

# Howard & Howard

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## Tax Client Alert 5

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*This notice is current as of 2:00PM EST on Wednesday, March 25.*

Howard & Howard remains committed to providing our clients with stability and exceptional service during these uniquely challenging times. In this alert, we offer you positive considerations and ideas to help you navigate the COVID-19 crisis. We will continue to look for creative options to assist you with your business and tax concerns in light of the ever-changing social and business landscape. In short, the IRS was busy this weekend!

### *Families First Coronavirus Response Act:*

- *On March 24, the Department of Labor issued guidance indicating the provisions of the Act apply only to leave taken after April 1, 2020. Please consult Howard & Howard if you have specific questions regarding your eligibility for tax credits. Specific Department of Labor guidance is linked below.*
- The Families First Coronavirus Response Act (the “Act”) provides a tax credit to employers that are required to provide paid sick or family leave to employees for very specific reasons, detailed below.
- The IRS is committed to processing quick refunds and make cash available for employers that must comply with the Act. We expect a claim form to be released this week by the IRS. Employers providing leave pursuant to the Act may RETAIN all payroll withholding taxes, up to the amount of credit it will ultimately claim, in lieu of depositing them with the IRS. This includes the employer’s and the employee’s share of federal income taxes, Social Security, and Medicare taxes for all employees; it is not limited to those on leave. See examples below.
- The Act only applies to employers with *less than 500 employees*; larger employers are exempt. The Act also provides a narrow exemption (related to paid time off to care for children out of school) for businesses with less than 50 employees, if compliance would jeopardize the business as a going concern.
- *The Act only applies to employees that miss work for the reasons detailed in the Act. The requirements and corresponding tax credits do not apply to employers that choose or are required to completely cease operations, however, a government isolation or shelter in place mandate may fall under the requirements of the Act.*
- *Paid Sick Leave Mandates (Division E of the Act):*
  - *10 days of paid sick leave.*
  - The Act **requires** employers to provide up to 10 days of paid sick leave, with such payments to be capped at the lesser of: (a) \$511 per day per employee or (b) the employee’s normal daily wages. In exchange, the Act provides a refundable tax credit to be applied against the employer’s share of social security payroll taxes up to the amounts the employer is required to pay. Sick leave under this provision may only be provided to employees who are:



- (i). Under a federal, state, or local quarantine or isolation order;
  - (ii). Advised by a healthcare professional to self-quarantine;
  - (iii). Experiencing symptoms of COVID-19 **and** seeking medical diagnosis;
  - (iv). Caring for an individual subject to a condition referenced in (i) or (ii); or
  - (v). Caring for a child whose school or childcare provider is closed or unable to work due to COVID-19.
- **Family and Medical Leave Mandates (Division C of the Act):**
  - **12 weeks of paid family and medical leave.** Employees may only use this Family and Medical Leave to care for a child under 18 years old whose school or childcare provider is closed or unable to work due to COVID-19 precautions.
  - The Act additionally **requires** employers to provide up to 12 weeks of paid leave, with such payments to be capped at the lesser of (a) \$200 per day per employee or (b) 2/3 of the employee’s normal daily wages.
  - In exchange for these benefits to the employee, the Act provides a **refundable tax credit to be applied against the employer’s share of social security payroll taxes** up to the amounts the employer is required to pay. In no event shall the amount paid exceed \$10,000 per employee. Employers may only receive the tax credit associated with paying for this family and medical leave if the employee is off work to care for a child under 18 years old whose school or childcare provider is closed or unable to work due to COVID-19 precautions.
- **Examples:**
  - If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.
  - If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.
- **Planning Opportunities:**
  - If you are an employer considering ceasing operations but continuing to pay your employees, you may be able to maximize tax benefits if you stay open but provide paid time off to employees under the provisions of this Act.
  - Consider “Quick Refunds” for tax credits (e.g., R&D credit), net operating losses from prior years, or overpayment of estimated taxes as a means to secure cash.
  - Additional individual benefits are provided in the Act. The full text of the Act can be viewed here:  
<https://www.congress.gov/bill/116th-congress/house-bill/6201/text>

**Postpone Remittance of Payroll Taxes:**

- Employers required to provide payments under the Act can retain payroll tax withholdings (including federal income taxes; employee share of Social Security and Medicare taxes; and the employer share of Social Security and Medicare taxes, with respect to **all** employees) to cover the cost of providing such leave.



- Such employers may be able to retain amounts that would otherwise be remitted to the IRS on April 30.

### ***Postpone Payment and Filing of Income Taxes:***

- The Federal tax filing deadline has been postponed from April 15 to July 15.
- Taxpayers may defer filing and payment of **any** amount of tax owed on April 15 (previous guidance capped amounts that could be deferred). The postponed filing and payment deadlines apply to all federal income tax filings and payments, including payments on self-employment income due on April 15, 2020. This includes payments of 2019 income tax and quarterly estimated payments for 2020 income tax.
- The postponement of filing and payment of income taxes applies only to payments otherwise due on April 15, 2020.
- ***The due date for Q2 estimated tax payments owed on June 15, 2020 remains; therefore, taxpayers should plan for tax payments due in two consecutive months.***
- The IRS has committed to providing refunds within 21 days. If you are expecting a refund, you should file your tax return to claim your refund. If you have already filed, you can use the “Where’s My Refund?” tool on the IRS website to check its status: <https://www.irs.gov/refunds>

### ***State Taxes:***

- The most up to date guidance regarding state tax due dates (including income as well as sales and use tax) can be found here: <https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/coronavirus-state-filing-relief.pdf>
- The increase in remote work may lead to a shift in withholding tax liabilities. For example, employees that normally work in the city of Detroit, Michigan will not be liable for city taxes on days worked outside the city. Conversely, employees that live in Oregon but work in Washington may be subject to Oregon withholding taxes on days worked from home.

### ***Coronavirus Stimulus Package***

- The Senate voted late Tuesday evening to pass the proposed stimulus package. At present, it has not passed the House of Representatives.
- The proposed stimulus package is expected to contain a multitude of spending provisions, including relief for impacted businesses as well as a one-time payment to all Americans within the income limitations.

### **Resources:**

- Guidance for Michigan businesses contemplating layoffs: <https://www.michigan.gov/coronavirus/0,9753,7-406-98158-522113--,00.html>
- Resources for Michigan businesses during COVID-19: <https://www.michiganbusiness.org/covid19/>
- Governor Whitmer Executive Order to suspend activities: [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522626--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html)
- Small Business Administration grant and loan programs: <https://disasterloan.sba.gov/ela/>



- Full text of the IRS press release related to Families First Coronavirus Response Act: The IRS issued guidance on how it plans to administer and enforce the Act; complete guidance can be found here: <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>
- IRS Guidance on extension of time to file and pay taxes: <https://www.irs.gov/newsroom/tax-day-now-july-15-treasury-irs-extend-filing-deadline-and-federal-tax-payments-regardless-of-amount-owed>
- Department of Labor Guidance: <https://www.dol.gov/agencies/whd/pandemic>

This is a rapidly evolving situation and we will update our guidance regularly to keep you informed. Stay healthy and stay informed.

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