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7 Things Tax Pros Are Grateful For This Thanksgiving Season

By **Amy Lee Rosen**

Law360 (November 24, 2021, 3:55 PM EST) -- Tax practitioners are grateful for many things this Thanksgiving, like the continued extension of federal and state tax deadlines in light of the pandemic, clarification on forgiven Paycheck Protection Program loans and the global agreement on a corporate tax overhaul.

Here, Law360 reviews seven developments tax professionals are thankful for this year.

State, Federal Tax Filing Time

When the coronavirus pandemic started in March 2020, the 2019 federal tax deadline was moved from April 15 to June 15, with states generally following this extension. Many states responded similarly for the 2020 tax year, for which the Internal Revenue Service pushed back the filing deadline for individuals from April 15 to May 17.

The IRS on March 17 said it would extend deadlines to give the public and practitioners more time to file returns due to hardships caused by the coronavirus and tax changes in the American Rescue Plan Act, which was passed earlier in March.

In the aftermath of that decision, most states and cities decided to conform with the federal government's May 17 deadline for personal income taxes.

Jamie Yesnowitz, a state and local tax national leader at Grant Thornton LLP, said he was grateful that state tax deadlines for individuals followed the federal extension.

"Due to the pandemic and significant changes in federal tax laws, many taxpayers faced significant challenges in determining their 2020 income tax liabilities," he said. "To the extent that states did not automatically conform to the federal extension, I appreciated that states generally acted quickly to ensure that taxpayers could adequately file extensions or complete their income tax returns."

Meanwhile, federal tax filing due dates for business entity income remained largely unchanged, with an April 15 deadline for filing corporate income taxes and an Oct. 15 extended due date.

Historically, most states had the same original and extended due dates as for federal, which posed compliance difficulties, especially when state and local tax practitioners may not have had accurate federal data until just a few days before the state deadlines, Yesnowitz said.

Yesnowitz said he was grateful for the continuing effort to provide a more consistent and uniform one-month gap between the filing of federal tax returns and state income tax returns.

"In an era of unprecedented complexity, I think it's imperative for state and local tax professionals to have a fair opportunity to thoughtfully evaluate the presentation of the federally filed return," he said. This extension would let tax practitioners "still have some time to document and accurately reflect tax base modifications, apportionment and credits on the state returns."

Yesnowitz said there's been an effort by several organizations over the past couple of years to permanently move the extended state corporate income tax due dates out one month, to Nov. 15.

"Many states have agreed, and hopefully we will see more to come in the next couple of years," he said.

Global Tax System Update

The international corporate tax system was updated by 136 jurisdictions when they found common ground in agreeing on a 15% minimum tax rate and rules that would rewrite how profits of large multinational businesses are allocated among jurisdictions.

On Oct. 8, 136 countries came together and agreed that multinational corporations with annual revenue above €750 million ($840 million) will be subject to a minimum 15% tax rate starting in 2023, according to the Paris-based Organization for Economic Cooperation and Development, which led the negotiations.

The global pact will also reallocate earnings from about 100 of the world's largest and most profitable companies to countries worldwide, "ensuring that these firms pay a fair share of tax wherever they operate and generate profits," the OECD said.

On Oct. 30, President Joe Biden and Treasury Secretary Janet Yellen praised the Group of 20 economically powerful nations' historic endorsement of the global tax deal because it ensures online companies pay tax, even where they have no physical presence.

Rebecca Kysar, a law professor at Fordham University School of Law who became an adviser to the U.S. Treasury Department this year, told Law360 she was grateful for this deal because of its wide-ranging impact. Because the jurisdictions represent about 95% of the world's gross domestic product, the agreement is "a landmark set of provisions because it will stop the race to the bottom of corporate taxes," she said.

