP Plan Limits	Contribution limit is lesser of: • $57,000 or 25% of compensation (20% if self-employed) Maximum of $285,000 compensation limit
Health Savings Account (HSA) Contribution Limits	$3,550 for self-only coverage $7,100 for family coverage Additional $1,000 catchup contribution for ages 55+ for either plan
Federal Estate Tax Exemption Amount & Tax Rate	$11.58 million exemption amount 40% tax rate over exemption amount
Annual Gift Tax Exclusion	$15,000 or $30,000 if gift-splitting with spouse
Required Minimum Distribution Changes (SECURE Act)	Required Minimum Distributions (RMDs) from retirement accounts will now begin at age 72 instead of 70½ Effective for individuals who reach age 70½ during year 2020 or later
Inherited IRA Changes (SECURE Act)	Most non-spouse inherited IRAs must fully withdrawal the account by the end of the 10th year after the year of death (instead of over the beneficiary's lifetime) This essentially eliminates the stretch IRA for most beneficiaries
Employer Retirement Plan Eligibility (SECURE Act)	Most part-time workers are now eligible to participate in an employer sponsored retirement plan
Required Minimum Distribution Changes (CARES Act)	Individuals do not have to take their RMD during year 2020 The waiver does not apply to defined benefit plans 60-day rollover period was extended to August 31 for RMDs already taken

Long-Term Capital Gains and Qualified Dividends Tax Brackets and Rates

Filing Status	0% Rate	15% Rate	20% Rate
Single	$0 – $40,000	$40,001 – $441,450	$441,450+
Married Filing Jointly	$0 – $80,000	$80,001 – $496,600	$496,600+
Married Filing Separately	$0 – $40,000	$40,001 – $248,300	$248,300+
Head of Household	$0 – $53,600	$53,601 – $469,050	$469,050+
Estates & Non-Grantor Trusts	$0 – $2,650	$2,650 – $13,150	$13,150+

SECURE Act:
Main Provisions & Considerations ›

Enacted in December 2019, the SECURE Act represents the biggest change to retirement planning laws since 2006. It is intended to expand retirement savings opportunities for workers.

Select highlights:

- Required minimum distributions from retirement accounts will now begin later (age 72 instead of 70½).
- Traditional retirement account contributions may now continue after age 70½.
- Workers may withdraw up to $5,000 penalty-free from a retirement account for the birth or adoption of a child.
- Eliminated the stretch IRA. For IRA inheritances occurring after January 1, 2020, beneficiaries must withdraw the entire balance within 10 years of the death of the account owner. The 10-year rule does not apply to surviving spouses, beneficiaries who are less than 10 years younger than the account owner, chronically ill individuals, disabled individuals or minor children (does not apply to grandchildren) of the account owner.
- $500 tax credit for small employers that implement automatic enrollment in their retirement plans.

Consider this...

Elimination of the stretch IRA greatly accelerates the taxation of an inherited IRA. Account owners should review all beneficiary designations, particularly where the following are named as beneficiaries:

- A minor grandchild (not an eligible beneficiary)
- A disabled or chronically ill individual
- A trust, especially where the trust is structured as a conduit trust
- A special needs trust for a disabled or chronically ill individual

Retirement Savings & 199A Deduction Eligibility

The 199A deduction is available for pass-through business owners and self-employed taxpayers. Essentially, eligible taxpayers must meet income limitations to qualify for 199A. If taxable income exceeds the 199A threshold (or phase outs for specified service providers) taxpayers may benefit from reducing taxable income. One way to reduce taxable income is with contributions to a retirement account (like 401(k)s, IRAs or defined benefit plans). However, if taxable income falls within the qualifying income limitation, reducing taxable income may decrease the 199A deduction. This may reduce the current tax benefit of the retirement contribution. Your RKL advisor can help determine the level of contributions needed to qualify for 199A.

CARES Act: Main Provisions & Considerations

Enacted in March 2020, the CARES Act contained a number of favorable provisions for individual taxpayers that are only available in 2020. Before making any decisions, meet with your RKL Wealth Management advisor and review your overall wealth plan. Much has changed in the past year, not just in the retirement planning world.

Select highlights:

- Waived 2020 RMDs for retirement accounts.
- Provides for up to a $100,000 hardship withdrawal from retirement accounts to qualified individuals (exempt from 10 percent early withdrawal penalty for those under age 59 ½).
- Allows for up to $100,000 to be loaned from most employer retirement plans to qualified individuals.
- Up to a $300 above the line charitable deduction, subject to limitations, for taxpayers who do not itemize.

Consider this...

- A retirement plan account withdraw should be a last resort for emergency liquidity if all other options have been exhausted.
- The 10 percent penalty will not apply to hardship withdrawals, yet income tax will still be owed.
- Loans from qualified plans must be repaid in five years to avoid being subject to income tax.
- Repayment of amount distributed any time during the three-year period beginning on the day after the distribution was received. The repayment may be done with a single rollover, or multiple rollovers during the three-year period. If the distribution is repaid, amended returns may be filed to claim a refund of income tax attributable to the amount repaid.
- Leaving funds in your retirement account as long as possible is generally advisable for a number of reasons, especially if the market is significantly down from the December 31 valuation date on which RMDs are calculated. Just because you can skip an RMD does not necessarily mean that you should. Your income tax bracket may be lower in 2020 than anticipated in future years and tax rates may increase in the future.
- Individuals considering a large gift to a charity who had significant income recognition events in 2020 (i.e., the sale of a business), may want to make that gift before the end of 2020.

Financial Management & Planning Tips ›

MONITOR SOCIAL SECURITY TAXABILITY

Social Security benefits are taxable for individual recipients with income over $25,000 or married couples with joint income of $32,000 or more. Up to 50 percent of benefits will be taxed for individuals with incomes between $25,000 and $34,000 and married couples filing jointly with incomes between $32,000 and $44,000. Up to 85 percent of benefits will be taxed for individuals with income over $34,000 and married couples with income over $44,000. Taxability is capped at 85 percent of benefits for all taxpayers.

For the purposes of calculating this tax treatment, the IRS defines income as the total of adjusted gross income excluding Social Security, tax-exempt income and half the amount of Social Security benefits. Recipients must monitor finances carefully throughout the year, and it may make sense to defer income until the start of a new year in some cases.

KNOW YOUR ANNUAL MEDICARE PREMIUM COST

The Social Security Administration uses a modified adjusted gross income (MAGI), which for its purposes means adjusted gross income plus tax-exempt income, to determine how much beneficiaries pay in Medicare premiums for the year. 2020 premiums are based on 2018 MAGI. In addition to routine premiums, higher-earning beneficiaries ($87,000+ MAGI for individuals and $174,000+ MAGI married couples) are required to pay an income-related monthly adjustment amount (IRMAA) surcharge.

FIND YOUR OPTIMAL CHARITABLE GIVING STRATEGY

The charitable deduction is a flexible and beneficial way for individuals to support causes they care about and reap tax benefits. To maximize these benefits, it is critical that taxpayers optimize the timing and methods of their donation. Here are four of the most common tax-advantaged donation strategies: bunching method, Donor Advised Fund, donation of appreciated assets and Qualified Charitable Distribution from an IRA. Each of these strategies has different criteria and consideration, so be sure to discuss the best options for you with your RKL Wealth Management advisor.

Estate, Gift & Trust **Planning**

Estate planning is a critical component of wealth management that bridges the present and the future. Your RKL Wealth Management advisor can help you develop a tax-advantaged estate plan that preserves financial security during your lifetime and achieves your desired wealth transfer objectives as part of your lasting legacy.

Estate, Trust, Gift Tax Rates, Rules and Limits

- **Federal estate tax (maximum rate):** 40 percent (each state has its own set of estate/inheritance tax laws)
- **2020 exemption amount:** $11.58 million per individual, $23.16 million for a married couple
- **Annual gift tax exclusion:** $15,000 or $30,000 if gift-splitting with spouse
- **Portability:** Surviving spouse may use the deceased spouse's remaining estate tax exemption (to elect portability of the unused estate tax exemption, surviving spouse must file a federal estate tax return and make this election)
- **Step-up in basis:** Inherited assets receive a step-up in basis to market value as of date of death

Federal Income Tax Rates for Estates and Trusts for Tax Year 2020

If taxable income is:				
over	but not over	The tax is:		of the amount over
$0	$2,600		10%	$0
$2,600	$9,450	$260.00	+ 24%	$2,600
$9,450	$12,950	$1,904.00	+ 35%	$9,450
$12,950	—	$ 3,129.00	+ 37%	$12,950

Tax Treatment of Electing Small Business Trust

Small business owners can establish an electing small business trust (ESBT) to hold S Corporation stock and split income among family members or other trust beneficiaries. An ESBT is taxed on income related to the S Corporation stock at the highest trust rate (37 percent for 2020), unless the income qualifies as a long-term capital gain. In that case, the capital gain rate applies (see chart on page 14). Your RKL advisor can help manage elections and calculate the appropriate tax treatment.

Trusts **At-a-Glance**

A trust allows a third party (a trustee) to hold and direct assets on behalf of one or more beneficiaries. Trusts can be an effective wealth management tool, particularly as it relates to legacy planning. Trusts come in many shapes and can be used in many ways – here is a snapshot of the most common types.

Trust Parties

- **Grantor (or Settlor):** The individual who creates and funds the trust
- **Trustee:** The individual or corporation who is charged with holding the trust assets and administering the trust terms
- **Beneficiary:** The individual(s) for whom the trust was created and who have rights to income and/or principal

Trust Characteristics

Revocable: Grantors have the full power to change or revoke these trusts. Revocable trusts are commonly used to avoid probate, simplify estate administration when there is real estate in multiple states and provide a level of privacy.

OR

Irrevocable: Grantors do not have power to change or revoke these trusts. They can be dissolved by the grantor only if permitted by another person with opposing interest in the trust.

Grantor: When the grantor retains certain rights and control over the trust, the trust will be deemed to be a grantor trust for income tax purposes. This means that all items of income and deductions flow through the trust to the grantor and are reported on his or her personal income tax return. The grantor then pays any tax liability that would otherwise be owed by the trust. Irrevocable trusts are often designed to be grantor trusts (sometimes referred to as Intentionally Defective Grantor Trusts) and can be a powerful strategy to reduce the grantor's taxable estate. Not all states recognize grantor trusts for tax purposes, so there could be some instances where the state income tax liability for the trust is paid by the trust.

