

EMPLOYEE RETENTION CREDIT

PRESENTED TO: Illinois CPA Society

April 9, 2020

Agenda

- Policy and Legislation
 - Families First Act
 - CARES Act

Legislative and regulatory response to COVID-19

- Families First Coronavirus Response Act and Family Medical Leave Act
- Coronavirus Aid, Relief, and Economic Security (CARES) Act
- Making credits available
- Tax regulations: enabling cash flows with tax payments (extensions, estimates and filings)

Families First Coronavirus Response Act

- Effective April 2, 2020
- Applies to businesses with 50 to 500 employees.
 - Employees includes part-time and full-time employees.
 - The definition of employer for FMLA is at [29 CFR § 825.104](#).
 - Under those rules, the legal entity that employs the employee is the employer under FMLA. This is true even when one corporation has an ownership interest in another corporation, unless
 - The corporation is one of two or more businesses that exercise some control over the work or working conditions of the employee (the joint employer test), or
 - It is an integrated employer, in which case the employees of all entities making up the integrated employer count in determining employer coverage and employee eligibility. In making a determination of whether or not separate entities are an integrated employer, you do not consider any single criterion, but rather you need to review the entire relationship in its totality. Factors considered in determining whether two or more entities are an integrated employer include:
 - Common management;
 - Interrelation between operations;
 - Centralized control of labor relations; and
 - The degree of common ownership and or financial control.
- U.S. Department of Labor
 - [Resources](#)
 - Fact Sheet of [Employee Rights](#) and [Employer Requirements](#)

FFCRA – Where to go and common questions?

- 66 FAQs
- https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#how_to_claim

CARES Act

- Key Tax Provisions
 - Employee Retention Credit
 - Delay of payment of employer payroll taxes
 - March 27, 2020 – December 31, 2020
 - Payable ½ December 31, 2021 & ½ December 31, 2022
 - Net Operating Losses (2018-2020)
 - Suspends 80% Limit
 - [5 Year Carryback](#): Tax Rate Arbitrage Opportunity
 - Excess Business Loss
 - Suspends Limitation until 2021
 - 163(j) Interest Limitations
 - 30% Adjusted Taxable Income Limit increased to 50%
 - Partnerships: Special rules with no changes for 2019.
 - Qualified Improvement Property:
 - Technical Correction Retroactive to 2018
 - Now 15-Year Property Eligible for Bonus Depreciation

Employee retention credit

- Credit against employment taxes equal to 50% of the qualified wages for each employer for each calendar quarter
 - Qualified wages cannot exceed \$10,000
 - Several other employment tax credits (if applicable) reduce payroll taxes before the employee retention credit is applied
- Excess credit (if any) for each quarter is treated as an overpayment and will be refunded
- Credit period is for wages paid after March 12, 2020 and before Jan. 1, 2021

Employee retention credit

- Credit available to any employer carrying on a trade or business in calendar year 2020 that:
 - was suspended due to orders from an ‘appropriate government authority’ limiting commerce, travel, or group meetings due to COVID-19; OR
 - experienced a 50% or greater reduction in gross receipts for a quarter as compared to the same quarter in 2019
- Credit is also available to tax-exempt organizations under section 501(c) and exempt from tax under section 501(a)
- Credit is not available to certain governmental employers
- An employer is not eligible if it is taking a small business interruption loan (regardless of forgiveness)

From the FAQ's: what does partially suspended operations mean?

- **When is the operation of a trade or business partially suspended for the purposes of the Employee Retention Credit?**
- The operation of a trade or business may be 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.**
- **Documentation**

What are qualified wages?

- Employers with more than 100 full time employees in 2019
 - Wages paid to an employee that IS NOT providing services due to the two qualifying factors ((1)gross receipts reduction or (2)suspension of operations).
- Employers than averaged 100 or fewer full-time employees in 2019.
 - Wages paid to ANY EMPLOYEE during any period of economic hardship in (1) and (2) above qualify.

How to claim?

- Eligible employers will report their total qualified wages and the related credit for each quarter on their federal employment tax returns – usually Form 941.
- Per the IRS FAQ's – Eligible Employers can fund qualified wages by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance of the credit from the IRS.

New IRS Form 7200

D Enter the total number of employees you have. See instructions ►

Part II Enter Your Credits and Advance Requested

1	Total employee retention credit for the quarter. See instructions		1	
2	Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions		2	
3	Total qualified family leave wages eligible for the credit and paid this quarter. See instructions		3	
4	Add lines 1, 2, and 3		4	
5	Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter	5		
6	Total advanced credits requested on previous filings of this form for this quarter	6		
7	Add lines 5 and 6		7	
8	Advance requested. Subtract line 7 from line 4. If zero or less, don't file this form		8	

- Some eligible employers may not have sufficient federal employment taxes set aside for deposits to the IRS to fund these qualified wages
- The eligible employer must first fully reduce its required deposits of federal employment taxes for wages paid in the same calendar quarter.
- If the anticipated credit amount for the qualified wages exceeds the remaining federal employment tax deposits for the quarter, Form 7200 may be filed to claim an advance refund for the full amount of the anticipated credit.

Interplay with other relief

- Payroll Tax Credit (FFCRA) and the Employee Retention Credit (CAREs)
 - Can both be claimed
 - But not for the same wages
 - Wages used for ERC can not include the amount of qualified sick and family leave wages for which the employer received tax credits under FFCRA.
- An eligible employer that receives a PPP loan should not claim ERC.

Employer payroll taxes

Delay of payment of employer payroll taxes

- March 27, 2020 – December 31, 2020
- Payable ½ December 31, 2021 & ½ December 31, 2022
- Deferral 6.2% of social security tax or half of self-employment tax.
- Ineligible if receiving PPP loan forgiveness
- Apply ERC first

Where to go for information?

- CARES Act Text:
<https://www.congress.gov/bill/116th-congress/house-bill/748/text?q=%7B%22search%22%3A%5B%22Coronavirus+Aid%2C+Relief%2C+and+Economic+Security+%28CARES%29+Act%22%5D%7D&r=2&s>
- IRS FAQs – ERC:
<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>
- IRS FAQs – Payroll Tax Credits:
https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#how_to_claim

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