How to Continue Navigating Through the #Covid-19 Storm!

DASZKALBOLTON
accountants & advisors

Conquer new ground.SM

Awaiting Additional Guidance

All of the information presented is subject to change based on (additional) guidance by the Congress, SBA, IRS, Department of Treasury, Department of Labor and the various State Taxing Authorities.

Qualified Disaster Assistance Payments "QDAP"

- Federally declared disaster allows **employers to make QDAP tax-free to employees**
- Fully deductible by employer
- Not subject to any payroll taxes or withholding and not considered compensation

- Payment is to **reimburse or pay the employee for "reasonable and necessary personal family, living or funeral expenses"** incurred as a result of Covid-19
- Employee cannot be compensated for such expenses or losses by insurance and this cannot be intended to replace lost income

Examples of QDAP Costs

- Out-of-pocket medical costs
- Over-the-counter medications and hand-sanitizer
- **Costs to enable employee to work from home (computer, monitor, printer, increased utility costs)**
- **Child care or tutoring due to school at home**

Best Practices

- Set a cap per employee or for the company
- Provide guidance on what you will and won’t reimburse
- Start and end date of the program
- List of amounts paid and to whom
- Employees do not need to provide receipts

Claiming Covid-19 Loss

- Losses usually deducted in year it occurs
- In Presidentially-Declared-Disaster you can **elect to deduct entire disaster loss in the year of loss (2020) or prior year (2019)**
- On an originally filed or amended 2019 tax return

Requirements

- **Loss must be attributable to the disaster (some direct causation)**
- Loss must have occurred within disaster area
- Loss must be of a type deductible under Section 165(a) for trade or business activity or transaction entered into for profit; and
- Loss must not be reimbursed by insurance or otherwise

Examples with direct causation

- Closure of store or facility locations
- Abandonment of leasehold improvements
- Permanent retirement of fixed assets
- **Abandonment of pending business deals for which costs have been capitalized**
- **Disposal of inventory or supplies that are unsaleable or unusable**
- Termination payments for executory contracts
- Losses from sale of property

Benefit of Deducting Losses in 2019

- Losses in 2019 may generate a Net Operating Loss that can be carried back 5 years (one year earlier than losses in 2020)
- Tax savings on 2019 income so more immediate cash flow!

Employer Payroll Tax Relief

- Families First Coronavirus Response Act –
  - Paid Sick Leave & Paid Family Leave
    - Payroll Tax Credit
    - Health Insurance Portion Credit
    - Employer FICA on required sick pay waived
    - Employer’s Medicare tax on required sick pay waived
- CARES Act
  - Employee Retention Credit
  - Deferral of Payroll Taxes

FFCRA

- Families First Coronavirus Response Act
- Public OR Private Employer with fewer than 500 employees
- Possible to get an exemption if fewer than 50 employees (but no guidance on how to claim the exemption)

FFCRA – Paid Sick Leave "EPSL"

Unable to work or **telework because**:

1) Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.

2) Employee advised by a health care provider to self-quarantine due to concerns related to COVID– 19.

3) Employee is experiencing symptoms of COVID– 19 and seeking a medical diagnosis.

4) Employee is caring for an individual who is subject to an order in (1) or advised per (2).

5) NEXT SLIDE

6) Employee is experiencing substantially similar condition per Secretary of Health & Human Services and Treasury or Labor Secretaries.