OR

Non-Grantor: With a non-grantor trust, the trust is its own taxpayer, files its own tax return and pays its own tax liabilities. Non-grantor trusts fall into two categories – complex and simple.

Complex: Distributes income or principal to its beneficiaries or make charitable contributions.

OR

Simple (or Income Trust): Requires all income to be distributed at least annually to a noncharitable beneficiary.

Specific Purpose Trusts

- **Bypass Trust (or Credit Shelter Trust):** This is a testamentary trust established to use the applicable credit amount of the first spouse to die.

- **Marital Deduction Trust:** Established to benefit a surviving spouse, this trust's principal is sheltered from estate tax by the unlimited marital deduction.

- **Spousal Limited Access Trust:** A multi-generational trust where the grantor's spouse is also a lifetime beneficiary.

- **Charitable Trusts:** There are a number of trust types related to charitable giving, which differ based on payment type and frequency (i.e. interest payments, annuity, fixed percentage) and whether the charitable portion is distributed in the beginning of the trust (a Charitable Lead Trust or CLT) or is distributed at the end of a specified term (a Charitable Remainder Trust or CRT).

- **Grantor Retained Annuity Trust**: This trust pays an annuity to the grantor for a period of years and then at the end of the annuity term distributes any remaining principal to the remainder beneficiary.

- **Qualified Personal Residence Trust:** This type of trust holds a personal residence for the grantor for a period of years and then at the end of term distributes the residence to the remainder beneficiary.

- **Asset Protection Trust:** This is an irrevocable trust where property can be transferred and protected from certain creditors' claims.

- **Dynasty Trust:** The term of this trust type extends as long as legally possible to preserve wealth across generations without threat of creditors or transfer taxes.

- **Electing Small Business Trust:** This trust serves as an S Corporation shareholder with the option for multiple beneficiaries and accumulation of income.

- **Medicaid Qualifying Trust:** This trust is set up to preserve the grantor's assets without compromising eligibility for government benefits like Supplemental Security Income and Medicaid.

- **Supplemental (or Special) Needs Trust:** This type of trust is often formed on behalf of elderly or disabled beneficiaries to provide financial support without reducing government benefits like Supplemental Security Income and Medicaid.

Cryptocurrency Tax Impact

According to the IRS, virtual currency transactions are legally taxable and cryptocurrencies like bitcoin and ethereum should be treated as property, akin to stocks, bonds or real estate property, not cash currency. As a result, the sale of any cryptocurrency triggers the requirement to report gains and losses. Keep in mind, the exchange of one cryptocurrency for another is also treated the same as a sale (unlike currencies). Investors who simply buy and hold the currency are under no reporting requirement. Last year, the IRS began issuing letters to virtual currency owners reminding them of their reporting obligations.

Unlike stock or bond sales, which are documented with a 1099 from a bank or brokerage, virtual currency exchanges may not provide investors with documentation to substantiate sales, gains and losses. As a result, investors should consider keeping their own detailed records of transactions for greater ease in calculating tax obligations.

Regulatory Update: **IRS Confirms Deductibility of Excess Deductions on Termination of an Estate or Trust**

While the Tax Cuts and Jobs Act of 2017 eliminated many personal itemized deductions, the IRS subsequently clarified that expenses unique to an estate or non-grantor trust would still be deductible. These expenses include attorney fees, accountant fees and other administrative expenses distinctive to an estate or non-grantor trust.

One aspect that was not clarified by the IRS was whether excess deductions on termination of an estate or non-grantor trust would still be deductible. Excess deductions occur in the final year of an estate or non-grantor trust when expenses, such as attorney fees, accountant fees and administration fees exceed income (interest, dividends, etc.).

Before tax reform, excess deductions were passed out to residuary beneficiaries on a Schedule K-1 and then deducted by the beneficiary on Schedule A as a miscellaneous itemized deduction subject to two percent of adjusted gross income (AGI). In May 2020, the IRS issued proposed regulations providing guidance on determining the character, amount and allocation of deductions in excess of gross income on the termination of a non-grantor trust. These regulations include rules that explain which deductions would be allowed as deductions arriving at AGI. Additionally, the IRS has provided line-by-line instruction for tax years 2018 and 2019 on how to report these deductions at arriving at AGI. If you were a beneficiary of an estate or non-grantor trust that terminated in 2018 or 2019, it may be beneficial to amend your individual income tax return.

Best Practices for Trustees, Executors and Beneficiaries

Trustees and executors should keep thorough records of all expenses. The excess deduction on termination may be comprised of several types of deductions, including:

1. Those deductions allowable in arriving at adjusted gross income under Code Sec. 62 and Code Sec. 67(e)
2. Itemized deductions under Code Sec. 63(d) allowable in computing taxable income
3. Miscellaneous itemized deductions currently disallowed under Code Sec. 67(g)

A Perfect Storm for **Wealth Transfer Strategies** ›

Lifetime exemptions are at all-time highs and interest rates are at all-time lows. This creates a perfect storm of opportunity for wealth transfer, but it could be limited. The upcoming presidential election and potential revenue offsets for coronavirus stimulus packages could alter these favorable conditions, and exemptions revert to pre-2017 levels in 2026 without further legislative action, so it is important to act now. Below are several tried and true wealth transfer strategies that are particularly beneficial in the current environment.

Multi-generational trust gift

Question: ***What is it?***

Answer: The simplest way to transfer wealth is a straightforward lifetime gift (as close to the full exemption as possible) to an irrevocable multi-generational trust. The best assets to gift are generally those with the highest growth potential, since all growth will occur inside the trust and outside of the donor's estate. Be sure to take into account the cost basis of an asset for income tax purposes, as gifted assets do not receive a step-up in basis upon the donor's death.

Question: ***What are the benefits?***

Answer: This type of gift takes advantage of the current high exemption amount, which is a "use it or lose it" proposition. All future growth in the asset will occur outside of the donor's estate. The trust will be exempt from estate tax for future generations, and will provide beneficiaries with protection from creditors, divorce, etc. A donor's spouse can be a beneficiary, which allows them to receive emergency distributions if needed (a Spousal Limited Access Trust or SLAT).

If structured as a grantor trust for income tax purposes, the donor will pay the income tax liabilities of the trust (with no gift tax consequences), thereby further reducing the grantor's gross estate and allowing the trust assets to grow income tax free.

Sale of assets to a multi-generational trust

Question: ***What is it?***

Answer: This type of transaction is typically used where the individual's net worth exceeds the estate exemption amounts (currently more than $23 million). In this case, the donor will sell an amount of assets, typically closely held business interests, to the trust in return for a promissory note. The interest rate on the promissory note must be equal to or greater than the applicable federal rate for the month of the sale.

Question: ***What are the benefits?***

Answer: Current historically low interest rates create a very low hurdle rate for the transaction's success. Provided the asset sold outperforms the interest rate assigned to the note, the donor will effectively move all of the growth outside his or her estate. This strategy is particularly effective with closely held S Corporations. The transaction is generally a non-recognition event for income tax purposes except for PA residents who will in most cases recognize state level capital gains at 3.07 percent.

Intra-family loan

Question: ***What is it?***

Answer: If a gift is not desirable, a loan may be a suitable alternative. Frequently, intra-family loans are used to provide children or grandchildren with funds to purchase a home or invest in a business venture. The repayment terms are fully customizable with the exception of the interest rate, which must be at least the Applicable Federal Rate (AFR) in effect at the loan's execution. At the time of this guide's fall 2020 publication, AFRs are at historical lows.

Question: ***What are the benefits?***

Answer: Cash can be loaned by a parent to a child or grandchild to purchase a house, start a business or any other significant life event. Further, cash can be loaned to a child or grandchild to purchase an asset with high growth potential effectively shifting that growth down a generation.

To the extent the borrowed funds are invested in an appreciating asset that grows greater than AFR, all of the growth will benefit the borrower without estate or gift tax consequences. The current interest rate environment also presents an opportunity to refinance existing intra-family notes carrying higher interest rates.

GRATs & CLATs

Question: ***What are they?***

Answer: A Grantor Retained Annuity Trust (GRAT) is a special type of trust that transfers the growth of an asset to the next generation free of estate and gift tax. The grantor transfers an asset to a trust which in turn is required to pay back the grantor an annuity for a period of years plus interest at the current Section 7520 rate. A Charitable Lead Annuity Trust (CLAT) is similar to a GRAT except that the annuity is paid to a charity instead of the grantor. A CLAT functions essentially the same as a GRAT but is used when the grantor is charitably inclined and does not need the annuity payments.

Question: ***What are the benefits?***

Answer: If the asset transferred to the GRAT outperforms the Section 7520 rate, all of the excess growth will pass to the grantor's children (or a trust for their benefit) free of estate or gift tax if structured appropriately. GRATs can be funded with any asset that has growth potential including marketable securities. With a CLAT, the annuity amount can be deducted as a charitable contribution.

Save for Education & Save on Taxes

529 plans help individuals and families save for higher education in a tax-advantaged and flexible way. Funds saved in a 529 account can be used at most colleges and trade schools; can be used for public, private, or religious elementary or secondary educational expenses up to $10,000; can be rolled into another plan or earmarked for another beneficiary; and remain indefinitely in the control of the account owner (not the student beneficiary). The tax benefits of 529 plans include:

- State and federal tax-free growth and distributions when used for qualified higher education expenses, such as tuition, room and board, books, etc.
- State tax deduction for contributions (limited to federal gift exclusion and cannot exceed taxpayer/spouse PA taxable income; rules vary by state/jurisdiction)
- Gift and estate tax benefits up to $75,000 ($150,000 for married couples)

For the purposes of financial aid, a 529 account owned by the parent or student is treated as the owner's asset. If the account owner is a grandparent or other individual, 529 plan distributions are reportable as student income on their FAFSA. Keep in mind, 529 plans have special rules to be used in tandem with the education credit.

WHERE THINGS STAND: DEDUCTIBILITY OF EXPENSES PAID WITH FORGIVEN PPP FUNDS

The CARES Act makes clear that a forgiven Paycheck Protection Program (PPP) loan is not to be included in taxable income for federal income tax purposes. Many business owners assumed that they would be able to follow tradition and write off expenses paid with forgiven PPP funds. On April 30, 2020, the IRS stated in Notice 2020-32 that no deduction is permitted for these expenses, since the PPP funds were provided on a tax-free basis.

