Tax Credits & Savings Opportunities Triggered by COVID-19

Q&A

Thursday, April 23, 2020
OUR PRESENTERS

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WEBINAR DETAILS

• Webinar will be recorded
• All attendees will be placed on mute
• Questions may be input into the Questions Box within the GOTOWEBINAR
The information presented today is provided for educational purposes and should not be considered legal advice.
AGENDA

1. Payroll Network Reminders
2. Payroll Tax Deferral
   • Overview
   • Developments
3. Qualified Leave under FFCRA
   • Key Points
   • FFCRA and CARES Act Interactions
4. Employee Retention Credit
5. Claiming Tax Benefits Under Section 139
   • Disaster Support
iSolved Update

• Reminder:
  • ALL CLIENTS with FFCRA Leave Credits – you need to confirm with Payroll Network if you are not taking Deferred Comp from these new Leave Earnings.

• New Reports Available:
  • CARES Paycheck Protection Program Report
  • FFCR Act Business Credits
  • FFCRA Average Hours and Wage Report
  • Coming:
    • CARES Act Employee Retention Tax Credit Report
    • PPP Loan Forgiveness Report
### Business Credits

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<tr>
<th>Credit Type</th>
<th>Amount</th>
<th>Balance</th>
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<tr>
<td>FFCR Act - SickPay</td>
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<td>0.00</td>
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<td>0.00</td>
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</tbody>
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### Credit Details

- **Credit Type:** FFCR Act - SickPay
- **Total Credit Amount:** 1691.33
- **Credit Previously Utilized:** 0
- **Remaining Balance:** 0
- **Date Entered:** 4/16/2020

### Other Details

- **Qualified Employee Sick Payments:** 1445.37
- **Employer Medicare Credit on Payments:** 20.96
- **Qualified Employer Health Plan Expenses:** 225.00
- **Request of Advance payment of Employer Credit:**
  - **Filing Type:** Form 941
  - **Pay Date:** 4/24/2020
Basic Provision

• Employers may elect to defer paying the 6.2% employer portion of social security taxes from March 27 through December 31, 2020.

• 50% of the deferred 2020 amounts will be due on December 31, 2021.

• The other 50% will be due on December 31, 2022.

• Deferral does not include the employer portion of Medicare tax.

• For self-employed, the deferral applies to 50% of the Self-Employment Contributions Act tax liability (including any related estimated tax liability).

• Form 941, Employer’s Quarterly Federal Tax Return, will be revised for the second calendar quarter of 2020 (April – June, 2020) to reflect the ability to defer these taxes.
Relationship to PPP

• Payroll tax deferral is not available if the taxpayer has had debt forgiveness under the PPP.

• Merely applying for and receiving a PPP loan does not override the right to defer payroll taxes. The trigger to end deferral is approval of loan forgiveness.

• This means that, even if an employer has applied for and received a PPP loan, it may defer deposit and payment of the employer’s share of social security through the date the lender issues a decision to forgive the loan.

• Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the employer’s share of social security tax due after that date.

• However, the amount of the employer’s share of social security tax that was deferred through the date that the PPP loan is forgiven continues to be deferred and will be due on the applicable dates.
Example

- Employer deferred 6.2% employer portion of social security tax from April 1 through September 30, totaling $25,000.

- Employer applied for a PPP loan in April 2020, with loan approved by bank and SBA in May 2020.

- On September 30, the PPP loan was forgiven.

- Employer will not be able to defer any further payroll taxes after September 2020.

- However, the $25,000 that had been deferred through September 30, will continue to be deferred, with $12,500 due on December 31, 2021, and the remaining $25,000 due on December 31, 2022.

- The ability to defer deposit and payment of the employer’s share of social security taxes applies to all employers, including employers who are entitled to paid leave credits under the FFCRA and ERC credits. However, an employer cannot get a credit under both programs for the same payments.
FFCRA Refresher and CARES Act Interactions
Families First Coronavirus Response Act

- Small- to medium-size employers (<500 employees) required to provide certain paid sick and family and medical leave related to COVID-19
- Max 80 hours (2 weeks) paid sick leave for the employee or to care for family
- Max 10 weeks of child care leave (for inability to work due to school/day care closures)
- FFCRA provides for refundable payroll tax credit intended to cover 100% of the cost of the FFCRA paid leave
- If leave costs > undeposited payroll taxes on hand, can apply for an expedited refund on Form 7200
• **General Rule:**
  ➢ No double-dipping.

• **PPP:**
  ➢ The PPP can cover “payroll costs,” including sick leave. Payroll costs do not include paid leave for which an FFCRA tax credit is allowed.

• **ERC:**
  ➢ The Employee Retention Credit ("ERC") is essentially a payroll tax credit for 50% of employee wages. The ERC is not available with respect to wages that are paid leave wages under the FFCRA.
Employment Retention Credit
Overview

• Eligible employer will receive a tax credit equal to 50% of qualified wages paid their employees.

