Congress is sworn in next year. So, we recommend buying time for this to be worked out over the next few months. This means continuing to delay our forgiveness application until next year. It also means taking the six-month extension on our 2020 tax return to buy additional time. Our tax bill will be due on April 15th, and we may have to come up with an additional tax payment if PPP expenses remain non-deductible at that time, but if Congress does fix this after April 15th, then we would claim our refund when we file the return in October.

We do not intend to contest the IRS on our return and take the deductions. If we did, we would attach IRS Form 8275 to our return. Form 8275 is used when a taxpayer takes a position contrary to the IRS's stated position. The benefit is that by openly disclosing a contrary position, if the matter is ultimately decided against the taxpayer, the IRS will not assess penalties. The problems are that the taxpayer should expect to have to fight this out, incurring CPA and legal fees in the process. Filng Form 8275 is an open invitation to the IRS to audit the entire tax return. No thanks!

If Giving Year-End Bonuses, Make them in the Form of Tax-Free Disaster Relief Payments

Following 9/11, Section 139(d) was added to the tax code permitting tax-free disaster relief payments from employers to employees following a terrorist attack or other federally declared emergency. The payments are meant to reimburse employees for expenses they incur in coping with the disaster. They are tax-deductible to the employer, tax-free to the employee and are exempt from FICA taxes. When President Trump declared COVID-19 to be a national emergency it qualified for Section 139(d) disaster relief.

This program is lenient. The employer can offer different amounts to different employees (or no amount). Specific reimbursements for this pandemic could include out of pocket medical expenses not covered by health insurance, teleworking costs such as computers, internet, and office supplies, funeral costs for an employee or employee's family member, or childcare costs permitting employees to work while their children are home from school. Employees do not need to provide receipts for their expenses. The amounts the employees report to you only need to be reasonably ... expenses they incurred." (The payments cannot be for income replacement, either as a substitute for W-2 wages or unemployment or furlough pay.)

Despite the lack of stiff regulations, this program should be offered to employees, not merely the owner. S corporation owners are not eligible for reimbursements. Prepare a simple sheet for each employee listing their name, their specific maximum disaster relief payment (which, coincidentally could equal the amount of a year-end bonus you intend to give them), and a list of the permitted expenses described in the preceding paragraph. Employees would complete the forms listing the costs they've incurred up to their maximum reimbursement. You would then write a company check to them in that amount and refer to it as a "qualified disaster relief payment" in your accounting records.

Year-End Auto Purchases Are Largely or Entirely Deductible

In the unlikely event the Tax Cuts and Jobs Act of 2017 is overturned next year, then 2020 would have been the best year to have acquired a new or used car, truck or heavy SUV. The TCJA greatly liberalized the depreciation rules for both new and used vehicles. To get the benefits, the vehicle must be both purchased **and** placed in service (i.e., driven at least one day) by December 31, 2020. Here's a recap of the rules:

Heavy SUVs: If the new or used SUV has a gross vehicle weight rating over 6,000 pounds, then it is eligible for 100% bonus depreciation even if it is bought and placed in service on December 31. Your actual depreciation will depend on your business use percentage. Most aggressive doctors we know are claiming at least 80% business use of their vehicles even if they only have one office location. Their theory is that their non-deductible personal commute is not from home-to-office in the morning and from office-to-home in the evening, but rather from home to a business stop (e.g., dental lab, bank, post office, etc.) and from there on to the office in the morning or back home at the end of the day.

Alternatively, you can choose to opt out of bonus depreciation and instead claim Section 179 expensing.

C&A