The IRS position presents a potential cash flow issue for recipients, who were required to spend all the funds properly to receive maximum forgiveness with no proceeds left over to pay taxes on the expenses. Business advocacy groups and several members of Congress have reached out to the U.S. Treasury to request reconsideration. RKL continues to monitor this matter and will update clients on any potential changes that could impact 2020 tax year filings.

WATCH STATE TAX CARES ACT CONFORMITY

The CARES Act adds another layer of complexity to state legislative tracking. States generally conform to the federal tax code on either a static or rolling basis. For example, some states automatically incorporate changes to federal tax law, only decoupling from specific provisions, while others use a fixed Internal Revenue Code conformity date. Some provisions of the CARES Act apply retroactively for federal tax purposes, but may not apply at the state level. Also, the significant expansion of teleworking due to COVID-19 could potentially trigger nexus and additional filing obligations for taxpayers. RKL's state and local tax team helps clients assess state implications of federal provisions and navigate compliance requirements. Contact your RKL advisor for assistance.

Deadlines for
Key Business Tax Filings ›

Tax Form	Due Date(s) *(for calendar year entities)*
Forms 1094-C and 1095-C (health insurance offer and coverage info)	**February 1, 2021** to employees **March 1, 2021** to IRS if filing hard copy **March 31, 2021** to IRS if e-filing
Form 1099 (see below for 1099-NEC – nonemployee compensation)	**February 1, 2021** to recipients **March 1, 2021** to IRS if filing hard copy **March 31, 2021** to IRS if e-filing
Forms W-2, W-3 and 1099-NEC	**February 1, 2021** to employees/recipients, Social Security Administration and IRS if filing hard copy or e-filing
Partnerships (Form 1065) and S Corporations (Form 1120S)	March 15, 2021
Individuals (Form 1040), C Corporations (Form 1120) and Trusts and Estates (Form 1041)	April 15, 2021
Tax-exempt nonprofit organizations (Form 990)	May 17, 2021
Employee Benefit Plans (Form 5500)	August 2, 2021
Extended return filings for partnerships and S Corporations	September 15, 2021
Extended return filing for trust and estates	September 30, 2021
Extended return filing for individuals, C Corporations and Employee Benefit Plans	October 15, 2021
Extended return filing for tax-exempt nonprofit organizations (Form 990 series)	November 15, 2021

Payroll: **New Tax Credits & Reporting Considerations**

Generally speaking, payroll is a pretty standard activity for business owners. That's not the case in 2020. Coronavirus relief provisions, expanded employee leave, new tax credits and revised IRS forms make tracking and reporting more complex and essential this year than ever before. In this section, we'll provide an overview of all the new factors employers and their payroll providers, whether in-house or external, must consider to maximize tax benefits.

New Payroll Tax Credits: CARES Act and Families First Coronavirus Response Act

Two major pieces of coronavirus relief legislation, the Families First Coronavirus Response Act (FFCRA) and the CARES Act, launched a number of new payroll tax credits designed to support employers and their workforce during the pandemic.

Payroll Tax Credit Best Practices

- Track the wages separately for the different credits
- Verify that the FFCRA wages paid are exempt from employer Social Security
- Make sure to include the allocated health insurance invoice costs as qualified wages

CARES Act: Employer Retention Tax Credit

Under the Employer Retention Tax Credit (ERTC), businesses that closed or suspended operations due to coronavirus or businesses that experienced a significant decline in gross receipts may be eligible for a one-year credit against the qualified wages it continues to pay its employees between March 13, 2020 and December 31, 2020.

Employers can claim a credit worth 50 percent of qualified wages paid to each employee, up to $10,000, for that quarter through December 31, 2020. Qualified wage calculations only include employees not providing services if the average number of full-time employees in 2019 was over 100. However, if under 100, then all employee wages are qualified. Wages are limited to those paid during the business shut down or slow down.

For any size company, qualified wages include group health plan costs. In all cases, the amount of qualified wages for each employee for all quarters may not exceed $10,000 (generating a max credit of $5,000 per employee).

How to claim ERTC: *Reduce the 941 payment by all credits available, complete a Form 7200 or reconcile the credits for a refund on Form 941.*

Note

Employers who receive forgiveness on a Payroll Protection Program loan are not eligible to take the ERTC credit.

CARES Act: Employer Payroll Tax Deferral

In order to provide businesses and self-employed individuals with additional cash flow in 2020, the CARES Act allows employers to defer payment of the employer share of the Social Security tax (6.2 percent) due in 2020. Fifty percent of the deferred payroll taxes are due on December 31, 2021, and the remaining 50 percent are due on December 31, 2022. Taxpayers of any size may take advantage of this provision.

Eligibility note: *This deferral provision is also available to businesses that received a Paycheck Protection Program (PPP) loan, but time limits may apply depending on the date of forgiveness of the PPP loan.*

How to defer payroll tax: *Report any employer Social Security amount deferrals for the quarter on the applicable Form 941. Remit 50 percent of the deferral by December 31, 2021 and the remaining 50 percent by December 31, 2022.*

Executive Order: Payroll Tax Obligation Deferral

In response to the ongoing COVID-19 pandemic, President Trump signed an executive memorandum on August 8, 2020, which defers the employee portion of Social Security payroll taxes beginning September 1 through December 31, 2020, for anyone earning less than $4,000 in Social Security taxable wages (pre-tax) every two weeks (or the equivalent amount with respect to other pay periods). The language currently does not include a forgiveness of these taxes, simply a deferral. On August 28, 2020, Treasury released Notice 2020-65, providing additional guidance to clarify some of the provisions of this deferral, including:

- This deferral is optional for the employer and, if the employer opts-in, it is then optional for each employee.
- The wage limit ($4,000) is assessed on a pay-by-pay bases; an employee could be eligible one pay and not eligible the next.
- The tax deferred in 2020 can be deducted (in addition to current taxes) from pays dated January 1, 2020 to April 30, 2021.
- Any tax deferred in 2020 must be deposited by employers no later than April 30, 2021 (penalties and interest begin to accrue on May 1).
- The employer has flexibility with arrangements to otherwise collect the deferred taxes from the employee.
- This liability will remain the employer's regardless of when or how the money is collected from the employee.

Additional considerations and unknowns:

- This remains a deferral, not a waiver.
- The maximum deduction for 2020 is $8,537.40. Once an employee pays and/or defers this total, any deferrals and withholdings end.
- The W-2 format will likely be created to report the deferrals.
- If an employer must pay the employee's deferred tax for them in 2021, this tax payment then becomes taxable wages to the employee and must be grossed up to pay the Social Security and Medicare taxes.
- Would a separate Social Security tax "code" be set up to track the deferral that is then "paid down"?
- How does this deferral apply to the self-employed?

Action items for employers:

- Prepare a communication to employees – are you as the employer opting in or out?
- If opting in, prepare a form for the employee to sign acknowledging this deferral (not waiver) and agreeing to collection and payback terms, conditions and timing.
- Regularly check in with your payroll provider or payroll software company on their process for managing this deferral (both with the deferral in 2020 and the payback in 2021).
- Permit deferrals only at the employee's election.

FFCRA: Emergency Paid Family and Sick Leave

The emergency leave provisions under FFCRA took effect on April 1, 2020 and run through December 31, 2020. FFCRA applies to public sector employers and private employers with fewer than 500 employees, with certain exemptions for healthcare, emergency responders and small businesses with 50 or fewer employees.

Employers and payroll managers can reference the below list of reasons and the chart underneath to help them administer and pay for FFCRA leave. **An employee qualifies for emergency sick leave if the employee is unable to work (or unable to telework) due to a need for leave because the employee:**

1. Is subject to a federal, state or local quarantine or isolation order related to COVID-19
2. Has been advised by a healthcare provider to self-quarantine related to COVID-19
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis
4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2)
5. Is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19
6. Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury

Under the FFCRA, the first 10 days of the expanded FMLA are unpaid. Employees may supplement this 10-day waiting period with the Emergency Paid Sick Leave (also provided under the FFCRA) or other company paid leave benefits.

Schedule of Expanded FMLA Leave if Employee Uses the Emergency Paid Sick Leave During the 10-day Waiting Period:

Employment Status	Leave needed for reason	Days covered	Payment Calculation	Cap on Wages Eligible for Tax Credit through December 31, 2020	Refundable Tax Credit Offsets
Employee	1,2,3	Days 1 to 10	100% of Regular Pay Rate **FT** = 2 weeks or 80 hours **PT** = typical # hours worked in 2 week period	$511/day or $5,110 in total	Covered employers qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA. Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps. Applicable tax credits include the employer portion of the Social Security and Medicare tax for all payments as well as amounts paid or incurred to maintain health insurance coverage.
Employee	4 or 6	Days 1 to 10	2/3 of Regular Pay Rate **FT** = 2 weeks or 80 hours **PT** = typical # hours worked in 2 week period	$200/day or $2,000 in total	
Employee	5	Days 1 to 10	2/3 of Regular Pay Rate **FT** = 2 weeks or 80 hours **PT** = typical # hours worked in 2 week period	$200/day or $2,000 in total	
Employee becomes eligible after 30 days of employment	5	Week 3 to 12 (50 days)	2/3 of Regular Pay Rate **FT** = 2 weeks or 80 hours **PT** = typical # hours worked in 2 week period	$200/day or $12,000 in total	

How to claim EPSL credits: *Reduce the 941 payment by all credits available, complete Form 7200 or reconcile the credits for a refund on Form 941. This form can be filed at any time before the end of the month following the quarter in which the qualified wages were paid (for example, for second quarter wages the filing deadline is July 31). The form may also be filed multiple times throughout the quarter.*

Federal Payroll Tax Forms:
Key Deadlines & Recent Changes ›

All federal payroll tax reporting and liability payments are based on pay date, not pay period date.

The lookback period is the 12 months (covering four quarters) ending on June 30 of the prior year. For example, the lookback period for 2020 is July 1, 2018 through June 30, 2019.

A business with tax liabilities of $50,000 or less during the lookback period are monthly depositors, with payments due by the 15th day of the following month.