• Maximum credit per employee is $5,000.

• Credit is applied against payroll taxes. If credit amount exceeds tax liability, employer will receive a refund equal to unapplied credit amount.
What Employers Can Take the ERC?

• All employers that carry on a trade or business during calendar year 2020 are eligible, including a tax-exempt organization, provided that either of the following conditions apply:

  ➢ The employer fully or partially suspends operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or

  ➢ The employer experiences a significant decline in gross receipts during the calendar quarter any calendar quarter in 2020.

• Self-employed individuals are not eligible for the ERC for their self-employment services or earnings.
Partial Suspension of Business Operations

• The operation of a trade or business will be treated as partially suspended if an appropriate governmental authority imposes restrictions upon the business operations by limiting commerce, travel or group meetings (for commercial, social, religious, or other purposes) due to COVID-19 such that the operation can still continue to operate but not at its normal capacity.

• It is unclear from the statute and IRS guidance how significant the adverse impact on the business must be.

• IRS Example:

  ➢ A state governor issues an executive order closing all restaurants, bars, and similar establishments in order to reduce the spread of COVID-19. However, the order allows those establishments to continue food or beverage sales to the public on a carry-out, drive-through, or delivery basis.
Significant Decline in Gross Receipts

• An employer has a significant decline in gross receipts in the first quarter in which 2020 gross receipts are less than 50% of gross receipts for the same quarter of 2019.

• Qualification for ERC based on significant decline in gross receipts continues until first calendar quarter for which employer’s 2020 gross receipts for the quarter are greater than 80% of its gross receipts for the same calendar quarter of 2019.

• IRS Example:
  ➢ Gross receipts were $100,000, $190,000, and $230,000 in the first, second, and third calendar quarters of 2020.
  ➢ Gross receipts were $210,000, $230,000, and $250,000 in the first, second, and third calendar quarters of 2019.
  ➢ This means that 2020 first, second, and third quarter gross receipts were approximately 48%, 83%, and 92% of its 2019 first, second, and third quarter gross receipts.
  ➢ Therefore, employer had a significant decline in gross receipts commencing on the first day of the first calendar quarter of 2020 (the calendar quarter in which gross receipts were less than 50% of the same quarter in 2019) and ending on the first day of the third calendar quarter of 2020 (the quarter following the quarter for which the gross receipts were more than 80% of the same quarter in 2019).
  ➢ Thus the employer is entitled to a retention credit with respect to the first and second calendar quarters.
Credit Amount

• The credit equals 50% of the qualified wages (including qualified health plan expenses) that an employer pays in a calendar quarter.

• The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is $10,000, so that the maximum credit for qualified wages paid to any employee is $5,000.

• **IRS Example:**
  - Employer pays Employee X $8,000 in qualified wages in Q2 2020 and $8,000 in qualified wages in Q3 2020. The credit available to the employer for the qualified wages paid to Employee X is $4,000 in Q2 ($8,000 x 50%) and $1,000 in Q3 due to the overall limit of $10,000 on qualified wages per employee for all calendar quarters.
Qualified Wages

• Qualified wages are wages paid after March 12, 2020, and before January 1, 2021.

• Qualified wages include the employer’s qualified health plan expenses that are properly allocable to the wages.

• The definition of qualified wages depends, in part, on the average number of full-time employees employed by the employer during 2019.

• If the employer had 100 or fewer employees, all employee wages are eligible, even if employees have not been prevented from providing services.
EMPLOYEE RETENTION CREDIT (ERC)

Qualified Wages

• If the employer had more than 100 full-time employees, there is a stringent limitation on employees that may be considered for the ERC:
  - If the employer averaged more than 100 full-time employees in 2019, the wages for which credit may be claimed are those paid to an employee for time that the employee is not providing services due to either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts.
  - For these employers, qualified wages taken into account for an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

• Wages paid after December 31, 2020 are not eligible for the ERC.
Application of ERC Against Employment Taxes

- The credit is allowed against the 6.2% employer portion of social security taxes.

- The credit is fully refundable. This means that the employer can get a refund if the amount of the credit is more than the employer portion of the social security tax on all wages that the employer pays to its employees, the excess is treated as an overpayment and refunded to the employer.

- As with other overpayments the excess will be applied to offset any remaining tax liability on the employment tax return and the amount of any remaining excess will be reflected as an overpayment on the return.

- IRS Example:
  - Employer pays $10,000 in qualified wages to Employee A in Q2 2020.
  - At 50%, the ERC amount for these wages is $5,000.
  - This amount may be applied against the employer share of social security taxes that the employer is liable for with respect to all employee wages paid in Q2 2020.
  - Any excess over the employer’s share of social security taxes is treated as an overpayment and refunded to the employer after offsetting other tax liabilities on the employment tax return and subject to any other offsets under the Internal Revenue Code.
EMPLOYEE RETENTION CREDIT (ERC)

How to Claim the Credit

- Employers will report their total qualified wages and the related credits for each calendar quarter on their federal employment tax returns - Forms 941.

