

TAX RELIEF FROM THE COVID-19 PANDEMIC

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As the legal and tax landscape continue to be shaped by COVID-19, the Chamberlain Tax Planning & Business Transactions Team is diligently reviewing and analyzing the newest legislation and guidance. We have prepared the below summary of certain FAQs recently issued by the IRS regarding the tax credits available under the Families First Coronavirus Response Act ("FFCRA") and the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). Given the expedited nature in which this new legislation was passed, new guidance may continue to be issued in the future, which may change current interpretations of this new legislation. As such, please let us know of any questions concerning these matters.

I. FFCRA Tax Credits for Required Paid Leave

Tax credits available under the FFCRA are intended to fully reimburse small and midsize employers for the cost of providing paid sick and family leave wages to their employees for leave related to COVID-19.

A. How to Claim

Claim on Tax Return - Eligible employers may claim FFCRA tax credits for qualified leave wages paid to employees for each quarter on their federal employment tax return, usually on Form 941, *Employer's Quarterly Federal Tax Return* ("Form 941")

Using Employment Taxes to Fund Credit Amount - To benefit more immediately, an employer may fund qualified leave wages (and allocable qualified health plan expenses and the employer's share of Medicare tax on the qualified leave wages) using federal employment taxes related to wages paid between April 1, 2020, and December 31, 2020, including withheld taxes, that would otherwise be required to be deposited with the IRS. The updated Form 941 will provide instructions on how to reflect the reduced liabilities for the quarter related to the deposit schedule.

Request an Advance - If federal employment taxes are insufficient to cover the amount of the credits, the employer may request advance payment of the credits from the IRS by submitting Form 7200, *Advance of Employer Credits Due To COVID-19* ("Form 7200"). The IRS expects to begin processing these requests in April 2020.

B. Required Documentation

Eligible employers must retain (i) records and documentation supporting each employee's leave to substantiate the claim for the FFCRA tax credits, and (ii) Forms 941 and 7200 in addition to any other applicable filings made to the IRS.

II. Employee Retention Credit

The CARES Act offers eligible employers an employee retention tax credit (the "Employee Retention Credit") as an incentive to retain employees on their payroll, despite the economic hardships imposed by COVID-19. The Employee Retention Credit amount is 50% of the qualifying wages paid to employees, capped at \$10,000 per employee for the calendar year, and is applied against the employer's portion of social security taxes.

A. How to Claim

Apply Against Payroll Taxes for Immediate Reimbursement - Employers may apply the credit against their portion of payroll tax when they fill out Form 941 or a quarterly employment tax return starting with the second quarter of 2020.

Request Refund for Excess Amounts - This is a refundable tax credit, so if the credit amount exceeds the employer's tax liability, the employer may obtain a tax refund by submitting Form 7200 to the IRS.

Request an Advance - Employers may also request an advance of the refund by submitting Form 7200 to the IRS.

B. Interplay with the FFCRA and Other CARES Act Provisions

FFCRA - An employer may claim the Employee Retention Credit and the credits under FFCRA as long as wages are not double counted for both credits. The amount of qualified wages for the Employee Retention Credit cannot include the amount of qualified sick and family leave wages for which the employer received a credit for under FFCRA.

Paycheck Protection Program - An employer that receives a loan under the Paycheck Protection Program is not eligible for the Employee Retention Credit. For further information on rules governing the Paycheck Protection Program, please see our separate postings on the [Chamberlain Hrdlicka website](#).

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