A business with tax liabilities of more than $50,000 during the lookback period are semi-weekly depositors. Deposits are due based on the following schedule:

- If your payday is on Wednesday, Thursday, and/or Friday, you must deposit these taxes by the following Wednesday.
- If your payday is on Saturday, Sunday, Monday, and/or Tuesday, you must deposit these taxes by the following Friday.

Any pay date with a liability of $100,000 or more must be deposited on the next business day.

If, at any time, a monthly depositor has liabilities of $100,000 or more for a pay period, they become a semi-weekly depositor for all future deposits for at least the remainder of the calendar year and for the following calendar year.

Payroll Resource:

IRS Publication 15-B, the Employer's Tax Guide to Fringe Benefits, is released each December for the new year. This publication walks employers through the taxation of various fringe benefits provided to employees, and may be updated throughout the year if legislative changes occur. Learn more and read the guide at IRS.gov/Pub15B.

Federal Unemployment Tax Act (FUTA) payments: Although Form 940 covers a calendar year, you may have to deposit your FUTA tax before you file your return. If your FUTA tax liability is more than $500 for the calendar year, you must deposit at least one quarterly payment. If your FUTA tax liability is $500 or less in a quarter, carry it forward to the next quarter. Continue to carryforward until the cumulative tax is more than $500 and deposit the tax in that quarter.

Form 941: Employer's Quarterly Federal Tax Return

Form 941 is a quarterly reporting of payroll liabilities, payments and credits. Form 941 is due the last day of the first full month following a quarter's end. Effective Q2 2020, Form 941 was updated to allow reporting for the relief and credit options made available as a result of the COVID-19 pandemic.

New items to note when filing Form 941:

1. "Worksheet 1. Credit for Qualified Sick and Family Leave Wages and the Employee Retention Credit" has been provided to assist employers with completing the Form 941. The calculations provided in the worksheet are critical to the accurate reporting of COVID-19 credits on the Form 941. This worksheet should not be sent with the Form 941, but should be maintained with the employee 941 package copy.
2. There are two types of credits identified on Form 941, nonrefundable and refundable. Both are eligible credits, but are recorded differently on the form. The nonrefundable portion of the credits is limited to the employer Social Security liability, while the refundable portion is the amount exceeding the remainder of the employer Social Security liability. Completing the calculations found on the worksheet will provide businesses with the accurate reporting of these different credits.
3. COVID-19 credits should be reported on Form 941, Schedule B, as a reduction to the liability. Both FFCRA and ERTC reductions are taken against the employer Social Security liability, starting with the first pay date in the quarter and in subsequent liabilities until the credit has been fully realized. Any remaining credit after these reductions should be reported on Line 13c (FFCRA) and Line 13d (ERTC) as a refundable credit.

Form 944: Employer's Annual Federal Tax Return

File Form 944 if your annual liability for employer and employee federal withholding, Social Security and Medicare payroll liabilities is $1,000 or less. It is due January 31 of the year following the liabilities.
Note: *Form 944 has not been updated to reflect any 2020 COVID-19 relief or credits.*

Form 943: Employer's Annual Federal Tax Return for Agricultural Employees

File Form 943 if you paid wages to one or more farmworkers and the wages were subject to Social Security and Medicare taxes or employee federal withholding. It is due January 31 of the year following the liabilities.
Note: *Form 943 has not been updated to reflect any 2020 COVID-19 relief or credits.*

Form 940: Employer's Annual Federal Unemployment Tax Return

Use Form 940 to report your annual FUTA tax. Together with state unemployment tax systems, the FUTA tax provides funds for paying unemployment compensation to workers who have lost their jobs. The FUTA tax applies to the first $7,000 paid to each employee during a calendar year after subtracting any payments exempt from FUTA tax.

W-2 Reporting for FFCRA Leave Wages: **Who, What, Where, How ›**

Organizations that paid employees any wages required by FFCRA must correctly map the earning code for these qualified sick and/or family leave wages onto Form W-2. Employers using a third-party payroll provider should confirm these earning codes will be reported correctly. Below is an at-a-glance guide to FFCRA wage reporting. Full guidance can be found in irs.gov/pub/irs-drop/n-20-54.pdf.

WHO

Any employee (including self-employed individuals who also receive wages or compensation as employees) who received payments in 2020 under FFCRA.

WHAT

Identify payments made separately for:

Sick Leave Wages for Employee: In labeling this amount, use the following or similar language: "sick leave wages subject to the $511 per day limit." This applies to employees unable to work due to:

- A federal, state or local quarantine or isolation order related to COVID-19
- COVID-19 self-quarantine at the direction of a healthcare provider
- COVID-19 symptoms and pending medical diagnosis

Sick Leave Wages for Employee Caring for Others: In labeling this amount, use the following or similar language: "sick leave wages subject to the $200 per day limit." This applies to employees unable to work because they are caring for an individual subject to a self-quarantine or isolation at the direction of a healthcare provider or government.

Emergency Family Leave Wages: In labeling this amount, use the following or similar language: "emergency family leave wages." This applies to employees caring for a child whose school or place of care is closed or unavailable due to COVID-19.

WHERE

Place the applicable descriptions/codes listed above in Box 14 on Form W-2

OR

Attached a separate statement page to Form W-2. Here is sample wording:

Included in Box 14, if applicable, are amounts paid to you as qualified sick leave wages or qualified family leave wages under the Families First Coronavirus Response Act. Specifically, up to three types of paid qualified sick leave wages or qualified family leave wages are reported in Box 14:

- *Sick leave wages subject to the $511 per day limit because of care you required;*
- *Sick leave wages subject to the $200 per day limit because of care you provided to another; and*
- *Emergency family leave wages.*

Individuals with self-employment income AND wages paid by an employer:

- *Report the qualified sick leave or qualified family leave wages on Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals.*
- *Include this form with your income tax return and reduce (but not below zero) any qualified sick leave or qualified family leave equivalent credits by the amount of these qualified leave wages.*

If you only have self-employment income, follow the instructions for your individual income tax return.

HOW

If the employee receives a paper Form W-2, the statement page must be included as a paper attachment and provided to the employee at the same time as the paper Form W-2.

If the employee receives an electronic Form W-2, the statement page must be provided electronically and provided to the employee at the same time as the paper Form W-2.

Payroll FAQ: **Independent Contractor or Employee?** ›

Employers need to delineate whether the individuals who work for them are employees or independent contractors. The IRS requires that employers withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. These requirements do not generally apply to independent contractor payments. The financial stakes for this distinction is even higher in 2020, since many of the tax credits and coronavirus relief measures hinge on the number and classification of employees.

To remain compliant with IRS regulations, U.S. Department of Labor guidelines, the Americans with Disabilities Act and various other reporting and compliance concerns, businesses must ensure the proper classification of workers.

The employee or independent contractor designation hinges upon the level of control and independence in the working relationship. The IRS provides three categories to help employers organize and weigh these factors:

1. **Behavioral Control:** Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. **Financial Control:** Are the business aspects of the worker's job controlled by the payer? (i.e., how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. **Type of Relationship:** Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

There is no specific number of factors that indicate employee or independent contractor. Instead, employers need to take stock of the entire relationship against the categories above, consider the extent of control and independence in each scenario and maintain documentation to support the decision-making process and ultimate determination.

Resource links:

- Independent Contractor (Self-Employed) or Employee? (IRS.gov)
- Fact Sheet: Employment Relationship Under the Fair Labor Standards Act (U.S. Department of Labor)
- PA Independent Contractor Questionnaire (PA Department of Labor & Industry)

Independent Contractor Payment: Dos & Don'ts

- **DO NOT** make a payment to the independent contractor until you receive a signed Form W-9; otherwise, backup tax withholding (24 percent for 2020) will kick in.
- **DO** maintain a detailed contract, including nature of work, start and end dates, penalties, confirmation of contractor status, etc. There are many more specific requirements for these contracts, so consult with your business or legal advisor to correctly draft the language.
- **DO** collect and maintain any required certificates or licenses for the work, proof of general liability and Workers' Compensation insurance (according to state guidelines).
- **DO** compile proof that work is advertised to other businesses (marketing materials, business cards, requests for proposal, references, other advertising, etc.).
- **DO** pay the independent contractor from invoices only (never timesheets).
- **DO NOT** create the invoices for the independent contractor – they must generate and provide to the employer.
- **DO NOT** use company letterhead on invoices for independent contractors.
- **DO** provide Form 1099 to the independent contractor for the respective tax year(s).
- **DO** report expense reimbursements to independent contractors on their Form 1099.
- **DO** file federal and state Forms 1099 as applicable.

CARES Act: **Business Income Tax Implications & Planning Opportunities**

The tax provisions of the CARES Act are intended to provide economic relief and stimulus to businesses impacted by COVID-19. It is critical for business taxpayers to perform quantitative modeling and consider the overall impact of the various provisions before making a decision in order to fully optimize the benefits.

Increased Limitation on Business Interest Expense

The Tax Cuts and Jobs Act (TCJA) generally limits the deduction for business interest expense for businesses that have average gross receipts (last three years) greater than $26 million at the sum of:

Business interest income **+** 30% of adjusted taxable income (ATI) **+** floor plan financing interest expense for taxable year

The CARES Act increases the ATI limitation from 30 to 50 percent for taxable years beginning in 2019 and 2020 for C Corporations and S Corporations. The 50 percent limitation is only applicable to tax years beginning in 2020 for partnerships (additionally, partnerships have special deductibility rules on 2020 tax returns for interest expense that was limited in 2019). For any taxable year beginning in 2020, an election may be made to use 2019 ATI in lieu of 2020 ATI.

