Updated: 10/9/20

Payroll tax-related benefits

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Overview

The CARES Act provides an employer retention tax credit and allows delayed payment of employer payroll taxes.

Employer retention credit

The CARES Act provides for a tax credit against employment taxes for certain businesses. An employer is eligible for this credit if the operation of the trade or business is fully or partially suspended during the calendar quarter, or is fully or partially suspended due to orders of a governmental authority that limited commerce, travel or group meetings. An employer is also eligible for this credit in the first calendar quarter in which the employer has a reduction of gross receipts of more than 50% in a calendar quarter as compared to the same calendar quarter in the prior year, and eligibility for the credit continues in each calendar quarter as long as the employer has a reduction of gross receipts of more than 80% reduction of gross receipts from the calendar quarter in the prior year.

The amount of the tax credit is 50% of the qualifying wages of the employer paid after March 12, 2020, and before Jan. 1, 2021. In general terms, qualifying wages for each employee are limited to $10,000 for all quarters and wages paid to certain employees.

For employers with an average of more than 100 employees, the credit only applies to employees that are still on the payroll but not providing services to the employer as a result of COVID-19. Guidance from the IRS indicates that reduced services may also qualify for the credit depending on the factual situation. For employers with an average of less than 100 employees, wages paid by the employer qualify regardless of whether the employee is still performing services for the employer.

In addition, the credit is not available if the employer is a borrower under the SBA 7(a) Paycheck Protection Program.

Delay of payment of employer payroll taxes

The CARES Act allows employers to delay paying their portion of the social security payroll tax (6.2%) for wages paid starting March 27, 2020, through Dec. 31, 2020. Fifty percent of the deferred amount of payroll taxes are due Dec. 31, 2021, with the remaining amount due Dec. 31, 2022.

Originally this payroll tax deferral benefit had certain limitations on those employers who receive SBA 7(a) Paycheck Protection Program loans; however, the Paycheck Protection Program Flexibility Act of 2020 signed by President Trump on June 5, 2020, retroactively removed the limitation on the deferment of such taxes after the forgivable portion of the loan and now allows employers to take full advantage of deferment of the employer's Social Security payroll taxes for wages paid between March 27, 2020, and Dec. 31, 2020, even if the employer received a SBA 7(a) Paycheck Protection Program loan and has all or a portion of the loan forgiven.

This chart summarizes each credit:

	Employer retention credit	Delayed payroll
Amount of credit	Credit up to $5,000 per employee per year	Employers can delay the 6.2% employer portion of payroll taxes, with 50% due by Dec. 31, 2021 and the remainder due by Dec. 31, 2022
Timeframe	March 13–Dec. 31, 2020	March 27–Dec. 31, 2020
Employer size	Rules vary for fewer than 100 employees	No size limitation
Relation to Payroll Protection Program	An employer may not receive the retention credit if the employer receives a Small Business Interruption Loan under the SBA's Paycheck Protection Program	Due to recent legislative changes, employers may take advantage of the payroll tax deferral even if they receive a Small Business Interruption Loan under the Paycheck Protection Program.

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