

# Coronavirus-Related Repayments: CARES Act v. IRS Notice 2020-50

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## Introduction

IRS Notice 2020-50 provides guidance regarding how to report coronavirus-related distributions and how to deduct repayments of those distributions (if any). But it appears that part of the guidance provided in that Notice regarding deductions for repayments doesn't follow the provisions in the CARES Act. This article points out the differences and invites you to inform your clients about the differences and to let them decide whether to follow the provisions in the CARES Act or in the IRS Notice.

## Background

On 3/27/2020, the President signed the "Coronavirus Aid, Relief, and Economic Security Act" (known as the "CARES Act") into law.<sup>1</sup> Section 2202 of that law deals with a "coronavirus-related distribution" from a qualified retirement plan, and the repayment of such a distribution. This is a tax provision that is not part of the Internal Revenue Code.

Under this section, a taxpayer could take up to a \$100,000 "coronavirus-related distribution" from a qualified retirement plan without owing the 10% additional tax on early distributions that is imposed by IRC §72(t).

A "coronavirus-related distribution" means a distribution from an eligible retirement plan made during 2020 to an individual, spouse or dependent who is diagnosed with the COVID-19 virus or who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, or experiencing lack of child care due to COVID-19, or other factors.<sup>2</sup>

For someone who took such a distribution, the law requires the distribution to be included ratably in income over the 3-year period of 2020, 2021 and 2022 unless the taxpayer elects not to spread the income over the 3-year period.<sup>3</sup>

The law also addresses the situation where the taxpayer decides to repay part or all of the distribu-

tion. Under the statute, a taxpayer has 3 years from the day after the distribution to repay it,<sup>4</sup> and if a taxpayer repays part or all of the distribution within this time frame, then the repayment will be treated as if the taxpayer made a trustee-to-trustee transfer within 60 days of the date of the distribution.<sup>5</sup>

In other words, if a taxpayer receives a coronavirus-related distribution in 2020 and repays all of it within the 3-year period, then this is treated as a qualified rollover, and none of the distribution is included in income.

On 6/19/2020, the IRS issued [Notice 2020-50](#), 2020-28 I.R.B. 35, to provide additional guidance for coronavirus-related distributions and repayments.<sup>6</sup>

Notice 2020-50 prescribes when a taxpayer may make the election under §2202(a)(5) to not spread the income ratably over the 3-year period, and it provides detailed rules for deducting repayments, which depend upon whether the election has been made, when the repayments are made, and the amounts of the repayments.

## Notice 2020-50 - The §2202(a)(5) Election

As I said above, under §2202(a)(5) of the CARES Act, a coronavirus-related distribution is included ratably in income over the 3-year period 2020, 2021 and 2022 unless the taxpayer elects not to have the 3-year spread apply. The statute doesn't explain when the taxpayer must make the election or the consequences of making this election.

Notice 2020-50 explains that if the taxpayer makes the election to not use the 3-year ratable income exclusion method, then the taxpayer must include the entire amount of the distribution in income for 2020.<sup>7</sup>

Notice 2020-50 also explains that the election must be made on the taxpayer's timely-filed return

<sup>1</sup> [P.L. 116-136](#).

<sup>2</sup> CARES Act §2202(a)(4).

<sup>3</sup> CARES Act §2202(a)(5).

<sup>4</sup> CARES Act §2202(a)(3)(A).

<sup>5</sup> CARES Act §§2202(a)(3)(B) and (C).

<sup>6</sup> The IRS refers to repayments as "recontributions."

<sup>7</sup> Section 4.B of Notice 2020-50.

(including extensions) for the year of the distribution.<sup>8</sup>

## Notice 2020-50 - Repayments

Notice 2020-50 addresses two situations involving repayments: (1) where the taxpayer elected to report the coronavirus-related distribution entirely in 2020 (the year of the distribution), and (2) where the taxpayer reported the distribution in income ratably over the 3-year period.

