

Overview of Tax Credits Available to Employers Under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief and Economic Security Act

April 9, 2020

As discussed in a prior Alert, available [here](#), tax credits are available to employers for amounts paid to employees for qualified sick leave and qualified family leave under the Families First Coronavirus Response Act (“FFCRA”). As discussed in a subsequent Alert on the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), available [here](#), similar credits are available for amounts paid to employees while an employer is fully or partially shut down due to a COVID-19-related government order or is experiencing a significant reduction in gross receipts (referred to as the “employee retention credit”).

These credits are allowed against the employer’s portion of Social Security taxes and are equal to 100% of the sick leave wages and family leave wages paid under the FFCRA and 50% of qualified wages paid under the employee retention credit provisions of the CARES Act. For purposes of these credits, qualified wages under the FFCRA and CARES Act include amounts paid by the employer and by the employee for health insurance coverage during the period the qualified wages are paid. The CARES Act employee retention credit is capped at \$5,000 per employee and is not available to employers who accept a small business loan under the Paycheck Protection Program of the CARES Act.

The IRS has published two sets of FAQs regarding these tax credits, available [here](#) and [here](#), which include detailed guidance on how to calculate qualified wages and health insurance costs, as well as the information and documentation an employer will need to collect from employees to substantiate qualified leave credits.

These tax credits are refundable, so if the credits exceed the employer’s Social Security tax liability, the employer is entitled to a refund from the IRS. To speed the refund process, the new guidance allows employers to retain federal income taxes withheld from employees and the employee and employer share of Social Security and Medicare taxes, until the tax credits are satisfied. If the employer’s credits exceed these retained amounts, the employer may file IRS Form 7200 (available [here](#)) for advance payment of the remaining credit amount.

The IRS FAQs provide an example of how to utilize Form 7200:

1. An employer paid \$10,000 in qualified leave wages (including allocable qualified health plan expenses and the employer’s share of Medicare tax on those qualified leave wages), requiring an \$8,000 deposit in federal employment taxes on wage payments made during the same quarter (including taxes withheld from all of its employees).

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2. The employer can keep the entire \$8,000 of taxes, without penalty, it would have otherwise been required to deposit as a portion of the credits it is otherwise entitled to claim on the employer's quarterly federal tax return. By completion and submission of the Form 7200, the employer would then be able to file a request for an advance credit for the remaining \$2,000.
3. An employer would be able to file the Form 7200 at any time before the end of the month following the quarter the wages were paid. An employer may also file multiple times for a quarter when claiming the refundable portions associated with multiple deposits.

The Form 7200 should be filed by fax to (855) 248-0552.

If you have questions regarding these developments, please contact a member of our Tax team.

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For more guidance on issues related to the coronavirus pandemic, please visit our [COVID-19 resource center](#).