Emergency Family Medical Leave - "EFML" #5 in list above

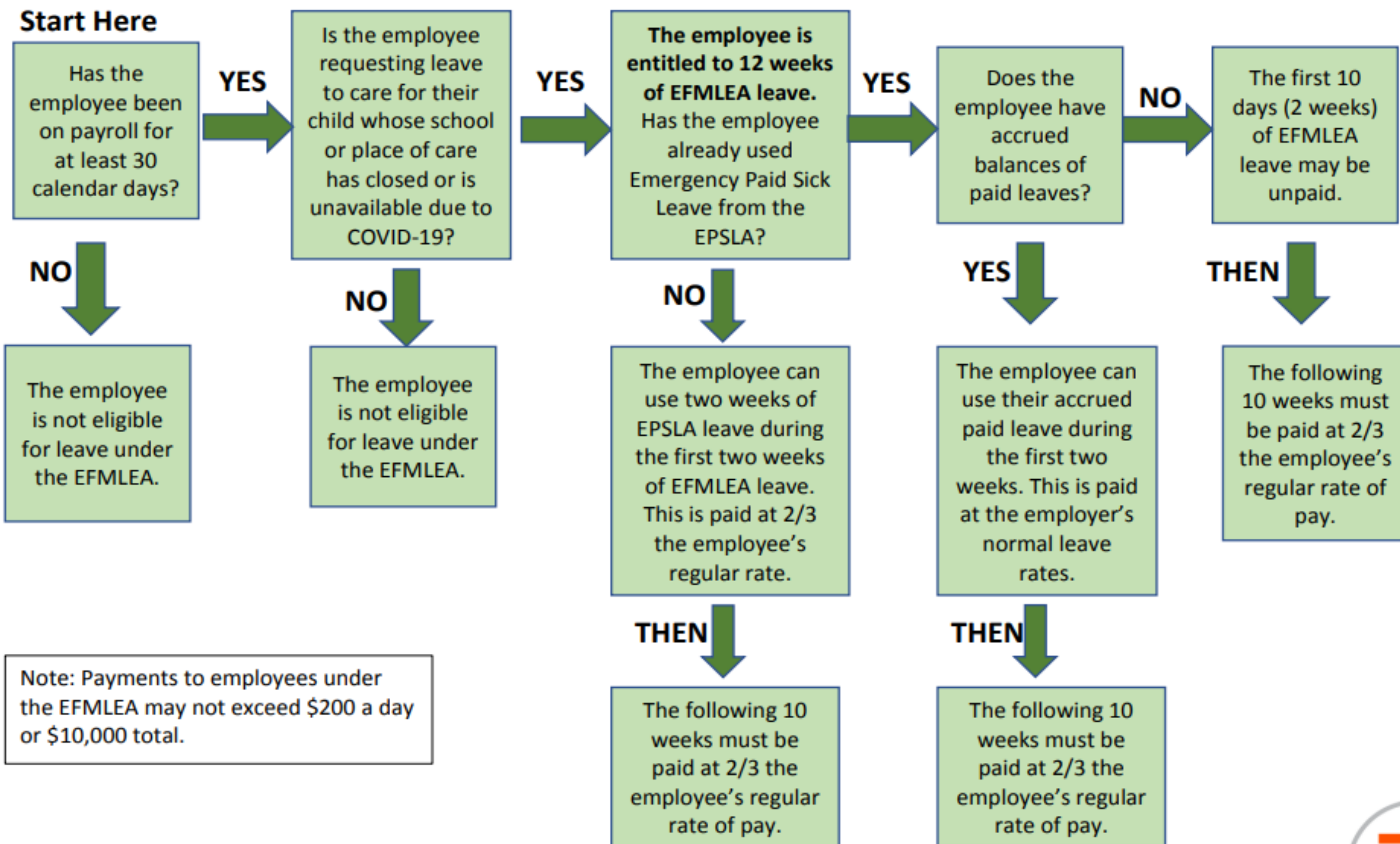
". . . means the employee is ***unable to work*** (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency."

For the Children …

For Category (5): A full-time employee is eligible for **up to 12 weeks** of leave (**two weeks of paid sick leave** *followed* by **up to 10 weeks of paid expanded family & medical leave**) at 40 hours a week. . .”

Effective April 1, 2020 through December 31, 2020

Determining an Employee’s Pay Under the Emergency Family and Medical Leave Expansion Act (EFMLEA)



Effective April 1, 2020 through December 31, 2020

FFCRA – Leave Chart for Emergency FMLA and Emergency Sick Leave

Qualifying Reasons for: Emergency Paid Sick Leave (EPSL)	Weeks 1 and 2 (80 hours)		Weeks 3 through 12 (additional 10 weeks)
1. subject to a Federal, State, or local quarantine or isolation order related to COVID-19	Paid EPSL at regular rate	No EFML	No EFML
2. has been advised by a health care provider to self-quarantine related to COVID-19	Paid EPSL at regular rate	No EFML	No EFML
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis	Paid EPSL at regular rate	No EFML	No EFML
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2)	Paid EPSL at 2/3 regular rate	No EFML	No EFML
5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons **This is Also the Only Qualifying Reason for Emergency Family Medical Leave (EFML)**	Paid EPSL at 2/3 regular rate	Unpaid EFML	PAID EFML at 2/3 regular rate
6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services	Paid EPSL at 2/3 regular rate	No EFML	No EFML

