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COVID-19 Relief for Businesses
The CARES Act and FFCRA: Tax Provisions
April 7, 2020

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Other Relief for Businesses

- Paid Leave and Payroll Tax Credits
- Payroll Tax Deferrals
- Other Modified Tax Provisions



Refundable Tax Credits for Paid Leave

Families First Coronavirus Response Act (“FFCRA”) requires employers to provide certain paid sick leave and emergency family and medical leave.

In light of this, FFCRA provides tax credits to employers to cover qualified leave wages paid to employees:

- Qualified sick leave wages
- Qualified family leave wages

The credits apply to leave taken from Apr. 1–Dec. 31, 2020.



Payroll Credit for Required Paid Sick Leave

Credit against social security taxes for each calendar quarter in an amount equal to 100% of qualified sick leave wages paid during the quarter.

- “Qualified sick leave wages” are wages that are required to be paid under FFCRA.
- Amount of the credit depends on the reason for the employee’s leave.
- Self-employed individuals can be eligible.



Payroll Credit for Required Paid Sick Leave

The amount of the credit is equal to the employee's rate of pay, up to \$511 per day, for up to 10 days (i.e., maximum credit of \$5,110), if employee is unable to work due to a need for leave because:

- The employee is subject to a quarantine or isolation order.
- The employee has been advised by a health-care provider to self-quarantine.
- The employee is experiencing COVID-19 symptoms and seeking medical diagnosis.



Payroll Credit for Required Paid Sick Leave

The amount of the credit is equal to $\frac{2}{3}$ of the employee's rate of pay, up to \$200 per day, for up to 10 days (i.e., maximum credit of \$2,000), if employee is unable to work due to a need for leave because:

- The employee is caring for an individual who is subject to a quarantine or isolation order, or has been advised by a health-care provider to self-quarantine.
- The employee is caring for a child if the school or child-care provider is closed or unavailable.



Payroll Credit for Required Paid Family Leave

Credit against social security taxes for each calendar quarter in an amount equal to 100% of qualified family leave wages paid during the quarter.

- “Qualified family leave wages” are wages that are required to be paid under FFCRA.
- Amount of the credit is limited to \$200 per day, or a maximum of \$10,000 ***with respect to all calendar quarters.***



Payroll Credit for Required Paid Family Leave

Self-employed individuals can be eligible for a credit in an amount equal to 100% of the qualified family leave equivalent amount.

The “qualified family leave equivalent amount” is an amount equal to the product of:

- The number of days (up to 50) during the year that the individual cannot perform services, multiplied by
- The lesser of (a) 67% of average daily self-employment income for the year, or (b) \$200.



Refundable Tax Credits for Paid Leave

The credit is allowed against the social security and Medicare taxes imposed on employers for all wages and compensation paid to all employees.

The credit is ***refundable***, meaning:

- If the amount of the credit exceeds the amount of payroll taxes due, the excess amount will be refunded.

Employers should retain an amount of the employment taxes equal to the amount of qualified leave wages paid.

If there are not sufficient employment taxes to cover such amount, employers can file IRS Form 7200 to request an advance payment.



Refundable Tax Credits for Paid Leave

The IRS provided the following example in its recent guidance:

- Employer paid \$10,000 in qualified leave wages.
- 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 quarter.
- Employer can keep the entire \$8,000 of taxes that Employer was otherwise required to deposit without penalties as a portion of the credits it is otherwise entitled to claim on IRS Form 941.
- Employer may file a request for an advance credit for the remaining \$2,000 by completing IRS Form 7200.



Refundable Tax Credits for Paid Leave

Document circumstances relating to the credits:

- Obtain a written request for leave from the employee, which includes (1) employee's name, (2) dates for leave, (3) a statement of the COVID-19-related reason for the leave, and (4) statement that the employee is unable to work as a result.
- Receive from employees "support" showing need for leave, such as name of health-care professional or governmental entity ordering quarantine.
- Get special statement from an employee if the employee's leave relates to a child who is older than 14 years old.
- Document determination of the amount of paid leave and keep copies of all related IRS Forms.
- Maintain documentation for at least 4 years.



Retention Tax Credit

Eligible employers can receive a credit against employment taxes for each calendar quarter in an amount equal to 50% of qualified wages with respect to each employee for such quarter.

- Amount ***for all quarters*** may not exceed \$10,000.
- Amount of taxes are reduced by credits allowed under FFCRA.
- An employer is not eligible if it receives a PPP loan.
- Applies to wages paid from Mar. 13–Dec. 31, 2020.



Retention Tax Credit

Employers are eligible if:

- Operations partially or fully shut down due to COVID-19 related order, or
- Gross receipts declined by more than 50% compared to same quarter last year.

For eligible employers with 100 or fewer employees, ***all*** employee wages qualify for the credit.

