Impact of COVID-19 Legislation on Federal Employment/Payroll Taxes

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Sponsored by the ABA Section of Taxation
The Panel

- Edward J. Leyden, Leyden Law LLC
- Kurt L. Lawson, Hogan Lovells US LLP
- William Hays Weissman, Littler Mendelson P.C.
- Chaya Kundra, Kundra & Associates, P.C.
Introduction

Topics for Today’s Webinar

• Refundable Payroll Tax Credits and Loans/Grants to Retain Employees
• Payroll Tax Deferral Provisions
• Credit Payment Application Process – New IRS Form 7200, Advanced Payment of Employer Credits Due to COVID-19 (March 2020)
• Questions and Answers
Background

COVID-19 Congressional Enactments

• Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 – P.L. 116-123 (March 6, 2020)
• Families First Coronavirus Response Act (FFCRA) – P.L. 116-127 (March 18, 2020)
• Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – P.L. 116-136 (March 27, 2020)
• Paycheck Protection Program and Health Care Enforcement Act – P.L. 116-139 (April 24, 2020)

**GOALS:** Pandemic relief and enhance liquidity
Refundable Credits and Loans/Grants

Congress has enacted three refundable credits to provide cash to employers by being payable in advance:

- The Qualified Sick Leave Credit (FFCRA)
- The Qualified Family Leave Credit (FFCRA)
- The Employment Retention Credit (CARES Act)
Refundable Credits and Loans/Grants

The FFCRA expanded existing federal paid leave provisions and reimburses employers for providing the required paid leave

- Division C, Emergency Family and Medical Leave Expansion Act, expands FMLA to enact Emergency Paid Family Leave (EPFL) for closure of employee’s child’s school
- Division E, Emergency Paid Sick Leave Act, provides Emergency Paid Sick Leave (EPSL) to employees who cannot work due to COVID-19 – Fewer than 500 employees
Refundable Credits and Loans/Grants

The FFCRA Provides Refundable Credits to Reimburse Employers for Required Paid Leave

• Division G provides refundable credits against the employer portion of Social Security Taxes (namely, OASDI - 6.2 percent up to the Social Security Wage Base of $137,700)

• Emergency Paid Family Leave Credits and Emergency Paid Sick Leave Credits are equal to: (i) leave payments; (ii) related pre-tax health plan expenses; and (iii) employer portion of Medicare taxes on the leave payments (that is, 1.45 percent)
Refundable Credits and Loans/Grants

The CARES Act Encourages Continued Employment by Introducing Employee Retention Tax Credit and Paycheck Protection Program (PPP)

- Section 2301 provides a refundable Employee Retention Tax Credit
- Equal to 50 percent of “qualified wages” (up to $10,000 per employee) paid or incurred from 3/13/2020 through 12/31/2020, including a portion of employer-provided health care – but not payments to independent contractors
- Creditable EPML and EPFL payments not eligible
The CARES Act Encourages Continued Employment by Introducing Employee Retention Tax Credit and Paycheck Protection Program (PPP)

- Employee Retention Tax Credit applies against the employer portion of Social Security Taxes (or RRTA instead, if applicable)
- All employers are eligible, regardless of size, including non-profits, except State/Local gov’ts
- Applies quarter-by-quarter if: Business is fully or partially suspended by gov’t order for COVID-19 OR
- Gross receipts are <50 percent comp. 2019 quarter
The CARES Act Encourages Continued Employment by Introducing Employee Retention Tax Credit and Paycheck Protection Program (PPP)

- IR-2020-62 (3/31/20) announced IRS FAQs on Employee Retention Credit (CARES Act, § 2301) – Credit only available for those employee did not work during a calendar quarter if employer averaged more than 100 employees in 2019
- SFC Republican Staff released FAQs (3/31/20)
- IRS Explanation of CARES Act § 2301 (4/3/20) – do not include credit on 1Q 2020 Form 941
The CARES Act Encourages Continued Employment by Introducing Employee Retention Tax Credit and Paycheck Protection Program (PPP)

- Section 1102 creates a Paycheck Protection Program (PPP) by amending Small Business Act (SBA)
- Authorized lenders make government-guaranteed loans to “small” businesses (≤ 500 employees) of no more than the lesser of $10 million or 250 percent of the business’ average monthly “payroll costs”
- Vacation, leave, group health, insurance, retirement
- BUT not more than $100k prorated individual salary
The CARES Act Encourages Continued Employment by Introducing Employee Retention Tax Credit and Paycheck Protection Program (PPP)

• Section 1106 provides that PPP loans will be forgiven if used to pay payroll costs, interest on mortgages, rent, and utilities during 8-weeks after the loan date.

• But amount forgiven will be reduced pro rata if average number of FTEs declines (including anyone rehired by 4/26/20) AND reduced dollar-for-dollar to extent ”total salary and wages” of ≤ $100k employees declines > 25 percent.