Employer Benefits - Refundable Payroll Tax Credits

- 100% qualified paid sick leave wages
- 100% qualified paid family leave wages
- Employer share Medicare tax (1.45%) waived
- Employer's cost of maintaining health insurance coverage during the EPSL and EPFL periods
- All of the above credited against payroll tax deposits
- IRS issuing revised form 941 for 2nd qtr 2020 or advance credit on form 7200

CARES ACT

- **Encourage Eligible Employers to keep employees on their payroll (Employee Retention Credit) and / or Payroll Tax Deferral**
- The FFCRA Paid Sick Leave and Paid Family Leave provided for Tax Credits for the employer.
- **The same wages cannot be counted for both credits.**

Employer Retention Credit "ERC"

- ERC is a fully refundable tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that Eligible Employers pay their employees.
- ERC applies to qualified wages paid after March 12, 2020, and before January 1, 2021.
- Maximum amount of qualified wages for each employee for all calendar quarters is $10,000, so max credit is $5,000 per employee.

Eligible Employers

- Carrying on a Trade or Business during calendar year 2020, including tax exempt organizations, where
  - **Employer's business is fully or partially suspended by government order due to Covid-19 during the calendar quarter; OR,**
  - **Employer's gross receipts are below 50% of the comparable quarter in 2019.**
  - Once gross receipts go over 80% of comparable quarter in 2019, employer no longer qualifies AFTER the end of that quarter.

Employers <= 100 Employees

- **If 100 or fewer employees ON AVERAGE in 2019, credit is based on wages paid to all employees, regardless if they worked or not.**
- If the employees worked full time and were paid for full time work, the employer receives the credit

Employers > 100 Employees

- If AVERAGE more than 100 employees in 2019 the credit is ONLY ALLOWED for wages paid to employees who did not work during the calendar quarter

How do I receive my credit?

- Reduce required payroll tax deposits that have been withheld from employees' pay by the amount of the credit
- Form 941 for 2nd quarter 2020 will be revised and expanded to reflect changes (to be released week of 4/23/2020)
- File Form 7200, Advance Payment of Employer Credits Due to Covid 19

CARES Act Payroll Tax Deferral

- Employer may defer the employer portion of Social Security taxes due between March 27 and December 31, 2020
- <u>However</u>, employers that have PPP <u>forgiven</u> are not eligible to defer these taxes.
- Elect to delay payment to IRS for those taxes from 3/27/2020 – 12/31/2020
- 50% payable on 12/31/2021
- 50% payable on 12/31/22

Interaction

- If you received PPP Loan –
  - Can take FFCRA tax credits but not on the same wages
  - Cannot claim the Employee Retention Credit on any wages
  - If any of your PPP was forgiven, you cannot defer payroll taxes on any wages past the date of loan forgiveness
- If you didn’t receive PPP Loan-
  - Can claim both FFCRA and ERC credits but not on the same wages

State Income Tax Relief

- Most States Extended the Corporate and Personal Income Tax Filing and Payment Deadline to 7/15 including 1st Quarter Estimate to 7/15)
- Growing Number of States are extending 2nd Quarter Estimate to 7/15 as well
- States offering generous relief include:
  - Alabama, California, Colorado, Connecticut, Georgia, Kentucky, Maryland, Missouri, Nebraska, New Mexico, North Dakota, South Carolina, West Virginia, Wisconsin

State Income Tax Relief

- Some states are offering limited if any relief
  - New York City – has not extended the due date but Businesses may request penalty waiver (interest accrues from 4/15) (New York State has extended due date including 2020 Q1 Estimates to 7/15)
  - Some States are waiving penalties but not interest on payments made past original due date including Massachusetts, North Carolina and Virginia
  - Some states will look on a case by case basis for late filing and/or late payment
  - Payment plans may be an option
  - Localities are not necessarily following State extension relief

When is my Florida Corporate Income Tax Return Due?

