



**April 2020**

## **COVID-19: Significant Payroll and Self-Employment Tax Relief**

If you are in business for yourself—say, as a corporation or self-employed—payroll taxes and self-employment taxes are likely two of your biggest tax burdens.

Due to the COVID-19 pandemic, individuals and business are suffering. Congress wants to help you individually and also keep small businesses afloat.

To do this, Congress decided that in addition to other measures, it should give you payroll tax and selfemployment tax relief, as we describe in this article.

We'll tell you how the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act will give you payroll and self-employment tax relief.

### ***Payroll Tax Deferral***

If you have employees (including yourself), then you can postpone payment of the employer share of payroll taxes incurred from the date of enactment of the CARES Act (March 27, 2020) through December 31, 2020.<sup>1</sup>

You'll need to pay 50 percent of your 2020 postponed employer taxes no later than December 31, 2021, and the remaining 50 percent no later than December 31, 2022.

**Note.** This provision doesn't apply if you use the small business loan forgiveness provision under the CARES Act. For this alternative, see COVID-19: New SBA Loans for Small Businesses—Maybe a Great Deal.

### ***Self-Employment Tax Deferral***

If you owe self-employment tax in tax year 2020, you'll pay it as follows:<sup>2</sup>

- 50 percent on your 2020 Form 1040 return (which you file in 2021),
- 25 percent no later than December 31, 2021, and
- 25 percent no later than December 31, 2022.

**Example.** On her 2020 Form 1040, Sue has a Schedule C and a self-employment tax liability of \$8,000. She'll pay that \$8,000 on the following schedule:

- \$4,000 with her 2020 Form 1040 when filed in 2021,
- \$2,000 no later than December 31, 2021, and
- \$2,000 no later than December 31, 2022.

## **Employee Retention Credit**

The CARES Act gives you a refundable tax credit against the employer portion of employment taxes equal to 50 percent of wages paid to your employees after March 12, 2020, and before January 1, 2021.<sup>3</sup>

You are eligible if

- a government order fully or partially suspended your operations during a calendar quarter due to COVID-19, or
- your gross receipts for a calendar quarter are less than 50 percent of gross receipts from the same quarter in the prior year, in which case your credit ends in the quarter when gross receipts exceed 80 percent of gross receipts from the same quarter in the prior year.

If you have **more than 100** full-time employees, then you can take a credit for wages paid to your employees when they are not providing services due to COVID-19-related circumstances.

If you have **100 or fewer** full-time employees, then all your employee wages qualify for the credit, whether you are open for business or subject to a shutdown order.

The maximum creditable wage amount is \$10,000 per employee for all calendar quarters and includes the value of the health benefits you pay on his or her behalf.

**Note.** You cannot take the employee retention credit if you receive a Small Business Interruption Loan from the Small Business Administration. For this alternative, see COVID-19: New SBA Loans for Small Businesses—Maybe a Great Deal.

## ***FFCRA Tax Credits—Overview***

If the FFCRA requires you to provide paid sick leave or paid family leave to your employees, then you receive refundable payroll tax credits against your employer portion of your employment tax liability to offset the wage expense.<sup>4</sup>

You'll be able to reduce your federal tax deposits by the anticipated credit amount to get immediate cash in your pocket. If the credit amount exceeds your payroll tax deposit, the difference is refundable to you.<sup>5</sup>

You won't pay employer Social Security taxes on the paid leave, and you'll get an additional tax credit to offset your share of the Medicare payroll tax.<sup>6</sup>

In addition, if you pay self-employment tax, and if you would have qualified for paid sick or family leave if you had been employed by someone required to offer paid leave, then you get a refundable tax credit against selfemployment tax.<sup>7</sup>

These provisions apply starting April 1, 2020, and end on December 31, 2020.<sup>8</sup>

## ***Who Must Provide Paid Leave?***

In general, you must provide paid leave if your business or tax-exempt organization has fewer than 500 employees.

The Department of Labor has authority to exempt small businesses with fewer than 50 employees from the paid leave requirements if those requirements would jeopardize the viability of the business.

The fewer-than-50-employees exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern.<sup>9</sup>

## ***Paid Sick Leave Payroll Tax Credit***

The Emergency Paid Sick Leave Act requires you to provide an employee with paid sick time to the extent that the employee is unable to work or telework due to a need for leave for any of the following reasons:<sup>10</sup>

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID19.
2. A health care provider advised the employee to self-quarantine due to concerns related to COVID19.
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order described in clause (1) or an advisory described in clause (2).
5. The employee is caring for the employee's child due to closure of school or place of care, or the childcare provider of such child is unavailable due to COVID-19 precautions.

6. The employee is experiencing any other substantially similar condition specified by the Department of Health and Human Services in consultation with the Department of the Treasury and the Department of Labor.

For paid sick time qualifying under clauses (1), (2), or (3) above<sup>11</sup>

- your employee receives up to two weeks of paid sick leave at 100 percent of the employee's pay, and
- you receive a 100 percent payroll tax credit for qualified sick leave wages, but the credit may not exceed \$511 for any day (or any portion thereof) for which you pay the individual sick time.

For paid sick time qualifying under clauses (4), (5), or (6) above,<sup>12</sup>

- your employee receives up to two weeks of paid sick leave at two-thirds of the employee's pay, and
- you receive a 100 percent payroll tax credit for qualified sick leave wages, but the credit may not exceed \$200 for any day (or portion thereof) for which you pay the individual sick time.