- ***Tax implications:*** *The increased ATI limitation from 30 to 50 percent allows taxpayers to deduct more business interest expense beginning in 2019 (except for partnerships) and 2020. As many companies will probably have substantially lower ATI in 2020 compared to 2019, using 2019 ATI to calculate the 2020 interest expense limitation may allow taxpayers to deduct more interest expense for the taxable year 2020. Taxpayers must use the increased 50 percent ATI limitation instead of the 30 percent ATI limitation, unless they make an irrevocable election not to have the 50 percent threshold apply.*
- ***Planning opportunities:*** *In order to maximize the interest expense deduction in 2020, it may be advantageous to shift deductions, via accounting method changes, to 2020 in order to increase ATI in 2019. It is worth noting that this provision is elective for taxpayers to balance tradeoffs among tax planning options and various international tax provisions. Taxpayers must evaluate the benefits of the enhanced deduction in conjunction with other tax laws.*

Tax Tip: Consider New Opportunities for R&D Tax Credit

The coronavirus pandemic forced companies and their employees to adopt new ways of doing business. Many organizations embraced new or expanded technology solutions or tools, which in addition to driving greater efficiency and performance improvements may also create new opportunities for claiming the Research and Development (R&D) tax credit. If your business invested or plans to invest in custom software development, ERP platforms, mobile applications or other new technologies may be eligible for and financially benefit from an R&D tax credit study. RKL has a team of dedicated R&D tax credit specialists who can help organizations determine eligibility and claim the maximum credit amount. Contact your RKL advisor or visit RKLcpa.com to learn more.

NOL Carrybacks and Limitation Relaxation

Under the TCJA, the ability to carry back a net operating loss (NOL) arising in tax years beginning after December 31, 2017 was eliminated. In addition, an NOL carryover can only be used to offset 80 percent of current taxable income. The CARES Act lifts the carryback and taxable income restrictions for NOLs generated in tax years beginning after December 31, 2017 and before January 1, 2021 (i.e. 2018, 2019 and 2020 losses) permitting a five-year carryback of NOLs arising in those tax years. The CARES Act also temporarily eliminates the 80 percent limitation, reinstating it for tax years beginning after 2020. Therefore, corporate taxpayers are allowed to use NOLs to fully offset taxable income as far back as tax year 2013.

As a result of the CARES Act, different rules will apply to NOLs based on which year they are generated, as seen below:

Tax Year NOL Generated	NOL Rules	NOL Limitation
Pre TCJA – NOL generated in tax years before 12/31/2017	Carryback 2 years and carryforward 20 years	No limitation, 100% of taxable income
Under the CARES Act – NOL generated in tax years beginning after 12/31/2017 and beginning before 1/1/2021	Carryback 5 years and carryforward indefinitely	No limitation, 100% of taxable income (prior to taxable years beginning in 2021) 80% of taxable income thereafter
Post TCJA – NOL generated in tax years beginning on or after 01/01/2021	NO carryback but carryforward indefinitely	80% of taxable income

- ***Tax implications:*** *Be mindful that for some taxpayers, the carryback of an NOL to an earlier tax year can require a recalculation of various other tax attributes and deductions, such as the Sec. 199 DPAD, the global intangible low-taxed income (GILTI), foreign-derived intangible income (FDII), Sec. 250 deduction, base erosion and anti-abuse tax (BEAT), foreign tax credits, AMT credits and R&D credits. A taxpayer may choose to elect to waive the carryback for NOLs. For a return that has already been filed, a taxpayer needs to file an election with the IRS waiving the carryback. To the extent a return has not been filed, the election must be attached to the timely filed return (including extensions). Please note that the election to waive a carryback is irrevocable. In addition, taxpayers that underwent an ownership change during any of these periods should carefully review purchase price agreements and other tax provisions to ensure that they are eligible to carry back NOLs and who owns the benefits associated with those NOLs. Short periods from merger and acquisition activity are treated as a full year for purposes of determining carryback periods.*

- ***Planning opportunities:*** *This provision creates a significant opportunity to help companies improve their cash position. For example, companies that incurred or will incur a loss in any of the 2018 -2020 years but were profitable in prior years, can carryback NOLs to claim tax refunds. Another potential opportunity for additional cash tax savings as a result of this carryback provision is tax rate arbitrage, which means using losses incurred at a 21 percent rate against tax liabilities at a 35 percent rate in pre-TCJA years. Taxpayers should also evaluate tax method changes in order to determine if there are ways to increase NOLs that may be carried back to obtain maximum benefits from this provision.*

Acceleration of Corporate AMT Credits

The TCJA repealed the corporate alternative minimum tax (AMT) for taxable years beginning after December 31, 2017, and allowed taxpayers to claim incremental portions of refundable minimum tax credits (MTCs) over taxable years beginning in 2018 through 2021. The CARES Act accelerates monetization of the remaining MTCs and allows an additional 50 percent credit for 2018 (50 percent was previously allowed) or a 100 percent credit of the remaining balance for 2019.

- ***Tax implications:*** *An accelerated timeline to claim refundable MTCs allows eligible corporations to obtain cash tax benefits as quickly as possible.*
- ***Planning opportunities:*** *Rather than filing an amended 2018 return to claim the credits, the CARES Act allows taxpayers to file Form 1139, Application for Tentative Refund, no later than December 30, 2020 to claim its remaining MTCs for its 2018 tax year. To file either Form 1120X or Form 1139, taxpayers must include at the top of the form, "Electing to Take 100% Refundable Credit Amount in 2018 – per CARES Act Section 2305(b)." Alternatively, the taxpayer can claim its remaining MTCs on its 2019 return. Taxpayers who have already filed their 2019 return without claiming the remaining MTCs may be able to file a "superseded return" to claim the unclaimed MTCs if such return is filed prior to the return's extended due date.*

State and Local Tax Complexity

The CARES Act adds another layer of complexity to state legislative tracking since the TCJA's enactment. States generally conform to the federal tax code on either a static or rolling basis. For example, some states automatically incorporate changes to federal tax law, only decoupling from specific provisions, while others use a fixed Internal Revenue Code conformity date. Additionally, many states use federal taxable income as a starting point and require NOLs to be added back. Some states may require the calculation of interest expense limitations under their own rules. Moreover, some provisions of the CARES Act apply retroactively for federal tax purposes, but may not apply at the state level.

When a federal return is amended, states generally require a taxpayer to file amended returns as well. When deciding whether or not to file a federal amended return for NOL utilization or other benefits, taxpayers should also take into consideration potential state amended filings requirements. Failure to file a state amended return in several states allows the statute to remain open for the applicable year indefinitely.

- ***Tax implications:*** *Taxpayers will need to closely monitor and analyze the state implications of the federal provisions they choose to implement. Most states have their own provisions with respect to NOL carrybacks and carryforwards. In addition, the significant expansion of teleworking due to COVID-19 could potentially trigger nexus and additional filing obligations for taxpayers. Some states have issued guidance that employee income tax obligations will still be based on employer's state, instead of employee's temporary home state; however, a few other states have decided that they will continue to apply the physical-presence rule, which could potentially create new tax compliance obligations. For states that have payroll and property factors, the presence of employees or company property in a new jurisdiction may have an impact on their multistate apportionment factor.*
- ***Planning opportunities:*** *Taxpayers should communicate changes to employee work locations with their tax advisor so that a review of activities creating nexus in states can be reviewed and addressed.*

Income Tax Accounting

The CARES Act contains significant business tax provisions that may impact a company's accounting for income taxes. Under ASC 740, companies must include the effects of any tax law changes in the financial statements in the period of enactment.

- ***Tax implications:*** *Numerous provisions included in the CARES Act have tax accounting implications, including interest deductibility, net operating losses, AMT credits and PPP loan forgiveness.*
- ***Planning opportunities:*** *With the downturn in profitability that many companies will experience in 2020, coupled with various provisions in the CARES Act, companies should reevaluate their ability to utilize deferred tax assets. A valuation allowance is required for deferred tax assets if it is more likely than not that all or some of the assets will not be realized. Additional or new valuation allowances may be necessary. Significant modeling exercises may be required to properly account for the various provisions of the CARES Act and their impact on the income tax provision and their financial statements.*

CARES Act Impact: Six Considerations for Plan Sponsors

The CARES Act includes several changes to retirement plans designed to give individuals greater flexibility and access to financial assets during calendar year 2020 only. Get more detail on these changes in the Wealth Management section starting on page 14.

For defined contribution plans, there are three key changes available to participants: coronavirus-related distributions, plan loans and required minimum distributions waived for 2020. For defined benefit (pension) plans, employer contributions (including quarterly contributions) due in calendar year 2020 can be delayed until January 1, 2021.

Plan sponsors should keep these concepts in mind as they continue to administer their retirement plans in accordance with fiduciary responsibilities:

1. Plans may see an increase in the number of loans and the dollar amount of loans which could cause additional administrative burden.
2. If 20 percent or more of a workforce has been laid off or furloughed, it may trigger a partial plan termination. Affected participants should be considered fully vested in their account balance as of the date of the full or partial plan termination.
3. As it relates to investment performance, continue to monitor, ask questions and properly document steps taken by the fiduciaries to monitor the situation.
4. As companies design creative compensation structures for employees who may be partially furloughed, be mindful of how these new sources of compensation fit into the retirement plan's definition of compensation.
5. Plan sponsors considering a reduction or elimination of 401(k) employer contributions may need to amend the retirement plan. Be sure to provide employees advance notice of any change to employer contributions.
6. A reduction in workforce could negatively impact a plan's nondiscrimination testing.

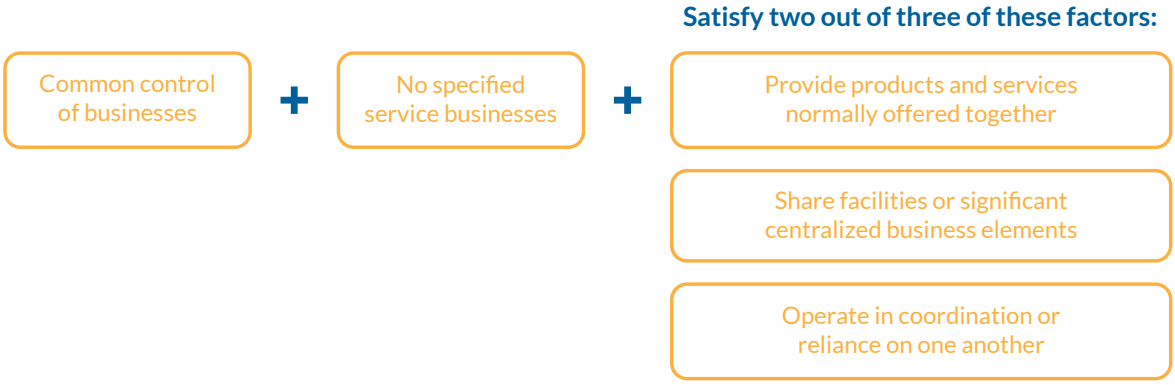
Section 199A: **Qualified Business Income Deduction**

The Section 199A qualified business income (QBI) deduction remains a meaningful way for business owners to reduce taxable income. After much analysis since 199A's introduction as part of tax reform, the rules and procedures around this deduction have started to settle into place. New forms (8995 and 8995-A) published this year provide clear instructions for calculating QBI, and make it easier for both tax practitioners and business owners to see the process behind the calculations. For the first time, business owners can start to proactively identify opportunities and avoid pitfalls affecting their business in relation to 199A.