### Distribution Reported Entirely in 2020

If the taxpayer elected out of the 3-year ratable inclusion method and reported the entire distribution in income for 2020, and if, during the 3-year period beginning on the day after the date of the distribution, the taxpayer repays amounts into a qualified retirement plan, then the taxpayer is entitled to file an amended return for 2020 to reduce the amount of the distribution that was included in income. The amount of the reduction is the total of the repayments made during the 3-year period.<sup>9</sup>

Notice 2020-50 contains three examples of this. *Example 1* is a taxpayer who received a \$45,000 distribution on 11/1/2020, elected to include the distribution in income for 2020, and made one \$45,000 repayment on 3/31/2021. The IRS says that the taxpayer need not report any amount in income for 2020. Form 8915-E is used to report the \$45,000 distribution and the \$45,000 repayment.

*Example 2* involves the same facts except that the taxpayer made the \$45,000 repayment on 8/2/2021 and had an extension to 10/15/2021 for filing the 2020 return. The IRS says that the taxpayer need not report any amount in income for 2020. Again, Form 8915-E is used to report the \$45,000 distribution and the \$45,000 repayment.

*Example 3* is a taxpayer who received a \$15,000 distribution on 3/30/2020, elected to include the distribution in income for 2020, and made one \$15,000 repayment on 12/31/2022. The IRS says that the taxpayer would need to file an amended return for 2020 to eliminate the \$15,000 reported as income. An amended Form 8915-E is filed with the amended return to report the \$15,000 distribution and the \$15,000 repayment.

### Distribution Reported Over 3-Year Period

If the taxpayer reported the distribution over the 3-year period, then the taxpayer is entitled to deduct from gross income any repayments made during the

3-year period. Under Notice 2020-50, the year of the deduction depends upon the amount and year that the distribution is included in income, the amount of the repayment, and when the repayment is made.

Notice 2020-50 contains three examples of this. In Section E, *Example 1* is a taxpayer who received a \$75,000 distribution on 12/1/2020, used the 3-year ratable inclusion method, and made one \$25,000 repayment on 4/10/2022 (before the due date for filing the 2021 return). The IRS says that the taxpayer must include the following amounts of the distribution in income: \$25,000 for 2020, \$0 for 2021, and \$25,000 for 2022.

*Example 2* involves the same facts except that the taxpayer made one \$25,000 repayment on 8/10/2022 (after the due date for filing the 2021 return). The taxpayer filed the 2021 return timely and did not request an extension. The IRS says that the taxpayer must include the following amounts of the distribution in income: \$25,000 for 2020, \$25,000 for 2021 and \$0 for 2022.

In Section F, the IRS addresses the situation where the repayment exceeds the ratable amount of the distribution that is included in income. In an example, the taxpayer received a \$90,000 distribution on 11/15/2020, used the 3-year ratable inclusion method, and made one \$40,000 repayment on 11/10/2021. The IRS says that the taxpayer must include \$30,000 in income for 2020, \$0 in income for 2021, and may either (1) carry the \$10,000 excess repayment forward and report \$20,000 in income for 2022, or (2) carry the \$10,000 excess repayment back to 2020 and file an amended return to reduce the income previously reported from \$30,000 to \$20,000.

## Notice 2020-50's 3-Year Repayment Rules Don't Follow the CARES Act Provision

The CARES Act provides that if a taxpayer repays part or all of the distribution during the 3-year period beginning on the day after the date of the distribution, then the repayment will be treated as if the taxpayer made a trustee-to-trustee transfer within 60 days of the date of the distribution.<sup>10</sup> In other words, the repayment offsets the amount that was included in income.

The Joint Committee on Taxation's explanation of the repayment provisions reached the same conclusion:<sup>11</sup>

<sup>10</sup> See §§2202(a)(3)(B) and (C) of the CARES Act.

<sup>11</sup> *Description of the Tax Provisions of Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act*, Joint Committee on Taxation ([JCX-12R-20](#), 4/23/2020), p.15

<sup>8</sup> *Id.*

<sup>9</sup> See Section 4.D. of Notice 2020-50.

