COVID-19 Tax Changes: Employer Recovery of Coronavirus-Related Paid Leave for Workers

By Bill Manne
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Since the March 20 IRS news release (IR-2020-57) covering payroll tax credits available under the Families First Coronavirus Response Act (FFCRA), signed by President Trump on March 18, additional information has become available. Notice 2020-21 made clear that the tax credits will apply beginning on April 1 (not April 2nd) through December 31, 2020. Besides summarizing benefits, the two IRS releases contain additional information regarding reimbursement to employers of amounts paid under the FFCRA, via payroll tax credits and refunds to employers. Additional information can be found at the IRS website, which includes an FAQs discussion and links to form 7200 instructions on how to request an advance payment of the tax credits.

Employers will receive 100% reimbursement for paid leave under the FFCRA; health insurance costs are also included in the credit; and self-employed individuals will receive an equivalent credit. Reimbursement will take the form of an immediate dollar-for-dollar tax offset against payroll taxes due. When the reimbursement amount exceeds payroll taxes due, an expedited refund process is available (two weeks or less) using a newly developed form 7200. Eligible employers include businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick leave and emergency paid family and medical leave under the FFCRA. Eligible employers entitled to sick leave or child care leave credits are entitled to an additional tax credit based on costs to maintain health insurance coverage for eligible employees during the leave period.

Payroll taxes that can be offset by the credit include federal income tax withheld, and both the employee and employer shares of Social Security and Medicare taxes, with respect to all employees. The FFCRA specifically exempts wages required to be paid under the FFCRA from being subject to such taxes. A special provision eliminates potential “double benefit” by (a) offsetting the ordinary income tax deduction applicable to FFCRA mandated employee payments by requiring the employer’s gross taxable income be increased by the amount of any tax credit; (b) by reducing any tax credits available under IRC section 45S (the current provision providing tax credits for paid family and medical leave) by the amount of credits under the FFCRA; and, (c) by eliminating any tax credits also available for the same wages under the newly enacted Employee Retention Tax Credit. (Although both this program and the Employee Retention Tax Credit may apply to wages paid under the FFCRA, employers are only eligible for one tax credit on FFCRA payments).

There are two expanded federal paid leaves that nonprofits with fewer than 500 employees must provide, which are summarized in this chart. As explained in articles about each of the expanded Emergency Paid Sick Leave and Emergency Family and Medical Leave, certain COVID-19 related circumstances will entitle employees to leave and provide pay, within limits, that is offset by tax credits.

To read more, visit the IRS Coronavirus Tax Relief page which is regularly updated.

For more information about ongoing developments related to COVID-19, visit Miller Nash Graham & Dunn’s resource library.

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Bill Manne's practice focuses on tax, business, and corporate law, with an emphasis on tax-exempt and charitable organizations, healthcare, emerging businesses, and business owner exit planning. Bill's years of experience in industry (in finance), and as a CPA and practicing attorney, provide the perspective and skills that enable him to balance legal, tax, management, business, individual, and financial considerations with what works in the real world.

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