- In anticipation of receiving the credit, prior to filing Form 941 for any quarter an employer can fund qualified wages by accessing federal employment taxes, including withheld taxes, that are otherwise required to be deposited with the IRS.

- IRS Example:
  - Employer paid $10,000 in qualified wages (and is therefore entitled to a $5,000 credit) and is otherwise required to deposit $8,000 in federal employment taxes, including taxes withheld from all of its employees, for wage payments made during the same quarter as the $10,000 in qualified wages.
  - Employer may keep up to $5,000 of the $8,000 of taxes that it was going to deposit, and it will not owe a penalty for keeping the $5,000.
  - Employer is required to deposit only the remaining $3,000 on its required deposit date.
  - Employer will later account for the $5,000 it retained when it files Form 941 for the quarter.
EMPLOYEE RETENTION CREDIT (ERC)

How to Claim the Credit

• If the amount of the credit cannot be fully applied by reducing the employer’s remaining federal employment tax deposits for wages paid in the same calendar quarter because the anticipated credit amount exceeds the remaining federal employment tax deposits for that quarter, the employer can file a Form 7200, (Advance Payment of Employer Credits Due to COVID-19), to claim an advance refund for the full amount of the anticipated credit for which it did not have sufficient federal employment tax deposits.

• IRS Example:
  ➢ Employer paid $20,000 in qualified wages, and is therefore entitled to a credit of $10,000
  ➢ Employer is otherwise required to deposit $8,000 in federal employment taxes, including taxes withheld from all of its employees, on wage payments made during the same calendar quarter.
  ➢ Employer can keep the entire $8,000 of taxes that the employer was otherwise required to deposit without penalties as a portion of the credits it is otherwise entitled to claim on the Form 941.
  ➢ Employer may also file a request for an advance credit for the remaining $2,000 by completing Form 7200.
Relationship With Other COVID-19 Programs

• An employer may receive the benefit of other the qualified leave credit under FFCRA and the ERC, but not on the same wages.

• The amount of qualified wages for which an employer may claim the ERC cannot include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.

• An employer may not receive the ERC if the employer receives a loan under the Paycheck Protection Program.

• IRS has not provided guidance on whether the ERC can be claimed prior to approval of a PPP loan. Possibly, IRS might allow the ERC for this interim period, taking the same approach it has with payroll tax deferral until PPP loan is forgiven.
Section 139
Leveraging Qualified Disaster Relief Payments
• Tax code provision added after September 11th attacks.

• Section 139 can be used if there is a “qualified disaster” (COVID-19 qualifies).

• “Qualified disaster relief payments” (“QDRs”) to individuals:
  
  ➢ No income tax upon receipt
  ➢ No reporting by employers making such payments (no W-2, no 1099)

• If QDRs are paid by employers to employees, they are generally fully deductible.
Payments “to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster, . . .

but only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.”

• Payments in the nature of income replacement (for example, lost wages, unemployment compensation, or business income replacement) do not qualify.

• Note that no substantiation is required under the law, though best practice is to require substantiation or grant block amounts reasonably expected to be commensurate with COVID-19 costs.
• Payments have to be for expenses. Can’t be for wage or income replacement.

• Expenses have to be incurred as a result of COVID-19. Not for employee expenses that already existed (e.g., most mortgage or rent obligations).

• Expenses can’t be reimbursed by insurance or anything else.

• Payments have to be reasonable and necessary. For example, nothing luxury, purely decorative, excessive or frivolous.
Examples

• Costs of additional childcare or tutoring, or subscriptions to educational materials, since COVID-19 closed schools.

• New work-from-home expenses (e.g. desk, printer, new monitor, increased internet costs).

• Increased transportation costs (public transit not a viable option anymore).

• Unreimbursed COVID-19 medical costs.

• Hand sanitizer, masks, thermometers, home cleaning supplies.

• Funeral expenses for someone who died of COVID-19.
Examples

• Pre-existing costs that would have been incurred regardless of COVID-19 (rent, mortgage, car payment, insurance, etc.).

• Regular food costs (to the extent providing food is more expensive, though, should qualify).

• Amounts that are linked to the replacement of income or wages.

• Amounts that are not paid in connection with costs or reasonably expected to be commensurate with the expenses incurred.
• Provides employees with the biggest bang for their buck – no federal income tax and in many cases no state income tax.

• Employers that are already making this kind of payment can take advantage of this section.

• Can potentially be part of an overall plan to cut costs (e.g., reduce salaries but create a program to pay QDRs)
• **Best Practice:**
  
  ➢ Draft and adopt a QDR plan (we can help) and share with employees.

• **QDR Plan Should Cover:**

  1. Who is eligible
  2. Examples or listing of expenses that are eligible
  3. Employer-imposed limits or caps
  4. Procedures to seek reimbursement (or apply for payment)
  5. Length of program
  6. Contact information for person administering the program

• **Consider whether to require substantiation.**
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