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Small Business Tax Credits for Paid Sick Leave or Medical Leave

From: Tax and Finance in the Time of Coronavirus

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Small Business Credit for Paid Sick Leave or Medical Leave

The Families First Act requires (with some exceptions)ⁱ employers with fewer than 500 employees to provide up to ten days of paid sick leave and/or family or medical leave for their employees who miss work for various coronavirus-related reasons. Businesses with over 500 employees are not entitled to the credit. As far as we know, this credit is the only mandatory provision of the CARES Act.

Eligible Employers¹ may claim fully refundable 100% credits based on qualifying leave payments made between April 1, 2020, and Dec. 31, 2020. The credit reimburses the employer for 100 percent of up to ten days of the qualified sick leave wagesⁱⁱ and up to ten weeks of qualified family leaveⁱⁱⁱ wages (and any qualified health plan expenses allocable to those wages^{iv}) that an Eligible Employer paid during a calendar quarter, plus the amount of the Eligible Employer's share of Medicare taxes imposed on those wages.

If the employee is otherwise entitled to sick and family leave under the employer's policies, Qualified Sick Leave and Qualified Family Leave under the FFCRA are supplemental to those preexisting leave entitlements.

To claim the Employee Retention Credit, report your total Qualified Wages and health insurance costs for each quarter on your quarterly employment tax returns (usually Form 941) beginning with the second quarter 2020 return. Technically, the credit offsets your share of social security tax but the excess is refundable. (The Service updated Form 941 to encompass this - It is now three pages long. Make sure you are using the correct version of the form!)

You may retain the employment taxes that otherwise would have been deposited, including federal income tax withholding, the employees' share of Social Security and Medicare taxes, and the employer's share of Social Security and Medicare taxes for all employees, up to the amount of the credit, without penalty. (We do not recommend this unless you are really strapped for cash.)

You do not need to wait until you file your 941 to monetize the credits. If you have already filed second quarter returns or made payroll tax deposits for any quarter you may recover the credit by reducing upcoming deposits or requesting an advance credit on [Form 7200, Advance of Employer Credits Due To COVID-19](#).

You must separately state the total amount of qualified sick leave wages paid because the employee was quarantined or diagnosed with COVID-19, the total amount of qualified sick leave wages paid because the employee was caring for a sick individual or for a child (or for other similar reason), and the total amount of qualified family leave wages paid. This may require a few modifications to your payroll system: Modifications that most of the large payroll firms have already implemented.

¹ Defined, rather circularly as businesses and tax-exempt organizations that: (i) have fewer than 500 employees, and (ii) are required under the FFCRA to pay "qualified sick leave wages" and/or "qualified family leave wages."

The IRS provides guidance to employers who incur this expense and claim this credit (See, Sources, Below)

Wrinkles:

- Accounting – Recordkeeping issue – you can not report what you don't keep track of. The breakdown of this expense is not something that most employers track. Some adjustment of record keeping, payroll, and accounting procedures may be necessary.
- Self-employed individuals qualify for the credits; c.f. IRS Website: [Specific Provisions Related to Self-Employed Individuals](#) at Question 60 et. seq.

Sources: Families First Coronavirus Response Act, [H.R. 6201](#)

DOL Website: General Discussion

- [Families First Coronavirus Response Act: Questions and Answers](#)

Small Business Credit for Paid Sick Leave or Medical Leave

- IRS Website: [New Employer Tax Credits](#)
- IRS Website: [COVID-19-Related Tax Credits for Paid Sick and Paid Family Leave: Overview](#)
- IRS Website: [COVID-19-Related Tax Credits: General Information FAQs](#)
- IRS Website: [Specific Provisions Related to Self-Employed Individuals](#) at Question 60 et. seq.
- IRS Website: [COVID-19-Related Tax Credits: How to Claim the Credits](#)
- IRS (Form, Instructions, and Narrative) [About Form 7200, Advance Payment of Employer Credits Due to COVID-19](#)
- Journal of Accountancy: [Employer tax credits form, employee retention credit guidance posted](#)
- AICPA: [CARES Act and Families First Coronavirus Response Act Summary](#)
- IRS Website: [Treasury, IRS and Labor announce plan to implement Coronavirus-related paid leave for workers and tax credits for small and midsize businesses to swiftly recover the cost of providing Coronavirus-related leave](#)
- [Recapture Regulations](#)
- Guidance on Reporting Qualified Sick Leave Wages and Qualified Family Leave Wages Paid Pursuant to the Families First Coronavirus Response Act ([IRS Notice 2020-54](#))
- COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs ([IRS FAQ](#))

End Notes

The notes in this presentation are intended to assist tax and financial professionals and ardent do-it-yourselfers. The notes offer a deeper analysis of issues than is commonly appropriate to a seminar presentation designed to familiarize non-professionals with the issues and rules they may confront. Please note that these Endnotes are, for the most part, extracted without editing from relevant source documents. Please do not judge Steven Roy Management's ability to articulate clear thoughts based on this part of our presentation.

