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Families First Coronavirus Relief Act - Tax Credits

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Employers required to provide paid emergency sick leave or paid extended family medical leave under the Families First Coronavirus Response Act are eligible for a refundable tax credit equal to 100 percent of qualified leave wages paid by the employer during the period from April 1, 2020 to December 31, 2020 for qualifying leave taken by employees during that same period. The amount of the tax credit is increased by the employer's share of Medicare taxes on qualifying leave and the cost of providing group health plan benefits allocable to the employees receiving qualifying leave.

While the original language of the FFCRA provided that the credit could be obtained by offsetting the employer's portion of Social Security taxes owed for a quarter, the IRS has now issued guidance stating that the credit can be obtained by accessing all federal payroll taxes of the business for the relevant pay period as explained in more detail below. If the available credit for providing the required leave payments exceeds the amount of such payroll taxes, the employer may request a refund for the excess amount of the credit for the quarter. An employer with qualified leave wages may elect not to have the credit apply and may instead claim a deduction for the leave wages paid.

Source of Funds - Details

To mitigate cash flow concerns, the IRS announced guidance on

March 31, 2020 that allows employers to recover a significant portion of the cost of paid leave simultaneously with paying the leave in that payroll period. IRS guidance now allows:

- Employers to retain (and not deposit) all federal payroll tax deductions for the payroll period: the federal income tax withheld from all employee wages, employer Social Security and Medicare taxes, and employee Social Security and Medicare withheld from all employee wages.
- If the amount of such payroll taxes is not sufficient to cover the cost of the qualifying leave paid for the period, employers may file a Form 7200 and request a refund of remaining tax credit from the IRS.
- Employers may file several Forms 7200 during a quarter to claim an advance payment of the tax credit the employer will claim on the Form 941 for that quarter. Refunds should be issued within 2

weeks of filing the Form 7200.

Considerations

To better assist employers substantiate the ability to claim a tax credit, provided below is a summary of the recordkeeping requirements associated with claiming tax credits:

- Employers must satisfy significant recordkeeping requirements in order to substantiate the tax credits claimed for paying qualifying leave. Employers should retain these records for at least 4 years. These records include how the employer determined whether employees were entitled to qualifying leave, calculated the credit, and determined allocable health costs. Employers should retain copies of any Forms 7200 filed with the IRS and the Forms 941 upon which credits were claimed.
- Employers claiming a tax credit must obtain a statement from the employee substantiating that the leave request constitutes qualifying leave. This statement should include the employee's name, the applicable dates of the requested leave, the COVID-19 related reason the employee is requesting leave with written support for such reason, and a statement that the employee is unable to work, including by means of telework, for such reason.
 - If employees are requesting leave due to a quarantine, the employee must provide the agency or person requiring such quarantine.
 - If the employee is requesting leave due to a school closure, the employee must provide the name and age of the student, the name of the closed school, and a description of the circumstances that require the employee to take care of the student.

We encourage you to visit Holland & Hart's Coronavirus Resource Site, a consolidated informational resource offering practical guidelines and proactive solutions to help companies protect their business interests and their workforce. The dynamic Resource Site is regularly refreshed with new topics and updates as the COVID-19 outbreak and the legal and regulatory responses continue to evolve. Sign up to receive updates and for upcoming webinars.

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