



TaxNewsFlash

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Notice 2020-35: Postponed deadlines for employment taxes, employee benefit plans, IRAs, HSAs, MSAs, other time-sensitive actions (COVID-19)

The IRS today released an advance version of Notice 2020-35 announcing that deadlines for certain time-sensitive actions will be postponed because of the coronavirus (COVID-19) pandemic.

Notice 2020-35 [PDF 59 KB] specifies that the postponed deadlines are intended to provide relief for actions regarding certain employment taxes, employee benefit plans, exempt organizations, individual retirement arrangements (IRAs), Coverdell education savings accounts, health savings accounts (HSAs), and Archer and Medicare Advantage medical saving accounts (MSAs) that generally are due to be performed on or after March 30, 2020, and before July 15, 2020.

In general, Notice 2020-35 provides that the revised deadline for an “affected taxpayer” to perform a “time-sensitive action” (as described by today’s notice) is July 15, 2020, unless a different revised deadline is specified.

Notice 2020-35 also provides a temporary waiver of the requirement that Certified Professional Employer Organizations (CPEOs) file certain employment tax returns and their accompanying schedules on magnetic media.

The relief provided in this notice is provided on account of the ongoing COVID-19 pandemic and is in addition to the relief previously provided by the IRS in Notice 2020-18,¹ Notice 2020-20,² and Notice 2020-23.³

¹ Notice 2020-18 postpones the due date for filing federal income tax returns and for making federal income tax payments from April 15, 2020, until July 15, 2020.

² Notice 2020-20 amplifies Notice 2020-18 and provides additional relief, postponing certain federal gift (and generation-skipping transfer) tax return filings and payments from April 15, 2020, until July 15, 2020.

Notice 2020-35

Notice 2020-35 amplifies the definition of “affected taxpayer” as provided in Notice 2020-23 to include certain taxpayers as defined in today’s notice.

Notice 2020-35 also amplifies the definition of “specified time-sensitive actions” also provided in Notice 2020-23 to include certain actions that are described in today’s notice that are due to be performed on or after March 30, 2020, and before July 15, 2020.

These amplified definitions—rather than the definitions in Notice 2020-23—apply for purposes of the relief described in today’s notice.

Notice 2020-35 provides that the revised deadline for an “affected taxpayer” to perform a “time-sensitive action” (as described by today’s notice) is July 15, 2020, unless a different revised deadline is specified. In the case of time-sensitive actions with respect to provisions of the Code for which there are parallel provisions in ERISA, the relief provided by today’s notice also applies for purposes of those provisions under ERISA.

Notice 2020-35 also provides a temporary waiver of the requirement under Reg. section 31.3511-1(g)(2) that CPEOs file certain employment tax returns, and their accompanying schedules, on magnetic media (including electronic filing). This temporary waiver is extended to all CPEOs. The IRS stated that individual requests for waiver do not need to be submitted. The waiver applies only to Forms 941 filed for the second, third, and fourth quarters of 2020 and only to Forms 943 filed for calendar year 2020, and their accompanying schedules. Accordingly, CPEOs are permitted, but not required, to file a paper Form 941, and its accompanying schedules, in lieu of electronic submission for the second, third, and fourth quarters of calendar year 2020. In addition, CPEOs are permitted, but not required, to file a paper Form 943, and its accompanying schedules, in lieu of electronic submission for calendar year 2020.

³ Notice 2020-23 provides relief for “affected taxpayers” with a federal tax payment obligation or a federal tax return due to be performed (originally or pursuant to a valid extension) on or after April 1, 2020, and before July 15, 2020. Under this notice, the term “affected taxpayers” includes sponsors or plan administrators of qualified retirement plans; exempt organizations with a federal tax payment, federal tax return, or other form filing obligation; and exempt organizations performing time-sensitive acts such as the filing of Form 990 series annual information returns.

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