

CARES Act Payroll Tax Relief Provisions

A Quick Look for Nonprofits and Microenterprises

Employee Retention Credit

NOTE: An employer that receives an SBA Paycheck Protection Program Loan is not entitled to this Credit. Also, self-employed individuals are not eligible for this Credit for their self-employment services or earnings.

The Employee Retention Tax Credit is a tax credit against the employer portion of certain FICA taxes which reduces or eliminates cash outlays for these taxes, and potentially entitles employers to receive a cash refund (i.e. – the Credit is “refundable”) if the amount of the Credit otherwise exceeds the employer’s payroll tax obligations. The Credit is intended to help the cash flow of employers whose business operations have been adversely affected by the COVID-19 pandemic in order to encourage employers to keep employees on payroll even if they are not currently providing services.

“Eligible Employers” are entitled to a refundable credit against the employer’s 6.2% portion of Social Security taxes for each calendar quarter in an amount equal to 50% of “Qualified Wages” paid to each employee during the applicable calendar quarter. The Credit applies to wages paid after March 12, 2020 and before January 1, 2021.

An “Eligible Employer” is an employer that either (i) has business operations fully or partially suspended due to a COVID-19 related

governmental order, or (ii) experiences at least a 50% decline in gross receipts as compared to the same calendar quarter in 2019, until such time as gross receipts have recovered to at least 80% of gross receipts for the same calendar quarter in 2019. Whether an employer is an Eligible Employer is tested separately for each calendar quarter. A tax-exempt organization is an Eligible Employer if it meets part (i) of the definition above.

“Qualified Wages” are generally wages paid to employees and taken into account for Social Security tax purposes, plus a portion of the cost of employer-provided health coverage. If the Eligible Employer has more than 100 employees, wages are “Qualified Wages” only if paid to employees who are not providing services due to the government order or the reduction in gross receipts. If the Eligible Employer has 100 or fewer employees, all wages paid count as Qualified Wages, even if the employee continues to work. The amount paid to each employee that will count as “Qualified Wages” is capped at \$10,000 per employee for the period after March 12, 2020 and before January 1, 2021, for a maximum Credit of \$5,000 per employee.

Wages considered in determining the new payroll tax credit for family medical leave or sick leave contained in earlier COVID-19 legislation do not count as Qualified Wages (i.e. – no “double dip”).

Payroll Tax Deferral

Employers (whether entitled to the Credit described above or not) may defer the employer portion of any 6.2% Social Security payroll tax obligation for wages paid during the period from March 27, 2020 through December 31, 2020, with fifty percent of the amount deferred due by December 31, 2021 and the remaining fifty percent due by December 31, 2022. For employers entitled to the Credit, the deferral only applies to wages for which the Credit has not been claimed. These deferral provisions do not apply to any employer that has had an SBA Paycheck Protection Program Loan forgiven, so any amounts deferred prior to loan forgiveness would have to be repaid, potentially with interest and penalties, though guidance has not yet been issued on these points.

Self-employed taxpayers can defer fifty percent of their Social Security self-employment tax obligation for the period from March 27, 2020 through December 31, 2020, with half of the deferred amount due by December 31, 2021 and the remaining half of the deferred amount due by December 31, 2022.

For more information

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