Since the PPP loan program has closed, much of the material related to loan qualification, head count, and initial application is predominantly of historical interest. It is included here 1. in case Congress enacts a CARES 2 relief package that employs similar criteria (which seems a likely scenario as of 07/25/2020) and 3. For reference if agencies challenge the bona-fides of the original application, fund grant, and debt forgiveness. At the moment, there seems to be little appetite for the latter examination-audit function, but "times change."

ⁱ The FFCRA permits the Department of Labor to provide rules that a business with fewer than 50 employees may use to claim an exemption from providing paid sick leave and expanded family and medical leave for the purpose of caring for a child whose school or place of care is closed or whose child care provider is unavailable due to COVID-19-related reasons if providing these qualified leave wages would jeopardize the viability of their businesses as a going concern. Any business that claims the exemption is not entitled to tax credits for any qualified leave wages that they are exempt from providing.

Also note that the FFCRA permits employers whose employees are health care providers or emergency responders not to provide qualified sick leave or qualified family leave wages to those employees.

For more information about exemptions from the requirement to provide paid sick leave and expanded family and medical leave under the FFCRA, see the Department of Labor's [Families First Coronavirus Response Act: Questions and Answers](#)

ⁱⁱ Qualified sick leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code for social security and Medicare tax purposes) that Eligible Employers must pay eligible employees for periods of leave during which they are unable to work or telework because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

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5. is caring for a child of the employee if the school or place of care of the child has been closed, or the child care provider of the child is unavailable due to COVID-19 precautions; or
 6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

ⁱⁱⁱ Qualified family leave wages are wages (as defined in section 3121(a) of the Internal Revenue Code for social security and Medicare tax purposes) that Eligible Employers must pay eligible employees for periods of leave during which they are unable to work or telework due to a need for leave to care for a child of the employee if the child's school or place of care has been closed, or because the child care provider of the child is unavailable, due to COVID-19 related reasons. The first ten days for which an employee takes leave for this reason may be unpaid. However, during that 10-day period, an employee may be entitled to receive qualified sick leave wages as provided under the ESPLA or may receive other forms of paid leave, such as accrued sick leave, annual leave, or other paid time off under the Eligible Employer's policy. After an employee takes leave for ten days, the Eligible Employer must provide the employee with qualified family leave wages for up to ten weeks.

^{iv} An Eligible Employer who sponsors a fully-insured group health plan may use any reasonable method to determine and allocate the plan expenses, including (1) the COBRA applicable premium for the employee typically available from the insurer, (2) one average premium rate for all employees, or (3) a substantially similar method that takes into account the average premium rate determined separately for employees with self-only and other than self-only coverage.

If an Eligible Employer chooses to use one average premium rate for all employees, the allocable amount for each day an employee covered by the insured group health plan is entitled to qualified leave wages could be determined using the following steps:

- The Eligible Employer's overall annual premium for the employees covered by the policy is divided by the number of employees covered by the policy to determine the average annual premium per employee.
- The average annual premium per employee is divided by the average number of work days during the year by all covered employees (treating days of paid leave as a work day and a work day as including any day on which work is performed) to determine the average daily premium per employee. For example, a full-year employee working five days per week may be treated as working 52 weeks x 5 days or 260 days. Calculations for part-time and seasonal employees who participate in the plan should be adjusted as appropriate. Eligible Employers may use any reasonable method for calculating part-time employee work days.
- The resulting amount is the amount allocated to each day of qualified sick or family leave wages.

An Eligible Employer who sponsors a self-insured group health plan may use any reasonable method to determine and allocate the plan expenses, including (1) the COBRA applicable premium for the employee typically available from the administrator, or (2) any reasonable actuarial method to determine the estimated annual expenses of the plan.

If the Eligible Employer uses a reasonable actuarial method to determine the estimated annual expenses of the plan, then rules similar to the rules for insured plans are used to determine the amount of expenses allocated to an employee. That is, the estimated annual expense is divided

by the number of employees covered by the plan, and that amount is divided by the average number of work days during the year by the employees (treating days of paid leave as work days and any day on which an employee performs any work as work days). The resulting amount is the amount allocated to each day of qualified sick or family leave wages.

The amount of qualified health plan expenses does not include Eligible Employer contributions to HSAs or Archer MSAs. Eligible Employers who sponsor an HDHP should calculate the amount of qualified expenses in the same manner as an insured group health plan, or a self-insured plan, as applicable.

The amount of qualified health plan expenses may include contributions to an HRA (including an individual coverage HRA), or a health FSA, but does not include contributions to a QSEHRA. To allocate contributions to an HRA or a health FSA, Eligible Employers should use the amount of contributions made on behalf of the particular employee.