

Payroll Tax Credits Available to Employers under the FFCRA and CARES Act

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COVID-19-Related Payroll Tax Credits

Families First Coronavirus Response Act (FFCRA)

1. **Emergency Paid Sick Leave (EPSL) Credit**
2. **Expanded Family and Medical Leave Act (E-FMLA) Credit**

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

3. **Employee Retention Credit (ERC)**

General Information

- Each credit is exclusive- cannot be taken for the same paid wages.
- An employer could be eligible for all three credits related to the same employee's pay provided all of the eligibility requirements of each credit is satisfied when the wages are paid to the employee.
- CARES Act provides that all employers may defer deposit and payment of the employer portion of social security taxes incurred from March 27-December 31, 2020 (If Payroll Protection Program loan is forgiven, deferral is allowed up until the date lender grants forgiveness).

EPSL Credit Eligibility

- Businesses and Tax-Exempt Organizations with less than 500 employees
- Employee is unable to work because:
 1. Employee subject to a government isolation order;
 2. Employee advised to self-quarantine by a health care provider;
 3. Employee experiencing COVID-19 symptoms and seeking a medical diagnosis;
 4. Employee caring for someone with COVID-19;
 5. Employee caring for son or daughter younger than 18 because school or daycare is closed; or
 6. Employee is experiencing any other substantially similar condition.

E-FMLA Credit Eligibility

- Businesses and Tax-Exempt Organizations with less than 500 employees
- Employed greater than 30 days
- Employee **unable to work** because employee is caring for son or daughter younger than 18 because school or daycare is closed due to the COVID-19 pandemic.

FFCRA Tax Credit Amounts and Timing

- 100% of wages mandated under FFCRA for leave taken April 1, 2020 through December 31, 2020 in an amount up to the following:
 - EPSL: up to 10 days
 - Reasons 1-3: \$511 per day, \$5,110 maximum per employee
 - Reasons 4-6: \$200 per day , \$2,000 maximum per employee
 - E-FMLA: \$200 per day, up to 10 weeks, \$10,000 maximum per employee
- Qualified employer health expenses allocable to the wages
- Employer's share of Medicare taxes associated with the wages (1.45% of wages).

Employee Retention Credit Eligibility

- Businesses and Tax Exempt Entities who:
 1. fully or partially suspend operations during 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19; or
 2. experience a significant decline in gross receipts during the calendar year.
- Not available to businesses that receive a Payroll Protection Program loan.

ERC: Fully or Partially Suspended Operations

- Essential Businesses
 - Businesses deemed essential and allowed to remain open generally, do not qualify.
 - If an essential business' supplier must suspend operations due to the order and such suspension makes the essential business unable to perform, the essential business may qualify.
- Teleworking: If workplace must close but business is able to continue operations through teleworking, business does not qualify.
- Timing: Only eligible for credit during time order is in force.

ERC: Significant Decline in Gross Receipts

- Begins: the first quarter in 2020 in which an employer's gross receipts are less than 50 percent of its gross receipts for the same quarter in 2019.
- Ends: the first quarter *following* the first quarter in 2020 in which an employer's gross receipts are greater than 80 percent of its gross receipts in same quarter as 2019; or the first quarter of 2021.
- Example:

Calendar 2020	Q1	Q2	Q3
Gross receipts as % of same 2019 quarter	48%	83%	92%

Employer is entitled to ERC for Qualifying Wages in Q1 & Q2.

Employee Retention Tax Credit Amount

- Qualifying Wages:
 - >100 average full-time employees during 2019: wages paid to employee who is not providing services.
 - 100 or less full-time employees during 2019: wages paid to any employee.
- 50% of Qualifying Wages paid after March 12, 2020 and before January 1, 2021, up to a maximum credit amount of \$5,000 per employee (\$10,000 in Qualifying Wages per employee).

How to Claim the Credits

- 1) Calculate total amount of qualifying wages paid under each credit,
 - include qualifying allocable health expenses; and
 - for the FFCRA credits, employer share of Medicare tax.
- 2) Retain the credit amount from payroll deposits after reduction for the deferral of the employer portion of social security tax.
- 3) File for Advanced Payment on IRS Form 7200.
- 4) File quarterly IRS Form 941.
- 5) Retain required documentation.

Example

- Employer with 75 employees, did not receive PPP loan, first Q2 federal employment tax deposit required is \$9,000.

Credit	Wages Paid	Amount of Credit
EPSL & E-FMLA	\$3,500	\$3,500
Employee Retention	\$10,000	\$5,000
Total	\$13,500	\$8,500

- \$1,500 of the \$9,000 deposit relates to the employer's portion of social security tax.
- \$1,500 deposit deferred; \$7,500 deposit remaining.
- $\$7,500 - \$3,500 \text{ (FFCRA)} - \$4,000 \text{ (ERC)} = \$0$ deposit required.
- \$1,000 (ERC) eligible for advanced payment.