The maximum number of COVID-19 creditable paid sick leave days is 10 per employee per calendar year.

Your credit also includes your qualified health plan expenses that are allocable to creditable qualified sick leave wages.

### ***Self-Employed Sick Leave Credit***

Remember, this credit applies if you were self-employed and would have qualified for paid sick leave if you had been employed by someone required to offer paid leave.

If you were unable to work under clauses (1), (2), or (3) above, your refundable tax credit is equal to the number of days you were unable to work, multiplied by the lesser of<sup>13</sup>

- \$511, or
- 100 percent of your average daily self-employment income for the tax year.

If you were unable to work under clauses (4), (5), or (6) above, your refundable tax credit is equal to the number of days you were unable to work, multiplied by the lesser of<sup>14</sup>

- \$200, or
- 67 percent of your average daily self-employment income for the tax year.

Your maximum number of COVID-19 creditable sick days is 10 days per calendar year.

Your average daily self-employment income under the provision is equal to your net earnings from self-employment for the taxable year, divided by 260.

**Example.** You have 2020 Schedule C net income from self-employment of \$100,000. You were sick and unable to work for five days because you experienced symptoms of COVID-19.

Your average daily self-employment income is \$385, which is \$100,000 divided by 260.

Your refundable tax credit is \$1,925, which is the lesser of

- \$2,555 ( $\$511 \times 5$  days), or
- \$1,925 ( $\$385 \times 5$  days).

### ***Paid Family Leave Payroll Tax Credit***

The Emergency Family and Medical Leave Expansion Act requires you to provide public health emergency leave to employees under the Family and Medical Leave Act of 1993 (FMLA).

This requirement generally applies when your employee is unable to work or telework due to a need for leave to care for a child under age 18 because the school or place of care is closed, or the childcare provider is unavailable, due to a public health emergency (defined as an emergency with respect to COVID-19 declared by a federal, state, or local authority).<sup>15</sup>

You can provide unpaid leave for the first 10 days of public health emergency leave required, but after that period, you must provide paid leave.

For paid family leave time,<sup>16</sup>

- your employee receives no more than 10 weeks of paid family leave at no less than two-thirds of the employee's pay for normally scheduled hours, and
- you receive a 100 percent payroll tax credit for qualified family leave wages, but the credit may not exceed \$200 for any day (or any portion thereof) for which you pay the individual family leave time, for an aggregate maximum of \$10,000.

Your credit also includes your qualified health plan expenses that are allocable to creditable qualified sick leave wages.

## ***Self-Employed Family Leave Credit***

Remember, this credit applies if you were self-employed and would have qualified for paid family leave if you had been employed by someone required to offer paid leave.

If you were unable to work for reasons listed in the section above, your refundable tax credit is equal to the number of days you were unable to work, multiplied by the lesser of<sup>17</sup>

- \$200, or
- 67 percent of your average daily self-employment income for the tax year.
- Your maximum number of creditable family leave days is 50 days per calendar year.

Your average daily self-employment income under the provision is equal to your net earnings from selfemployment for the taxable year, divided by 260.

## ***No Double Benefits***

For both the paid sick leave credit and the paid family leave credit, you'll include

- the credit amount as income, and
- the qualifying expenses as a deduction.

**Example.** You claim a credit of \$2,700 for \$2,500 of qualified family leave wages and \$200 of health plan expenses paid during the quarter. You will have an offsetting income inclusion amount of \$2,700, but you may deduct \$2,500 of qualified family leave wages and \$200 of health plan expenses.<sup>18</sup>

In addition, if you are self-employed but also receive paid sick or family leave from an employer, then the amount you receive from the employer reduces the amount you can use toward the self-employed refundable tax credit.

## ***Takeaways***

In the legislation dealing with COVID-19, Congress gave you the possibility of significant tax credit and payroll deferrals for taking care of yourself and your employees. In this article, we explained the

- 2020 payroll tax deferral,
- 2020 self-employment tax deferral,

- employee retention credit,
- paid sick and family leave credits for employees, and
- paid sick and family leave credits for the self-employed.

The payroll deferral provisions complicate your accounting, but you keep the cash, so the annoyance is likely worth the trouble.

With the tax credits, the feds are covering or at least subsidizing your paid sick leave payroll during this COVID19 business interruption.

If you are self-employed and qualify for a refundable tax credit because of your inability to work due to illness or family needs, be sure to thoroughly document that you qualified for the credit.

- 1 CARES Act, Section 2302(a); President Donald Trump signed the CARES Act into law on March 27, 2020.
- 2 CARES Act, Section 2302(b).
- 3 CARES Act, Section 2301.
- 4 FFCRA, Sections 7001; 7003.
- 5 IR-2020-57.
- 6 FFCRA, Section 7005.
- 7 FFCRA, Sections 7002; 7004.
- 8 Notice 2020-21.
- 9 IR-2020-57.
- 10 FFCRA, Section 7001; JCX-10-20, ps. 8-11.
- 11 Ibid.
- 12 Ibid.
- 13 FFCRA, Section 7002; JCX-10-20, ps. 12-14.
- 14 Ibid.
- 15 FFCRA, Section 7003; JCX-10-20, ps. 15-18.
- 16 Ibid.
- 17 FFCRA, Section 7004; JCX-10-20, ps. 19-21.
- 18 JCX-10-20, p. 16.