- Florida has not yet granted filing or payment relief for 2019 corporate income taxes or 2020 estimated tax payments
- According to the Florida Tax FAQS regarding Covid-19 relief, the Department of Revenue will work with impacted taxpayers on a case by case basis.
- Unclear at this point what relief is being offered for those businesses “impacted by the virus”

Additional States with Limited Relief - Corporate

- Arkansas - Due Date Remains 4/15 and Franchise Tax remains due 5/1
- Idaho –Due Date Extended to 6/15 including 2020 Q1 Estimate
- Minnesota – due date 4/15 (but check for automatic extension)
- Mississippi – Due date extended to 5/15 including 2020 Q1 Estimates
- Montana- Due date Remains unchanged at 5/15
- 2020 Estimates
  - Iowa – Q1 and Q2 – Conditional Penalty Relief if paid by 7/31
  - Louisiana – No extension for estimates but penalty waiver

Additional States with Limited Relief – Personal Income Taxes

- Certain States Offering Limited (if any) Relief
  - Idaho – due date extended to 6/15 includes Q 1 2020 Estimate
  - Mississippi – due date extended to 5/15 includes Q1 2020 Estimate
- 2020 Estimates
  - Iowa – Q1 and Q2 – Conditional Penalty Relief if paid by 7/31
  - Louisiana – No extension for estimates but penalty waiver

Takeaway on State Income Tax Relief

- Individual Relief more expansive than for BusinessesReview state specific rules to avoid unwanted interest and/or penalties
- Guidance is ever-changing in all states
- Beware of Localities administering their own income/gross receipts type taxes.
- Contact State Taxing Authorities if Payment cannot be made and…
  - Confirm Relief with your Tax Advisors
  - Contact States and/or Localities to Request Payment Plans

Sales Tax - What Relief is being offered by the States?

- Sales Taxes are Trust Fund Taxes which are collected at time of transaction, and thus most States DID NOT extend deadlines.
  - Seller does not "own" funds as seller is "Trustee" for the Jurisdiction
- States offering some sort of Sales Tax Relief (many are conditional) include the following States.
  - Alabama, California, Colorado, Connecticut, District of Columbia, Illinois (very limited), Louisiana, Maryland, Massachusetts, Michigan, Minnesota (very limited), North Carolina (interest still accrues), Vermont (limited), Virginia by request, Washington and Wisconsin (limited)

When are my Florida Sales Tax Returns Due?

- February - no penalties or interest were imposed if return filed and taxes paid by 3/31/2020
- March Returns and payments extended to 4/30/2020 if the taxpayer has been *adversely affected* by the COVID-19 outbreak.
- What does Adversely affected mean? Shouldn't all businesses be eligible for relief?

“Adversely Affected” Defined by FL DOR as…

- Any of the following four conditions:
  - 1) The business closed in March 2020 in compliance with a state or local government order issued in response to the COVID-19 outbreak and following the closure had no taxable transactions for the taxes listed above; OR
  - 2) The business experienced sales tax collections in March 2020 that are less than 75% of March 2019 sales tax collections; OR
  - 3) The business was established after March 2019; OR
  - 4) The business is registered with the Department to file quarterly.

Nexus For Remote Workers

- How will remote workers create nexus for Businesses due to COVID19 (stay at home orders)
- What is nexus?
  - The connection business has with a state/locality that creates a filing requirement for income and/or sales taxes
- Example: Ashley is head of sales for PetRetail Co. in NYC. She lives in NJ and normally commutes to NYC as the company does not permit telecommuting. She and colleagues are working remoting in NJ or CT (and states not near NYC to be with family/friends) due to stay at home order in NYC.
- Will nexus be created in States where Company X has remote workers?

When is nexus created?

- Pre-Covid19 - Income tax (and sales tax) nexus is generally created when an employee (or 1099) works from home for a business.
  - Physical Presence via employees and/or 1099s
- During Covid19 – Several States have issued guidance that remote workers will not impact nexus determinations during the duration of pandemic.
  - Physical presence will be ignored temporarily
  - District of Columbia, Indiana, Maryland (case by case), Minnesota, Mississippi, New Jersey and Pennsylvania
- Post Covid19 – When will states look to assert nexus over remote workers based upon a physical presence argument? 30 days after stay at home orders lifted? 60 days? What about employees that prefer to work from home indefinitely?