Advanced Payment

Form 7200 (March 2020) Department of the Treasury Internal Revenue Service	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) (2) <input type="checkbox"/> April, May, June (3) <input type="checkbox"/> July, August, September (4) <input type="checkbox"/> October, November, December
Number, street, and apt. or suite no. If a P.O. box, see instructions. _____		
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (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) _____

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

IRS Resources Related to Payroll Tax Credits

- FFCRA payroll tax credits (EPSL and E-FMLA)
 - Overview: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-paid-sick-and-paid-family-leave-overview>
 - FAQ: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>
- CARES Act payroll tax credit (ERC)
 - Overview: <https://www.irs.gov/coronavirus/employee-retention-credit>
 - FAQ: <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

Questions?

Thank You!

This presentation provides information of a general nature. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations or issues. Additional facts and information or future developments may affect the subjects addressed in this presentation. You should consult with a lawyer about your particular circumstances before acting on any of this information because it may not be applicable to you or your situation.

Changes in Net Operating Loss Carry-back Rules and Other Tax Relief

Wisconsin Veteran's Chamber of Commerce
May 6, 2020

Net Operating Losses (“NOLs”) and the CARES Act

Pre-CARES Act	Post-CARES Act
<ul style="list-style-type: none">• No carry back• Indefinite carry forward• NOLs generated after 2017 are limited to 80% of taxable income	<ul style="list-style-type: none">• Losses generated in tax years 2018, 2019, and 2020 can be carried back five years• Temporarily suspends the 80% limitation• Available to businesses and individuals

Changes to Individual Loss Limitations

For non-corporate taxpayers, the Cares Act temporarily modifies the loss limitation rules under Section 461(l).

Pre-CARES Act	Post-CARES Act
<ul style="list-style-type: none">• “Net business loss” limited to \$250,000 (single) or \$500,000 (married filing jointly)• Excess loss converted into a NOL	<ul style="list-style-type: none">• CARES Act temporarily suspends these provisions for 2020 and retroactively to January 1, 2018.• Taxpayers who had loss limitations in 2018 and 2019 may file refund claims.

The Quick Refund Procedure

- Corporations file a Form 1139, Corporation Application for Tentative Refund
- Individuals file a Form 1045, Application for Tentative Refund
- Temporarily allowed to fax the Form to the IRS
 - Note: Amending returns requires a different procedure
- IRS Notice 2020-26 grants a 6 month extension of time to file these forms as applicable

Partnerships with NOLs

- Eligible partnerships can file amended partnership returns
 - Must select “Amended Return” box on Form 1065
- The Partnership should issue amended Schedule K-1s to Partners
- Partnerships filing amended returns should write the following at the top of the return:
 - “FILED PURSUANT TO REV PROC 2020-23”

Other COVID-19 Tax Relief

- 401(k)/Thrift Savings Plan/Retirement Relief (WI conforms)
- Charitable Contributions (WI conforms)
- Payroll Protection Program tax-free forgiveness (WI conforms)
- Mortgage Forbearance
- Wisconsin Property Tax Relief

IRS NOL resources

- IRS Resources for NOL rule changes as of April 28, 2020
 - Revenue Procedure 2020-23
 - Revenue Procedure 2020-24
 - IRS Notice 2020-26
 - <https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19>
 - <https://www.irs.gov/newsroom/tax-filing-tips-for-military-service-members-and-veterans>
 - <https://www.irs.gov/newsroom/frequently-asked-questions-about-carrybacks-of-nols-for-taxpayers-who-have-had-section-965-inclusions>

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Impact of COVID-19 on Commercial Leasing Disputes, Evictions and Foreclosures

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Emergency Order Number 15

- Suspension of Foreclosures and Sheriff's Sales
- Suspension of Evictions and Notices Terminating Tenancies

Commercial Leasing Disputes

- What to Expect and What to Argue
- Legal Options and Strategies

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Preparing for an Uncertain Future: Proactive Steps for Small Businesses to take regarding Commercial Contracts

WISCONSIN VETERAN'S CHAMBER OF COMMERCE
MAY 6, 2020

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“Failing to prepare is preparing to fail.”

--John Wooden

Steps You Can Take Now

1. Check Your Supply Chain and Distribution Channels
 - a. Identify Necessary Goods and/or Services
 - b. Identify Key Suppliers, Customers, and/or Distributors
 - c. Determine Potential for Interruption
2. Review Contracts and Applicable Laws
 - a. Identify Impacted Terms
 - b. Determine When Notice is Required
 - c. Analyze Risks Associated with Breach or Default
 - d. Evaluate Applicable Laws

Steps You Can Take Now (cont.)

3. Manage Inventory and Purchases
 - a. Consider Potential Shortages
 - b. Develop Mitigation Plan
 - i. Alternate Sources Allowed
 - ii. Resource Allocation Formula
4. Determine Applicable Insurance Policies or Other Indemnification Sources

Why Is It Important to Prepare

- Being Proactive Can:
 - Establish Clear Policies and Procedures
 - Prevent Future Conflict
 - Save Time and Resources
- Victoria Secret Litigation
- Uncertain Future

Takeaways

- Develop a Plan that:
 - Mitigates Risk
 - Limits Liability
 - Allows Flexibility
- Proactive Approach Better than Reactive Approach

Questions?