4 Opportunities and Pitfalls for 199A

1. **Adjust wages to optimal levels:** Wages can be a major limiting factor for QBI deduction. If you find that your business has been limited over the past two years, or your business is coming close to the limitation, there are a few ways to optimize wages in order to avoid it. Contact an RKL advisor to discuss your options.

2. **Aggregation:** After two years of QBI, we are now able to better identify when aggregation is advantageous in the current year as well as future years (because aggregation is binding in future years). Remember, there are a few criteria the business must meet in order to be eligible to aggregate as outlined below.



   If your business qualifies, here are some triggers that indicate you may want to consider aggregation:

   - The wage and unadjusted basis in assets are limiting your qualified business deduction.
   - Your business income fluctuates and can create a loss at one entity and income at another entity.
   - Most employees and/or capital assets are held at one company that works closely with a commonly controlled company.

3. **Rental real estate safe harbor:** Rental real estate can be a grey area for QBI, but the IRS provides a safe harbor. If you satisfy the safe harbor requirements, the income qualifies for the QBI deduction. You will need to track separate books and records and maintain records of all services performed and total hours of services performed.

4. **1231 gains/losses:** 1231 gains do not qualify for QBI, but 1231 losses are considered QBI. The one exception that is beneficial to taxpayers (for QBI purposes) is that 1231 gains within five years of a 1231 loss are considered ordinary income, not capital, so the gain should be included in QBI.

Other **Business Deductions** ›

Meals & Entertainment

Event	2020 Expenses
Office holiday party or picnic	100% deductible
Client business meals	50% deductible if business is conducted, taxpayer is present and not lavish or extravagant
Entertainment-related meals	50% deductible if the meals are purchased separately from the entertainment or the cost of the meals is stated separately from the cost of the entertainment on one or more bills, invoices or receipts
Transportation to/from restaurant for client business meal	100% deductible
Sporting event tickets	No deduction for face value of ticket No deduction for skybox expenses to the extent of non-luxury seat ticket face value in such box No deduction for charitable sports events No deduction for the right to purchase tickets to an educational institution's athletic events No deduction for transportation to/from and parking at sporting events 50% deductible in the case of food and beverages provided during an entertainment activity; only when the food/beverages are purchased separately from the entertainment or the cost of the food/beverage is stated separate from the total cost of the entertainment on one or more bills/ invoices/receipts
Club memberships	No deduction for club dues No deduction for expenses incurred at a club organized for business, pleasure, recreation or other social purposes if related to an active trade or business
Meals provided for the convenience of the employer	50% deductible (nondeductible after 2025)
Meals provided to employees occasionally and overtime employee meals	50% deductible (nondeductible after 2025)
Water, coffee and snacks at the office	50% deductible (nondeductible after 2025)
Meals in office during meetings of employees, stockholders, agents or directors	50% deductible
Meals during business travel	50% deductible
Meals at seminar or conference or at a business league event	50% deductible
Meals included in charitable sports package	50% deductible
Meals included as taxable compensation to employee or independent contractor	100% deductible
Meals expenses sold to a client or customer (or reimbursed)	100% deductible
Food offered to the public for free (e.g., at a seminar)	100% deductible

Meals & Entertainment Recordkeeping Tips:

- Maintain certain details about events and expenses to support deductions taken. This can be as simple as a copy of the receipt, with attendees and a short phrase regarding purpose of the meal jotted down on the back.
- If using a standardized expense reimbursement form, update it to include prompts for pertinent information, such as attendee details and purpose or primary discussion topic of the meal.
- Consider setting up separate general ledger accounts for each class of meals and entertainment instead of merging into one account – this may keep the deduction and documentation process clearer and simpler.

Parking Expenses: Qualified or Nondeductible?

Does your business offer free parking or cover transportation costs for employees? Expenses paid or incurred by employers to provide employee parking are (generally) nondeductible.

Qualified parking is defined as parking provided to employees on or near the business work premises, or parking on or near a location from which employees commute to work by commuter highway vehicles, mass transit or van pool. Parking is considered qualified (and thus a taxable fringe benefit) even if the business owns a facility or lot.

How do you calculate qualified vs. nondeductible parking expenses?

This calculation will vary depending on the manner in which the business offers employee parking. The nondeductible portion can be calculated using one of the three methods described below:

1. **Qualified Parking Limit Methodology:** Multiply the total number of spaces used by employees during the peak demand period (or total number of employees instead of employees using parking) by the monthly income exclusion amount ($270 for 2020) for each month of the year.
2. **Primary Use Methodology:** Identify reserved employee spaces. Calculate whether 50 percent or more is used by the general public. Then, identify reserved non-employee spaces and allocate remaining expenses.
3. **Cost-per-Space Methodology:** Find the total parking expenses, divide by total parking spaces and then multiply by the number of available parking spaces to be used by employees during peak demand period.

When are parking expenses deductible?

Expenses are allowed as a deduction only if the amounts are included in employees' income because they exceed the monthly limitation ($270 for 2020). If the expenses are below the monthly limitation, the expenses are not allowed as a deduction and the amounts should not be included in the employees' income.

Expenses for goods, services and facilities made available to the general public are also deductible.

Parking Expenses Defined

The definition of parking expenses include but are not limited to:

- Repairs, maintenance and cleaning
- Utilities
- Insurance
- Property tax
- Interest
- Snow removal
- Landscaping
- Leaf or trash removal
- Parking attendant expenses
- Security
- Rent or lease payments

Does not include depreciation/amortization

Fixed Asset **Planning**

CARES Act Unlocks New Cost Recovery Opportunity for Eligible Businesses

One of the many tax provisions in the CARES Act provides an opportunity for businesses to potentially reap additional tax savings on interior renovations completed since January 1, 2018. The CARES Act reassigned Qualified Improvement Property (QIP) from a 39-year depreciable life to a 15-year life, eligible for bonus depreciation.

A Brief History of Qualified Improvement Property

The Protecting Americans from Tax Hikes Act of 2015 created a new cost recovery category for QIP. This new category allowed companies to use bonus depreciation for qualifying 39-year life non-residential interior improvements made after such building was first placed in service. QIP excludes elevators, escalators, building footprint enlargement and internal structural framework (load-bearing internal walls and other internal structural supports essential to a building's stability).

In December 2017, the Tax Cuts and Jobs Act moved QIP into a separate property class. Congress intended to also change QIP from a 39-year to a 15-year depreciable life, which would make it automatically eligible for bonus depreciation, but a technical error in the statutory language retained the 39-year life and excluded QIP for bonus depreciation. Finally, the CARES Act corrected that technical error and assigned QIP with a 15-year life as originally intended, effective January 1, 2018.

How to Make the Qualified Improvement Property Correction and Recoup Bonus Depreciation

Taxpayers who filed tax returns with the prior 39-year life for QIP may be eligible to file either an amended return or Form 3115 (Change of Accounting Method) to change the depreciable life to 15 years and recoup bonus depreciation on that QIP. Since return amendments can be cumbersome, particularly when there are multiple partner and shareholder returns associated, Form 3115 is a convenient option to make the correction. Consult your RKL advisor for assistance or with questions.

Section 179 Small Business Asset Expensing

Owners can garner more immediate savings from business expenditures through Section 179 expensing. Section 179, also known as the Small Business Asset Expensing Election, lets owners immediately expense the full purchase price of eligible software, equipment and leasehold improvements, rather than capitalizing them and waiting for depreciation. Use of Section 179 expensing for rental real estate and certain improvement property could negatively impact the Qualified Business Income (QBI) deduction for certain entities. **For 2020, the Section 179 allowable expense limit is $1.04 million and the spending cap phase out starts at $2.59 million.**

Bonus Depreciation

Tax reform proposed significant changes to bonus depreciation, the biggest of which was the change to a 100 percent bonus rate for qualifying property through 2022 and the inclusion of used property. These proposed changes were made final on September 13, 2019, with a retroactive effective date of September 27, 2017. These final regulations also confirm that bonus depreciation is mandatory unless a taxpayer makes an election out of bonus depreciation for any class of property during the taxable year.

Placed in Service Year	Bonus Rate	Longer Production Period Property & Certain Aircraft
9/28/2017 – 12/31/2022	100%	100%
2023	80%	100%
2024	60%	80%
2025	40%	60%
2026	20%	40%
2027	None	20%

Important notes to keep in mind:

- There are certain acquisition requirements for used property to be eligible for these new bonus depreciation rates. Three of these include (1) the written binding purchase contract must be dated after 9/27/2017; (2) a taxpayer or a predecessor may not use the property prior to the acquisition; and (3) the acquisition must occur by purchase (related party considerations).
- For new construction (or self-constructed property), the new bonus rates are applicable if "physical work of a significant nature" and the in-service dates occur after September 27, 2017. New guidance was issued to provide a safe harbor that "physical work of a significant nature" begins at the time the taxpayer incurs more than 10 percent of the total cost of the project.

Question: ***How does a taxpayer make the bonus depreciation rate change if 2018 tax return was filed prior to the final regulations?***

Answer: Taxpayers who filed their 2018 tax returns under the proposed regulations with 40 percent bonus depreciation on new construction projects are eligible to file a Form 3115, Change in Accounting Method, with their current year tax return, if they now qualify for 100 percent bonus depreciation under the final regulations. Contact your RKL advisor to see if you are eligible for this benefit.

There's Never Been a Better Time to Consider Cost Segregation

Cost segregation is not a new strategy, but tax reform changes to bonus depreciation and the CARES Act qualified improvement property correction provide even more incentive for business owners to consider a cost segregation study in the near future. Essentially, cost segregation identifies parts of a building that can be depreciated more quickly and turns those components into bigger tax deductions that can generate more cash flow in the earlier years of a building's lifespan.

