STATE TAX ISSUES DUE TO THE COVID-19 PANDEMIC

June 16, 2020

This presentation has been prepared for general guidance and informational purposes only and does not constitute professional advice. You should not act upon the information contained herein without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained herein.



Experience | Knowledge | Relationships | Insight

\sum

Administrative

> To receive CPE credit for this webinar you must:

- Be signed in to a Microsoft Account (free) with first & last name and email address (No "anonymous" answers will be recorded)
- Stay connected to the program for the entire time and respond to 3 of the 4 polling questions
- Record your answers to the polling questions in the Q&A box
- > Complete the evaluation which will be sent to you via email
- Assuming you meet the CPE criteria, your CPE certificate will be emailed to you within the next few days
- CPE cannot be awarded if you are participating in a group, over the phone only, or watching a replay of the webinar

Presenters



Kay Gotshall, CPA Tax Senior Manager kgotshall@keitercpa.com



Terry Barrett, CPA Tax Senior Manager tbarrett@keitercpa.com



Agenda

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



Polling question #1

Where are you currently working?

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



Due Dates



Due Dates – Income Taxes – All Settled?

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



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



CARES ACT: STATE CONFORMITY

CARES Act – Key Provisions

Paycheck Protection Program – loans forgiven and excluded from federal income tax Excess Business Losses - Modification of limitation on losses (excess business losses) –for tax years 2018 - 2020 Depreciation of Qualified Improvement Property (QIP) – QIP placed in service after 12/31/2017 may be classified as 15-year MACRS

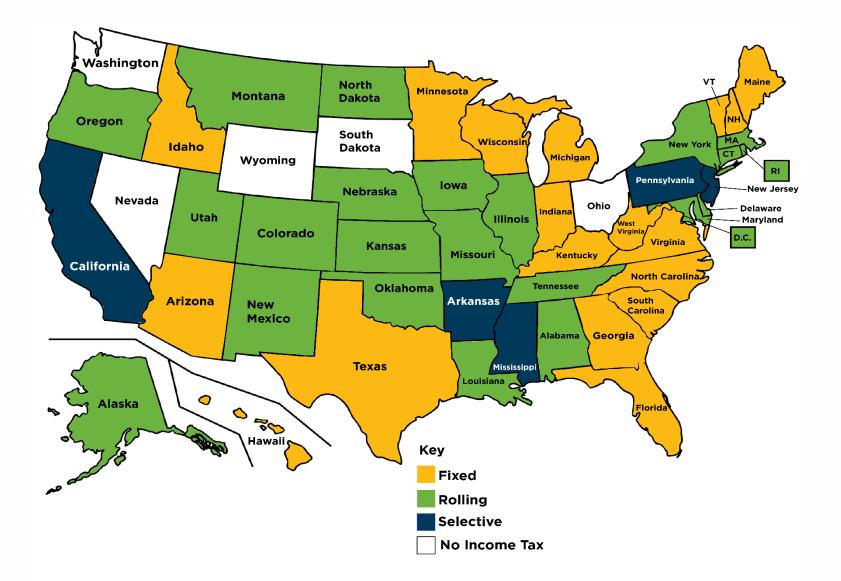
NOL Carrybacks – Carryback of NOLs from tax years beginning 2018 through 2020 for up to five years

Interest Limitation Increase (IRC Section 163(j)



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

State Conformity to IRC (as of mid-April 2020)



Conformity to Key CARES Act Provisions

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

Virginia Fixed Date Conformity

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

State Tax Considerations on Conformity

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

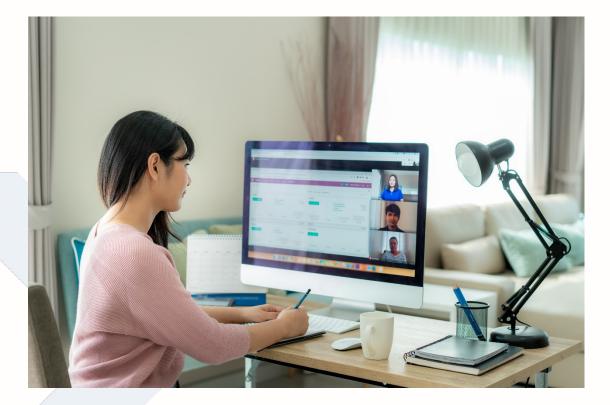


Polling Question #2

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

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





NEXUS ISSUES

Experience | Knowledge | Relationships | Insight

Impact of Teleworking – Income Tax Nexus

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



Teleworking – Impact on Apportionment Factors

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

Teleworking – Sales Tax Nexus

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

STATE TAX WITHHOLDING

State Income Tax Withholding – How is it impacted?

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

State Income Tax Withholding

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



Polling Question #3

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

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



WHAT'S AHEAD...

Experience | Knowledge | Relationships | Insight



What's Ahead

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

Things To Consider

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

Polling question #4

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

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

Questions?

Terry M. Barrett, CPA Tax Senior Manager Keiter 804.273.6254 tbarrett@keitercpa.com

Kay Gotshall, CPA Tax Senior Manager Keiter 804.273-6223 kgotshall@keitercpa.com





Experience | Knowledge | Relationships | Insight

Other Keiter COVID-19 Resources

› Keiter's COVID-19 Resource Library <u>https://keitercpa.com/covid-19-resources/</u>