• No § 62 income for loan forgiveness – but, § 162?
Refundable Credits and Loans/Grants

The CARES Act Encourages Continued Employment by Introducing Employee Retention Tax Credit and Paycheck Protection Program (PPP)

- Treasury Department FAQs (4/3/20) - total of 36 Q&As through 4/26, including that housing stipend is a “payroll cost” (FAQ-32) and that P/T employees count for purposes of loan eligibility but only FTEs matter for purposes of loan forgiveness (FAQ-36)
- 85 FR 20811 (4/15/20) – SBA interim final rule requires that 75 percent of loan be used for ”payroll costs”; cf. statutory language of CARES Act § 1102
- 85 FR__(4/28/20) – no PPP to hedge funds or PE firms
The CARES Act Provides Added Liquidity by Deferring Payment of Employer-Side Social Security Taxes Until 2021 and 2022

- Section 2302 delays when "applicable employment taxes" for the "payroll tax deferral period," from 3/27/20 through 12/31/20, must be deposited
- 50 percent by 12/31/21 and 50 percent by 12/31/22
- "Applicable employment taxes" are the employer portion of Social Security Taxes (also, RRTA) – employee portion and all FITW must continue to be deposited timely
Deferral of Employment Tax Payments

The CARES Act Provides Added Liquidity by Deferring Payment of Employer-Side Social Security Taxes Until 2021 and 2022

• But an employer that has had a PPP loan forgiven is not eligible to continue to defer deposits
• IRS FAQs (4/10/20) clarify that employer may not defer deposit of employer-side Social Security Tax due after the date that employer receives lender’s decision that PPP loan is forgiven – but amount of Social Security Tax that was deferred through loan forgiveness date will continue to be deferred through 12/31/21 and 12/31/22, respectively
Deferral of Employment Tax Payments

The CARES Act Provides Added Liquidity by Deferring Payment of Employer-Side Social Security Taxes Until 2021 and 2022

• Notice 2020-22 (3/27/20) correlates the employer-side tax credit and deferral provisions under the FFCRA and CARES Act, respectively, with the failure-to-deposit penalty imposed by IRC § 6656 (See also SBSE-05-0420-0036 and SBSE-05-0320-030 for COVID-19 stay in TFRP enforcement)

• Relief from the failure-to-deposit penalty applies to the extent that amounts not deposited are equal to or less than the amounts of refundable tax credits to which the employer is entitled under FFCRA/CARES

• As a result, credit may be used to offset all payroll taxes but not if Form 7200 for advance payment was filed
Applying for Advance Credit Payments

• IRS Released Form 7200, “Advance Payment of Employer Credits Due to COVID-19,” for Employers to Use in Applying for Credit Payments

• Use IRS Form 7200 to file for advance credits anticipated for a quarter before the end of the month following the quarter in which the employer paid qualifying wages

• Employer may file several Forms 7200 in a quarter

• But an employer may not file Form 7200 after filing Form 941 for 4Q 2020 or annual Forms 944, 943, CT-1

• Fax completed Form 7200 to: 855-248-0552
Advance Payment of Employer Credits Due to COVID-19

Go to www.irs.gov/Form7200 for instructions and the latest information.

OMB No. 1545-0029

Name (not your trade name)  
Employer identification number (EIN)  
Trade name (if any)  
Applicable calendar quarter (check one)  
City, or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)  
Number, street, and apt. or suite no. If a P.O. box, see instructions.  
Foreign country name  
Foreign province/county  
Foreign postal code  
Does a third-party payer file your employment tax return? (See instructions.) If “Yes,” enter its name.  
Third-party payer’s EIN (if applicable)  
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)  
Tip: File Form 7200 if you can’t reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don’t reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can’t request an advance payment of the credit for sick and family leave for self-employed individuals.

Part I Tell Us About Your Employment Tax Return

A. Check the box to indicate which employment tax return form you file (or will file for 2020):
   (1) ☐ 941, 941-PR, or 941-SS  (2) ☐ 943 or 943-PR  (3) ☐ 944 or 944(SP)  (4) ☐ CT-1

B. Is this a new business started on or after January 1, 2020? □ Yes □ No
   If “Yes,” skip line C unless you’ve already filed Form 941, Form 941-PR, or Form 941-SS for at least one quarter of 2020.

C. Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions.

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

Third-Party Designee

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details. □ Yes. Complete below. □ No

Designee’s name   
and phone number  
Select a 5-digit personal identification number (PIN) to use when talking to the IRS.

Sign Here

Under penalties of perjury, I declare that I have examined this form, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature  
Print/Type Date  
Preparer’s signature  
Preparer’s EIN  
Check if self-employed

Paid Preparer Use Only

Print/Type preparer’s name  
Preparer’s signature  
Date  
PTIN  
Firm’s name  
Firm’s EIN  
Firm’s address  
Phone no.

How To File

Fax your completed form to 855-248-0552.

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.
For more information

- Edward J. Leyden, Leyden Law LLC, 301-390-6600 ejleyden@leydenlaw.com

- Kurt L. Lawson, Hogan Lovells US LLP, 202-637-5660 kurt.lawson@hoganlovells.com

- William Hays Weissman, Littler Mendelson P.C., 925-324-3960 wweissman@littler.com

- Chaya Kundra, Kundra & Associates, P.C., 301-424-7585 ckundra@kundrataxlaw.com
Questions?

All attendees can submit questions via the Q&A feature on the webinar interface.