The deal will "restore equity for the middle-class and working-class people both in the U.S. and around the world, [and] it will also ensure that profitable corporations pay their fair share and provide governments with the resources to invest in their people and economies," Kysar said. "President Biden often talks about a 'foreign policy for the middle class,' and this historic deal is what foreign policymaking for the middle class looks like in practice."

Tax Rules for Coronavirus Relief

Although the pandemic began in March 2020, the IRS continued to provide a variety of rules that give tax benefits and incentives for employer-provided relief payments, which has been greatly appreciated by tax professionals.

Under Internal Revenue Code Section 139, qualified disaster relief payments can be excluded from gross income, which can include an employer's reimbursement of reasonable and necessary personal, family, living or funeral expenses as a result of a qualified disaster.

Mary B. Hevener, a tax partner at Morgan Lewis & Bockius LLP, said this section continues to apply throughout the pandemic as more employers have used this exclusion. This is especially true because many employers have extended their return-to-office dates over and over again in 2021, she said.

Since the pandemic is a qualified disaster, employers have been able to use this section to cover payments for unexpected out-of-pocket expenses attributable to the pandemic that would have been incurred by their employees, including health care workers, sanitation workers, police and firefighters, she said.

Steve Johnson, another tax partner at Morgan Lewis, said related expenses can include face coverings, trips to obtain vaccines or virus testing, unexpected expenses attributable to working from home and teaching children at home and expenses of reopening offices.

Guidance covering Section 139 includes a revenue ruling from 2003, IRS Publication 3833, and FAQs issued in May 2020, which recognize COVID-19 as a qualified disaster and confirm that section of the code is available to exclude payments to offset particular expenses an individual would incur due to the virus, Hevener said. COVID-19 is the respiratory ailment caused by the coronavirus.

These relief programs have historically been offered for the year of the national disaster and the next calendar year, and it is important to note that Biden did not try to end the "national disaster" triggered by the pandemic, Hevener said. So, as the pandemic continues, Section 139 continues to apply, with more employers using this exclusion, she said.

"We're thankful for code Section 139, because it provides an exclusion for a wide variety of COVID-19 assistance payments, and thankful to the IRS for providing old and new guidance confirming how the exclusion applies," Hevener said.

Paycheck Protection Program Guidance

Tax practitioners are grateful that the IRS clarified several issues related to the Paycheck Protection Program, created by the passage of the Coronavirus Aid, Relief and Economic Security Act in 2020 to give $350 billion in forgivable loans to small businesses to encourage them to keep employees on their payrolls.

On Nov. 18, the government issued several revenue procedures clarifying when amounts excluded from gross income in connection with forgiven PPP loans are considered received or accrued for tax purposes and how partnerships should allocate such amounts. Revenue Procedure 2021-48 said amounts excluded from gross income in connection with forgiven PPP loans can be treated as received or accrued when the relevant expenses are incurred, when the application for forgiveness is filed or when the loan is forgiven. The two other revenue procedures dealt with issues for partnerships and allocation among partners.

Adam Markowitz, an enrolled agent and vice president of Howard L. Markowitz PA CPA, said he appreciates the clarifications set forth in the revenue procedures, even though guidance would have been helpful at an earlier point in time.

"It is nice of the IRS to at least generally be giving tax preparers the leeway for just about everything involving PPP timing issues for federal tax purposes," he said. "The IRS took a very taxpayer-friendly position for when PPP can be attributed to basis, [however] these rev procs should've been out in 2020, not in November 2021, but better late than never."

Pass-Through SALT Cap Workarounds

Tax professionals appreciate that IRS guidance from 2020 allowing pass-through entities to claim entity-level deductions and get around a $10,000 SALT deduction cap is still on the books.

The 2017 Tax Cuts and Jobs Act imposed a $10,000 state and local tax deduction cap, and before the IRS notice was issued, it was unknown whether states were allowed to tax pass-throughs at the entity level, which can be a way around the SALT cap.

