

**PRESENTED AT**

Higher Education Taxation Institute Summer Series - I

June 8, 2020

## **Recent Developments in College and University Tax Law**

**Bert Harding, Law Office of Bertrand M. Harding Jr.  
Ed Jennings, University of Michigan**



# **Part One: Higher Education Taxation Institute Summer Series**

**Noon to 1 p.m.  
Monday, June 8, 2020**

## **RECENT DEVELOPMENTS IN COLLEGE AND UNIVERSITY TAX LAW**

### **Presenters:**

Bert Harding, Law Office of Bertrand M. Harding Jr.  
Ed Jennings, University of Michigan

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- G. IRS Issues NOL Carryback Guidance
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## **I. Guidance Related to CARES Act and FFCRA Tax Provisions**

On March 18, the President signed into law the Families First Coronavirus Response Act (“FFCRA”), which provides for, among other things, employer tax credits and tax exemptions. And on March 27, he signed into law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which contains a number of other individual, business, and miscellaneous tax provisions.

The text of the FFCRA can be found at <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>, and the text of the CARES Act is at <https://www.congress.gov/bill/116th-congress/house-bill/748/text?loclr=bloglaw>.

A detailed discussion of the tax and other impact of these two statutory provisions on higher education and nonprofit organizations can be found at:

- <https://www.nacubo.org/News/2020/3/What-the-Coronavirus-Stimulus-Means-for-Higher-Education-Tax-Compliance>
- <https://www.natlawreview.com/article/ffcra-and-cares-act-key-provisions-affecting-nonprofit-organizations>
- <https://www.mcguirewoods.com/client-resources/Alerts/2020/4/covid-19-pandemic-tax-relief-affecting-nonprofits>

Much guidance has been issued by the IRS and others regarding these new tax provisions, and much more is certainly on the way. Here are the most significant guidance items as of the date of this outline:

### **A. IRS Releases Guidance on Paid Sick and Family Leave Tax Credits**

The FFCRA provides tax credits to reimburse employers for the costs of providing paid sick leave and paid family and medical leave to employees unable to work because of COVID-19. These credits are refundable, which means that if the amount of the credit exceeds the amount of tax owed, the remainder is refunded to the business or organization. The IRS has released a Fact Sheet 2020-06 describing this new tax credit. Link: <https://www.irs.gov/newsroom/new-credits-fund-employers-for-coronavirus-related-paid-leave>

The IRS has issued an updated set of FAQs on these tax credits. Link: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.

**B. DOL Guidelines on FFCRA**

The Department of Labor has issued question-and-answer compliance assistance to employers and employees on their responsibilities and rights under the FFCRA. Link: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>.

**C. Joint Committee Issues Report on CARES Act Tax Provisions**

The Joint Committee on Taxation has issued a report (JCX-12-20) describing the tax provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The report pertains to Division A of the Act, which includes the direct tax assistance provisions for individuals and businesses, aid to educational and healthcare institutions, and the suspension of certain excise taxes. Link: <https://www.jct.gov/publications.html?func=startdown&id=5256>.

**D. Employee Retention Credit**

The Senate Finance Committee staff has released a set of “frequently asked questions” about the CARES Act employee retention credit, which is a refundable payroll credit based on wages paid by an eligible employer whose business has been financially affected by COVID-19. Link: <https://www.finance.senate.gov/chairmans-news/cares-act-employee-retention-credit-faq>. And the IRS has issued Fact Sheet 2020-5 with a detailed explanation of how this credit mechanism works. Link: <https://www.irs.gov/newsroom/new-employee-retention-credit-helps-employers-keep-employees-on-payroll>. See also a set of IRS FAQs on this credit at <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>.

**E. IRS FAQs on Deferring Employment Tax Deposits and Payments**

The CARES Act allows employers to defer the deposit and payment of the employer's share of social security taxes, and the IRS has issued a set of frequently asked questions related to such deferrals. The IRS says that these FAQs will be updated to address additional questions as they arise. Link: <https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020>.

**F. Impact on Retirement Plan Provisions**

Senate Finance Chair, Chuck Grassley (R-IA), has released a set of frequently asked questions on the retirement plan provisions in the CARES Act, clarifying the handling of withdrawals, types of plans covered, loans, and required minimum distributions. Link: <https://www.finance.senate.gov/chairmans-news/cares-act-retirement-provisions-faq>.

**G. IRS Issues NOL Carryback Guidance**

The CARES Act made changes to the net operating loss rules, and the IRS has issued Rev. Proc. 2020-24, which provides guidance to taxpayers with net operating losses that

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