Now through 2022, any qualifying personal property or land improvement identified and broken out from the building cost through cost segregation are eligible for 100 percent bonus depreciation. Since used property is now also eligible, owners can take advantage of bonus depreciation on qualifying assets identified at the time of a building's purchase. Before tax reform, these assets were depreciated with shorter depreciable lives and accelerated methods, but were not eligible for bonus depreciation.

Contact your RKL advisor to find out how a cost segregation study may benefit your organization.

Cost Segregation Study Options

	Description	Bonus Depreciation Eligibiity	Qualified Improvement Property Eligibility	Accounting Method Change Required
Current Year Purchase Price Allocations	Segregate purchase price into land, building, land improvements and personal property	Yes *(land improvements and personal property)*	No	No
Current Year New Construction	Segregate cost of construction project to break out land improvements and personal property	Yes *(land improvements and personal property)*	No	No
Current Year Renovations	Segregate cost of construction project to break out land improvements, personal property and QIP	Yes *(land Improvements, personal property and QIP)*	Yes *(excludes footprint enlargements, elevators, escalators and internal structural framework of building)*	No
Look-Back Studies	Segregate assets from prior year purchase or construction project to break out land improvements, personal property and QIP	Depends upon the year of purchase/renovation and the bonus depreciation rules at that time	Purchases, no renovations – Depends upon year in which renovations occurred	Yes
Qualified Improvement Property Study	Opportunity to look at renovations that occurred in 2018 or 2019 and break out QIP assets	Yes	Yes *(excludes footprint enlargements, elevators, escalators and internal structural framework of building)*	Yes

Cost Segregation in Action: Stories of Client Tax Savings

Purchase Price Allocation

Client A purchased a manufacturing facility in 2019. Since the existing tenant paid for its own interior fit-out, RKL considered only exterior assets in the cost segregation study. RKL identified 21 percent or $800,000 of the $6 million exterior building cost as personal property and land improvements. Combined with 100 percent bonus depreciation, this cost segregation produced a present value of the tax savings of $171,300 using a discount rate of six percent, with projected additional depreciation deductions of $809,600 for a tax savings of $295,000 (using tax rate of 37 percent).

New Construction

Client B constructed a new hotel facility in 2019. RKL identified 33 percent or $4.3 million of the total project cost of $16 million as personal property and land improvements. Combined with 100 percent bonus depreciation, this cost segregation produced a present value of the tax savings of $888,300 using a discount rate of six rate, with projected additional depreciation deductions of $4.2 million for a tax savings of $1.5 million (using tax rate of 37 percent).

Renovations

Client C renovated an office building in 2019. RKL identified 78 percent or $2 million of the total project cost of $2.5 million as personal property, qualified improvement property and land improvements. Combined with 100 percent bonus depreciation, this cost segregation produced a present value of the tax savings of $412,600 using discount rate of six percent, with projected additional depreciation deductions of $1.9 million for a tax savings of $717,400 (using tax rate of 37 percent).

Look-Back Study

Client D constructed a new manufacturing facility in 2018. In 2019, RKL performed a look-back study for that construction and identified 16 percent or $793,300 of the total project cost of $5 million as personal property and land improvements. Combined with 100 percent bonus depreciation, this cost segregation produced a one-time additional depreciation deduction of $779,200 to be recognized in the current tax year, for a tax savings of $288,300 (using tax rate of 37 percent).

Qualified Improvement Property Study (QIP)

Client E renovated an auto dealership in 2018. In 2019, RKL performed a QIP study on those renovations and identified 38 percent or $1.2 million of the total project cost of $3.1 million as QIP. Combined with 100 percent bonus depreciation, this cost segregation produced additional depreciation deductions in 2019 of $1.2 million, resulting in a tax savings of $444,000 (using tax rate of 37 percent).

U.S. International **Tax Compliance**

Since enactment of the major international changes under tax reform, clarifying regulations (many of them retroactive) have slowly been released by the Treasury Department and IRS. We have gained (and continue to gain) additional insights into key areas outlined below.

Increased Reporting Requirements

Information reporting for U.S. taxpayers with ownership in foreign corporations increased dramatically in order to keep up with complexities of U.S. international tax law after tax reform. This additional data is required to be included with the tax return of a "U.S. Shareholder," that is a domestic individual or entity with a 10 percent ownership interest in a foreign corporation that is a controlled foreign corporation (CFC). A CFC is a foreign corporation with more than a 50 percent share (by vote or value) owned by 10 percent U.S. Shareholders.

CFC Reporting Changes for 2018 Tax Year and Beyond:

- Reporting of all direct owners of the foreign corporation
- Detailed questionnaire regarding payments to foreign persons, foreign-derived sales, inversions, intercompany arrangements and other transactions to provide a roadmap for the IRS to identify relevant international tax concerns
- Foreign tax payment support information including the amount of income taxable on the foreign tax return, foreign currency and breakdown of taxes applied to various U.S. anti-deferral categories and buckets of earnings
- Supporting data relating to the calculation of Global Intangible Low-Taxed Income (GILTI)
- Breakdown of the foreign corporation's earnings and profits (E&P) into various categories and E&P buckets, along with additional detail by shareholder for amounts previously taxed under one of the anti-deferral regimes

Compliance Tips:

- Allow sufficient time to gather the new documentation and potentially coordinate with other shareholders to get a complete picture of the earnings subject to tax.
- The 10 percent ownership interest threshold for determining status as a U.S. Shareholder is not applicable for ownership in captive insurance companies. In that case, any ownership share automatically causes a U.S. person to be a U.S. Shareholder.

Expansion of Anti-Deferral Provisions

Provisions of existing law meant to prevent certain types of earnings from being held offshore, such as Subpart F income and the Passive Foreign Investment Company (PFIC) rules, were retained under tax reform. In addition, the Tax Cuts and Jobs Act (TCJA) provides for a minimum tax on Global Intangible Low-Taxed Income (GILTI). GILTI includes not only intangible income, but all income earned by a controlled foreign corporation (CFC) above a 10 percent return on its depreciable tangible property used to generate the income. A deduction meant to reduce the tax rate on GILTI income by 50 percent is only available to C Corporations.

The regulations allow a limited exception to partners with small ownership interests in a domestic partnership that is a 10 percent U.S. Shareholder of a controlled foreign corporation. Rather than calculating GILTI at the partnership level and allocating the income, the regulations look to the indirect ownership share of the U.S. partner to allocate the related income and expense items. If the partner is not him or herself a U.S. Shareholder, no GILTI-tested items should be assigned to the partner.

Final regulations on the GILTI high-tax exclusion released in late July 2020 state that if a CFC's effective foreign tax rate exceeds 18.9 percent and the appropriate election is made, a U.S. Shareholder may exclude the income inclusion items from its GILTI calculation. The election to utilize the high-tax exclusion is made on an annual basis and is applied to all CFCs owned by a U.S. Shareholder and to all of a CFC's U.S. Shareholders. The regulations are effective for CFC tax years beginning on or after July 23, 2020, but taxpayers may also elect to apply the final regulations retroactively to tax years beginning after December 31, 2017.

Reduced Rate on High-Margin Exports

Income from the export of goods and services for use in a foreign country will generally be eligible for a deduction for foreign-derived intangible income (FDII) if profit is above a 10 percent return on depreciable tangible property used to generate the income. Corporations with profits from the use of intangibles can also benefit. The net effect of the deduction is intended to reduce the tax rate on such income to 13.125 percent. This deduction is also only available to C Corporations.

In order to qualify, a taxpayer must be able to establish that the property or services are sold to a foreign person (individual or entity) for foreign use. Final regulations released in July 2020 replace the strict documentation requirements as determined under the proposed regulations. Specific types of documentation to establish foreign person status and foreign use have been replaced by a more flexible substantiation standard. Your RKL advisor can work with you to ensure that proper documentation is on file to support the FDII deduction.

Note

The FDII deduction and the 50 percent deduction against GILTI income (collectively the Section 250 deduction) are limited by taxable income, meaning that the deduction cannot cause a corporation to incur a taxable loss.

Foreign Dividend Planning

There is a silver lining to the additional foreign income inclusions enacted as part of tax reform: tax-free repatriation of cash. To the extent that foreign earnings are subject to tax under a provision of the Code (for example, GILTI), the equivalent amount may generally be distributed to U.S. Shareholders without being taxed a second time. For U.S. C Corporations, an even more generous 100 percent dividends received deduction is allowed against dividends from 10 percent-owned foreign corporations.

The Transition Tax Lives On

The Section 965 transition tax represents a mandatory deemed repatriation of the accumulated earnings of foreign corporations with U.S. ownership.
The 965 liability and reporting was generally reported on taxpayers' 2017 and 2018 tax returns. Looking forward, only those taxpayers who elected to pay the tax in installments will have continued 965 reporting requirements. In addition to penalties, failure to make a timely installment payment according to the below schedule can cause the entire tax liability to be accelerated and come due immediately.

- 8 percent of the tax liability for each of the first five installments
- 15 percent of the tax liability for the sixth installment
- 20 percent of the tax liability for the seventh installment
- 25 percent of the tax liability for the eighth installment

CARES Act & the International Implications of NOL Rule Changes

With the enactment of the CARES Act in response to the COVID-19 pandemic, Net Operating Losses (NOLs) generated in 2018-2020 are eligible to be carried back to prior tax years. The change in these rules can have significant tax implications for taxpayers in the U.S. international context.
The 50 percent GILTI and 37.5 percent FDII deductions are limited to the taxpayer's taxable income after NOL.

Accordingly, carrying back NOLs to previous years with these deductions may not provide the anticipated benefit if either, or both, of these two deductions is limited by taxable income. Furthermore, the forgone deductions cannot be carried forward to future years. Consult with your RKL tax advisor if considering claiming an NOL carryback to ensure all possibilities are considered and you receive the optimal benefit.

State Tax Implications for Foreign-based Companies

For many foreign companies with sales and distribution activities within various states, it may come as a surprise that even those with minimal physical presence in the U.S. can have significant state tax compliance responsibilities. For federal tax purposes, non-U.S. companies can rely on existing income tax treaties to reduce or eliminate the federal income tax liability. However, these federal treaties do not apply at the state level, leaving taxpayers exposed, especially those with a physical presence in the state (i.e. property or payroll).