Any portion of a coronavirus-related distribution may, at any time during the three-year period beginning the day after the date on which the distribution was received, be recontributed in one or more contributions to an eligible retirement plan to which a rollover can be made. **Any amount recontributed within the three-year period is treated as a rollover and thus is not includible in income.**

Let's apply this rule to the IRS's examples in Notice 2020-50. In Section E, *Example 1* is a taxpayer who received a \$75,000 distribution on 12/1/2020, used the 3-year ratable inclusion method, and made one \$25,000 repayment on 4/10/2022. The IRS says that the taxpayer must include \$25,000 of the distribution in income for 2020, and then may offset the \$25,000 repayment made on 4/10/2022 against the \$25,000 that was included in income for 2021.

This is different from the statute. Under the statute, the repayment must be treated as if the taxpayer made a trustee-to-trustee transfer within 60 days of the date of the distribution, which would treat \$25,000 of the 12/1/2020 distribution as a qualified rollover. Under the statute, the \$25,000 repayment made on 4/10/2022 is treated as an offset against the \$25,000 included in income for 2020 (rather than 2021 as in Notice 2020-50).

*Example 2* has the same facts except that the taxpayer made one \$25,000 repayment on 8/10/2022. The IRS says that the taxpayer must include \$25,000 in income for 2020 and \$25,000 for 2021, and then may offset the \$25,000 repayment made on 8/10/2022 against the \$25,000 that is included in income for 2022.

Again, this is different from the statute. Under the statute, the repayment must be treated as if the taxpayer made a trustee-to-trustee transfer within 60 days of the date of the distribution, which would treat \$25,000 of the 12/1/2020 distribution as a qualified rollover. Under the statute, the \$25,000 repayment made on 8/10/2022 is treated as an offset against the \$25,000 included in income for 2020 (rather than 2022 as in Notice 2020-50).

In the example in Section F, the taxpayer received a \$90,000 distribution on 11/15/2020, used the 3-year ratable inclusion method, and made one \$40,000 repayment on 11/10/2021. The IRS says that the taxpayer must apply \$30,000 of the repayment to 2021 and carry the excess \$10,000 either back to 2020 or forward to 2022.

Again, under the statute, the repayment must be treated as if the taxpayer made a trustee-to-trustee transfer within 60 days of the date of the distribution, which would treat \$40,000 of the 12/1/2020 distribution as a qualified rollover. Under the statute, the

\$40,000 repayment made on 11/10/2021 eliminates the \$30,000 included in income for 2020, and reduces the amount included in income for 2021 from \$30,000 to \$20,000.

In essence, if a taxpayer uses the 3-year ratable inclusion method to report the distribution, then any repayments made during the 3-year period beginning on the day after the distribution should be applied against the amount of the distribution included in income in the earliest year first. That's different from the guidance in Notice 2020-50.

## Which Guidance Should Your Clients Follow?

For your clients who decided to report coronavirus-related distributions using the 3-year ratable inclusion method, should you advise them to follow Notice 2020-50 for reporting the repayments or §§2202(a)(3)(B) and (C) of the CARES Act?

In my opinion, you should advise your clients to follow §§2202(a)(3)(B) and (C) of the CARES Act. Why? Because an IRS Notice doesn't carry the force of law,<sup>12</sup> and because an IRS Notice is not accorded the deference that is given to a regulation.<sup>13</sup>

## Conclusion

For those taxpayers who chose to report their coronavirus-related distribution using the 3-year ratable inclusion method, the guidance in Notice 2020-50 for deducting repayments differs from the CARES Act provision. You may want to point out this difference to your clients and let them choose which method they want to follow for deducting their repayments.

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<sup>12</sup> See [Standley v. Commissioner](#), 99 T.C. 259, 267 n.8 (1992), aff'd. without published opinion, 24 F.3d 249 (9th Cir. 1994); [Blakeney v. Commissioner](#), T.C. Memo. 2012-289.

<sup>13</sup> See [Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.](#), 467 U.S. 837, 843-844 (1984).