Practical Advice

- Businesses should be very careful to ensure nexus was not created before employees were required to work from home as states will not disregard tele-workers for state income tax purposes if a business had pre-existing nexus.
  - Physical presence is created by employees, 1099s, property, inventory etc…
- It is unclear if this temporary waiver of nexus created by tele-workers will apply to all taxes (income, sales and use, franchise, other taxes), particularly Sales Taxes
- Businesses may face additional withholding requirements that could differ based upon state rules and state reciprocity agreements

Sales Tax Economic Nexus – Wayfair Enforcement – Post Covid19

- Wayfair decision (June 2018) enabled states to collect sales tax from remote sellers based solely upon economic presence (abandoning) the decades old “traditional” physical presence requirement.
- 2019 – All but two States (Florida and Missouri) implemented laws to tax businesses based upon volume of sales in a state.
- 2020 –Year of economic nexus enforcement, and once this health crisis passes, we will certainly see states step up compliance efforts.

Practically Speaking…

- Although a few States have extended tax filing and payment deadlines, and waived interest and penalties during this crisis, States will be sure to ramp up sales tax audit activity.
  - States are already looking to hire additional examiners to compel sales tax compliance and collect revenue
  - Lookback period – depends upon state

- As online sales continue to dominate the retail industry, especially during Covid19, businesses selling in a multi-state environment should:
  - Review state and local economic sales tax filing requirements
  - Come into compliance as soon as practicable.
  - Even International Companies need to be wary of Wayfair

Loan Programs Update

- SBA 7(b) – Economic Injury Disaster Loan (EIDL)
  - Early applicants are seeing grants of up to $10k ($1k/employee with cap of $10k) funded.
  - Phase I (50% of prior year gross profit up to $500k) – status of program unclear, no funding that we know of to date; talks of cap at $15k.
  - Phase II based on actual losses / need, up to total for all Phases of $2m – status also unclear, no funding to date.
  - SBA lacks manpower to process (burden is on SBA to administer, rather than individual banks / lenders).

- SBA 7(a) – Paycheck Protection Program (PPP)
  - Original budget of $349bn exhausted; Senate has approved $310bn of additional funds with $30bn earmarked for banks <$10bn in assets, $30bn 10-50bn in assets, remaining $250bn available for all lenders to distribute. Pending House approval.
  - Many businesses have received funds and are now navigating the forgiveness guidance which lacks clarity
  - Advice for self-employed individuals and smaller businesses seeking loans

Loan Programs Update

- Main Street Lending Program
  - New loan facilities up to lesser of $25m or 4x 2019 EBITDA
  - Expand existing loan facilities up to lesser of $150m or 6x 2019 EBITDA
  - Rate: Secure Overnight Financing Rate (SOFR) + 250-400 basis points
  - 4 year term, unsecured
  - Restrictions on distributions, dividends, executive and highly-compensated individual pay.
  - The Fed and Treasury were receiving feedback from lenders until April 16th, new guidance and details are expected as early as next week

Financial Modeling

- Business leaders should be continuously updating budgets and projections within their operating models to understand near-term financial position and potential funding shortfalls

- Connecting financial models to various funding programs:

  – EIDL – Phase II (when available), an updated model showing spend needed for operations will support receiving max loan amount of up to $2m.

  – PPP – Understanding required spend during the covered period (8 weeks from date of funding) and strategic application of funding to maximize forgiveness.

  – Main Street Lending Program – vetting and quantification of potential adjustments to reported EBITDA may allow for additional funding that is more representative of the leverage ratio the business can support (as is governed by 4x or 6x EBITDA for new and existing loans, respectively).

DASZKALBOLTON
accountants & advisors

Conquer new ground.^{SM}

At Daszkal Bolton, we stand with our clients to deliver thoughtful solutions. We think creatively and make your goals our priority because you deserve more than accounting. You deserve relationships you can trust.

With Daszkal Bolton by your side, you have the added strength to conquer new ground.

Call us today to learn more or visit us at dbllp.com.

Boca Raton - 2401 NW Boca Raton Blvd, Boca Raton, Florida 33431-6632 | 561.367.1040
Fort Lauderdale - 490 Sawgrass Corporate Parkway, Suite 200, Sunrise, Florida 33325-6252 | 954.974.3544
Jupiter - 4455 Military Trail, Suite 201, Jupiter, Florida 33458-4828 | 561.622.8920

Daszkal Bolton is a member of AGN International, an affiliation of accounting and business advisory firms who collaborate and share resources in more than 80 countries. Through 200 AGN International member firms, Daszkal Bolton is able to assist clients in meeting their needs throughout the United States and around the world.

The Daszkal Bolton brand and *Conquer new ground* are the property of Daszkal Bolton LLP. With three offices and approximately 120 employees, Daszkal Bolton is a leading accounting and advisory services firm in South Florida.