Several states have shifted toward a gross receipts based tax subject to a bright-line threshold.
These non-income taxes are not subject to the income tax nexus limitations under Public Law 86-272.
(***Note:*** Public Law 86-272 also generally only protects certain activities of interstate commerce and not foreign commerce, although many states have applied Public Law 86-272 protection to include both activities). Common examples include the Ohio Commercial Activity Tax, Washington Business and Occupation Tax and the Oregon Commercial Activity Tax. Non-U.S. companies with economic activity (i.e. sales) in these states should be aware of these taxes and their potential for applicability.

Reporting for Payments to **Foreign Persons**

Taxpayers who conduct business with foreign vendors and foreign related parties must report payments and withhold tax from certain types of income. The rules for withholding tax on payments of U.S. income earned by foreign persons can be quite complex and missing a tax deposit during the year can be costly.

Remember:

- Forms 1042, 1042-S and 1042-T (which summarize yearly withholdings) are due each year on March 15.
- Tax withholding generally applies to income that is passive in nature, such as interest, dividends, rents, royalties (including items deemed to be royalties, such as software subscriptions), premiums and annuities. Services performed in the U.S. can also be subject to withholding.
- A 30 percent default rate of withholding applies unless valid Form W-8 series documentation asserting a lower rate is received prior to payment.
- Interest charges apply to late deposits and late payment penalties can reach to as high as 25 percent of the unpaid tax in some cases. If annual Form 1042 filings are missed, late filing penalties up to another 25 percent of the tax can result.
- Even if the default withholding rate is reduced to zero, there is still a requirement to file Form 1042.

Four-Step Guide to Identifying Payments to Foreign Persons

Step 1: Review vendor list for non-U.S. payees, passive payments and services performed in the U.S. by a foreign person or company (exclude inventory and equipment purposes).

Step 2: Require completion of Form W-9 (for domestic payees) and Form W-8 (for foreign payees) as part of vendor acceptance process to reduce potential tax or penalty exposure.

Step 3: Withhold tax at time of payment and deposit to the U.S. Treasury within three business days after the end of the quarter-monthly period (i.e. after the 7th, 15th, 22nd and last day of the month) in which the payment is made to the foreign party.

Step 4: Stay in contact with your RKL advisor as payments are made in real time to prevent issues down the line and ensure compliance.


Budget
Actual
Difference
700.00
175.00
0.00
175.00
Hotel
Apartment
Cafe
Shop
Other
11%
Budget
Actual
Difference
37%
700.00
525.00
350.00
175.00
0.00
175.00
Hotel
Apartment
Cafe
Shop
Other

Tax Planning for **Nonprofits**

Filing Deadlines: Form 990 Series (990, 990-EZ, 990-PF, 990-N, 990-T)	
Filing for December 31 year-ends	May 17, 2021
Extensions for December 31 year-ends	November 15, 2021
Filing for June 30 year-ends	November 15, 2021
Extensions for June 30 year-ends	May 16, 2022
All other year-ends	15th day of the 5th month following the end of the organization's taxable year (extensions due six months after that date)

2020 Tax Changes & Reminders for Exempt Organizations

REPEALED: EMPLOYEE PARKING TAX

Effective December 20, 2019, nonprofit parking and transportation benefits will no longer be counted as unrelated business taxable income. This full repeal was part of the Taxpayer Certainty and Disaster Tax Relief Act of 2019 and is retroactive for 2018 and 2019.

NOT REPEALED: EXCISE TAX ON EXCESSIVE EXECUTIVE COMPENSATION

Nonprofits must pay a 21 percent excise tax on any annual compensation exceeding $1 million paid to the top five highest compensated employees (former or current), as well as separation pay or "golden parachute" packages greater than or equal to three times base salary.

PRIVATE FOUNDATION TAX RATE STANDARDIZED TO ONE LEVEL

Previously taxed at a two-tier rate (one and two percent), private foundation net investment income will now be subject to a standard 1.39 percent tax. This change was codified as part of the 2020 federal government funding bill, and is effective for tax years beginning after December 31, 2019.

LATEST GUIDANCE ON CALCULATING UNRELATED BUSINESS INCOME (UBI)

Since the passage of tax reform, UBI is taxed at the corporate rate of 21 percent, instead of the previous tiered tax system. Originally, tax reform required nonprofits to calculate UBI individually for each trade or business. In April 2020, the IRS proposed regulations that permit nonprofits to group UBI into 20 silos.

IRS CLARIFIES TREATMENT OF NET OPERATING LOSSES (NOLS) UNDER CARES ACT

In FAQs published in June 2020, the IRS directs nonprofits to silo NOLs occurring in tax years 2018 and 2019 so they can be calculated separately for each unrelated trade or business. Nonprofits are permitted to carry back NOLs five years and use them against aggregate UBI.

Nonprofit Planning: 3 Areas that Could Jeopardize Tax-Exempt Status

Lobbying: 501(c)3 organizations cannot participate in ***substantial*** lobbying. The term substantial is not specifically defined in the tax code. Organizations can make a 501(h) election on IRS Form 5768, which allows them to spend up to a certain amount on lobbying activities based on their total exempt purpose expenditures. The election must be filed within the same tax year as the lobbying activities, and remains effective each year until revoked.

Organizations that exceed the lobbying nontaxable thresholds outlined below must pay a 25 percent excise tax on those amounts. This excise tax is paid on Form 4720, which is due at the same time as Form 990.

Total Exempt Purpose Expenditures:	The Lobbying Nontaxable Amount is:
Not over $500,000	20% of the amount of total expenditures
Over $500,000 but not over $1,000,000	$100,000 plus 15% of the excess over $500,000
Over $1,000,000 but not over $1,500,000	$175,000 plus 10% of the excess over $1,000,000
Over $1,500,000 but not over $17,000,000	$225,000 plus 5% of the excess over $1,500,000
Over $17,000,000	$1,000,000

There are two types of lobbying that could be considered taxable: direct and grassroots. Direct lobbying includes testimony at public hearings by legislative communities, correspondence (including email) with legislators or staff and publications of any kind advocating specific legislative action. Communications are considered direct lobbying if they include specific legislative references and the organization's views on legislation. Grassroots lobbying includes appeals to the general public to take action or contact their legislators on legislative matters. If a nonprofit encourages direct or grassroots lobbying by members, the organization itself is considered to be taking part in such activity.

Does your nonprofit need these tools/resources to carry out exempt activities?

- County gaming license
- PA state sales tax exemption
- Registration in other states
- Real estate tax exemption

RKL's team of nonprofit advisors can answer questions and discuss applicability with your organization.

Unrelated business income vs. excluded income:

The purpose of the unrelated business income tax (UBIT) is to level the playing field between nonprofits and for-profit entities. The IRS does not want tax-exempt organizations to have an unfair advantage if they are participating in business activities that do not further their exempt purpose. Taxes are one of the largest expenses for a business, so if nonprofits do not have that expense they would be able to offer services at a lower price than their taxed competitors.

Income generated by nonprofits must be classified into one of three categories: related, unrelated and excluded. Related income revenue supports the mission of the organization, whereas unrelated income does not and is therefore taxable. The IRS provides opportunities to exclude income from UBIT, provided the income or activity meets one or more of the following criteria:

- Furthers the organization's exempt purpose
- Not carried out on a regular basis (occasional fundraisers are permitted)
- Passive income, such as rents (not debt-financed), royalties, dividends, interest
- Uses all volunteer labor
- Merchandise for sale is donated
- Product or service provided solely for the convenience of members and others

Common Nonprofit Activities – Related, UBI or Excluded?

Rental property example

- Commercial property rented to a for-profit entity with no mortgage – not UBI, excluded (passive income)
- Commercial property rented to a for-profit entity that has a mortgage for 60 percent of the cost of the building – 60 percent UBIT, 40 percent excluded
- Residential property rented exclusively to low-income families that has a mortgage for 60 percent of the cost of the building – 100 percent related (furthers exempt purpose)

Advertising example

- Selling advertisement space in a theater's playbill – UBI
- Printing list of donor names in the playbill as a thank you to sponsors – not UBI, excluded (not considered a business activity)
- Cannot use qualitative or comparative language, price information or indications of savings or value
- Cannot endorse the business
- Cannot include inducements to purchase, sell or use the products or services

Religious organization example

- Church with a café that is only open on Sunday mornings – not UBI, excluded (convenience of members)
- Open to the public all week – UBI
- Possible remedy for exclusion – use only volunteer labor at café

Social club example

- Special rules for these 501(c)(7) organizations
- Investment income – UBI
- Non-member use of facilities – UBI

Soliciting in another state: In a world where more and more fundraising occurs online and a charity's website is available everywhere, solicitation rules can become blurred. Charitable organizations that are based in Pennsylvania, even if all of their program services and operations are located solely in PA, may find themselves with a registration or other filing requirement in other states. Most states have registrations requirements that are similar to that of the PA Bureau of Charitable Organization – if residents are being solicited for contributions, some reporting is required. There are several exemptions for some types of organizations, such as churches, schools, government agencies, etc., but the rules vary from state to state. The requirement generally is based on whether solicitation occurs in that state and the organization's overall amount of contributions received during the year.

Registration Thresholds and Audit Requirements for Common States

State	Required to register if total contributions are greater than:	Financial statement audit/review/compilation requirement:	Filing fee:
PA	$25,000	**Contributions:** Less than $100,000 – internally prepared financials $100,000-$250,000 – compilation $250,000-$750,000 – review Greater than $750,000 – audit	$15-$250
NJ	$10,000	**Gross income:** Less than $500,000 – audit	$30-$250
NY	$25,000	**Revenue:** $250,000-$500,000 – review Greater than $500,000 – audit	$25-$1,500
MD	Any solicitation	**Contributions:** $300,000-$750,000 – review Greater than $750,000 – audit	$0-$300
FL	Any solicitation	**Contributions:** Less than $500,000 – compilation $500,000-$1,000,000 – review Greater than $1,000,000 – audit	$10-$400
CA	Any solicitation	**Total revenue:** Less than $2,000,000 – audit	$0-$300

Let's Continue **the Conversation**

This publication is intended to guide our clients and friends through year-end planning and facilitate discussion around new tactics or opportunities.

Questions about any of the topics discussed here?
Ready to implement any of these strategies?

Contact your RKL advisor, reach us at one of our offices listed below or visit RKLcpa.com.

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