The IRS issued the guidance, Notice 2020-75, in November 2020, clarifying that state and local taxes imposed at the entity level on pass-through entities are permitted as a deduction and that this "is consistent with the long-standing position" of Treasury. The government said upcoming regulations would "clarify that state and local income taxes imposed on and paid by a pass-through entity are allowed as a deduction by the pass-through entity in computing its nonseparately stated taxable income or loss for the taxable year of payment."

Pass-throughs can apply the upcoming rules to certain income taxes paid beginning with the 2018 tax year and before the date the proposed regulations are published in the Federal Register.

Linda Z. Swartz, a partner at Cadwalader Wickersham & Taft LLP, said she is thankful for this notice because it blesses pass-through entity laws that several states enacted in response to the 2017 law. What's more, the guidance is not limited to 2020 and can be relied on to interpret any laws that are described in the notice in future years as well.

"The contours of state taxes, and specifically, pass-through entity tax laws, vary from state to state, so their application can be quite complex," she said. "Against this backdrop, a road map from the IRS is extremely valuable for anyone charting a course through the rules."

While the government hasn't yet issued any regulations to further clarify Notice 2020-75, which would be helpful, Swartz said the notice alone provides sufficient guidance. In the future, Swartz said she hopes state and local taxes once again will be deductible so the notice and related pass-through entity tax laws are no longer needed.

Virtual Meetings With LB&I

The IRS' Large Business and International Division recently decided to accept all requests from taxpayers to meet virtually with government employees, which extended a practice first set up during the pandemic to help offer an alternative to phone calls or in-person meetings.

Last month, LB&I said it would let large-business taxpayers meet through secure videoconference platforms such as ZoomGov and WebEx. LB&I said it decided to expand the practice based on feedback it received that phone communications were not always adequate or productive.

"These efforts are aimed at continuing to improve service to meet the needs of large business taxpayers and their representatives and are a part of the IRS' ongoing commitment to find more convenient and effective ways to interact with taxpayers and the community of tax professionals," the IRS said.

Joe Calianno, a managing director at Andersen, said he was grateful that LB&I decided to extend the practice to offer taxpayers the opportunity to meet virtually with government officials since that is a "very pragmatic approach."

"The extension of the approach taken during the pandemic of meeting virtually with taxpayers via videoconferencing provides an efficient way for taxpayers to interact with the IRS," he said. "It shows that LB&I is responsive to taxpayer requests for such meetings and demonstrates a willingness by LB&I to collaborate with taxpayers."

Return To In-Person Meetings

Tax practitioners are also thankful for a return to in-person meetings and conferences through the establishment of crucial protocols to make it safe to once again meet face-to-face.

Jordan M. Goodman of Horwood Marcus & Berk Chtd. told Law360 that he's grateful to be able to once again meet in person because had missed getting together with his SALT constituents. Over the past 20 months, many business adjustments had to be made and people grew accustomed to the "new normal" by accepting digital meetings as the link to the SALT world, he said.

"However, as conferences started going live and in-person, I came to realize how important face-to-face interactions really are," he said. "It was as if we had lost our sense of smell but didn't realize it … but then, all of the sudden, our olfactory glands came back in a rush."

Conferences established protocols on whether actions like handshakes and hugs were acceptable, Goodman said, and other conferences required a proof of vaccination or a negative test for COVID-19.

"These in-person conferences allowed me to have lunch with my favorite state folks, to share a libation with my clients and peers. To share a meal with all those involved in SALT was just fantastic," he said. "In-person gave us time to catch up, discuss how our family and friends were doing, to discuss some of the latest developments whether personal or professional without the pressure of being on the clock or on a video call."

Goodman said he didn't realize how much he missed the SALT community until it was back together, live and in-person, which was a development he had not anticipated this year but was truly grateful for.

--Additional reporting by Andrew Kragie, Natalie Olivo, Molly Moses, Stephen Cooper, Eric Kroh and Maria Koklanaris. Editing by Aaron Pelc and Neil Cohen.