For eligible employers with greater than 100 employees, only wages paid to retained employees who are furloughed or working reduced hours due to COVID-19 qualify for credit.



Retention Tax Credit

The retention credit is ***refundable***:

- If the amount of the credit exceeds payroll taxes for any calendar quarter, the excess amount will be refunded.

Eligible employers should retain an amount of the employment taxes equal to their retention credit.

If there are not sufficient employment taxes to cover the credit, employers can file IRS Form 7200 to request an advance payment.



Deferred Payment of Payroll Taxes

The payment for applicable employment taxes for the payroll tax deferral period will not be due before the applicable date.

- The “payroll tax deferral period” means from Mar. 27–Dec. 31, 2020.
- The “applicable date” means:
 - December 31, 2021, with respect to 50%, and
 - December 31, 2022, with respect to the remaining amount.
- Employers receiving PPP loan forgiveness are ineligible to defer payment of payroll taxes.



Net Operating Loss Modifications

Net operating losses (“NOLs”) are a tax deduction that is created when a corporation has negative taxable income.

- (i.e., its expenses are greater than its revenues)

The deduction helps a corporation’s tax year more closely track its business cycle.

Since the Tax Cuts and Jobs Act of 2017 (“TCJA”), NOLs:

- can be carried forward to tax years following the year of the loss, but cannot be carried back to prior year; and
- are subject to 80% taxable-income limitation.



Net Operating Loss Modifications

Under the CARES Act:

- NOLs arising in a tax year after Dec. 31, 2017, and before Jan. 1, 2021, can be carried back to each of the five years before the tax year of the loss.
- Specifically, a corporation can carry back its 2018, 2019, and 2020 NOLs to offset pre-2018 income or gains.
- Corporations may claim a refund for tax returns from prior tax years.
- Corporations may use NOLs to fully offset taxable income, rather than 80% of taxable income for the period beginning after Dec. 31, 2017, and before Jan. 1, 2021.



Loss Limitation for Non-Corporate Taxpayers

Current law prohibits non-corporate taxpayers from deducting excess business losses for the period from Dec. 31, 2017–Dec. 31, 2025.

- “Excess business loss” means, for the applicable tax year, the excess of: (1) the taxpayer’s aggregate trade or business deductions, over (2) the sum of the taxpayer’s aggregate trade or business gross income or gain plus \$250,000 (\$500,000 for joint filers) (as adjusted).

CARES Act temporarily modifies the loss limitations to such extent that non-corporate taxpayers’ NOLs are generally subject to the same rules as corporations.

A non-corporate taxpayer may file an amended return to claim a refund resulting from the deduction for excess business losses.



MTC Acceleration

Pre-TCJA law allowed a corporation to generate and claim minimum tax credits (“MTCs”) under the alternative minimum tax (“AMT”) regime.

TCJA repealed the AMT regime, but transition rules allow corporations to utilize remaining MTCs, subject to certain limits, incrementally from 2018–2021.

The CARES Act accelerates timing by allowing corporations to claim the MTC credits in full in 2018 or 2019.

Corporations may accelerate their credit refund for 2018 by using IRS Form 1139, rather than filing an amended return.



Increased Business Interest Deductibility

In general, current law limits the amount of business interest expense allowed as a deduction to an amount equal the sum of:

1. the company's business interest income,
2. 30% of the company's adjusted taxable income ("ATI"), and
3. the company's floor plan financing interest expense.

The CARES Act temporarily **increases** the ATI component from 30% **to 50%** for tax years beginning in 2019 and 2020.

Taxpayers may elect out of the increased limitation.

Taxpayers may also elect to calculate the interest limitation for tax years beginning in 2020 using 2019 adjusted taxable income.



Increased Business Interest Deductibility

The CARES Act includes specific provisions for partnerships.

Under the CARES Act, the increase to 50% ATI does not apply to a partnership, but, for any 2019 excess business interest allocated to a partner:

- 50% of excess business interest will be treated as business interest that is paid or accrued by the partner in 2020, and will not be subject to certain limitations, and ***thus deductible***; and
- The other 50% will be subject to limitations in the same manner as any other excess business interest allocated to the partner.

The partnership can elect not to have the 50% rule apply, or elect to use its ATI from 2019 for ATI in 2020.



Qualified Improvement Property

The CARES Act includes a technical correction with respect to qualified improvement property (“QIP”).

- QIP includes any improvement to the interior of nonresidential buildings that is placed in service after the initial construction of the buildings.
- QIP **does not include** elevators, escalators, additions, or internal-structural framework.

QIP is now designated as 15-year property for depreciation purposes and 20-year class life for the alternative depreciation system.

QIP is also eligible for the 100% bonus depreciation.

Taxpayers may be able to change QIP depreciation methods by filing an automatic accounting method change or an amended return.



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Questions?

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