

Tax Law Q&A: COVID-19 Tax Issues for Businesses

What are some of the recent tax changes designed to help businesses?

As part of the Families First Coronavirus Response Act (the “FFRCA”) and the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Congress made a number of favorable changes to the Internal Revenue Code that benefit both businesses and individuals. Specifically with respect to businesses, the following provisions may be extremely helpful during the economic crisis stemming from COVID-19:

- Credits for paid sick and FMLA leave and for employee retention
- Delay of payment of employer payroll taxes
- Relaxation of limits on business losses and business interest
- Delay of payment for employer payroll taxes
- No cancellation of indebtedness income for certain government-provided relief loans and grants



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What are the new payroll tax credits and how do I qualify for them?

Congress enacted three new payroll credits as part of the FFCRA and the CARES Act. These three credits are (1) the paid sick leave credit, (2) the paid family leave credit, and (3) the employee retention credit.

The Paid Sick and Family Leave Credits

The first two credits, for paid sick and family leave, are intended to help businesses provide the paid leave required by the FFCRA. Under the FFCRA, certain small and medium size employers must now provide workers with approximately two weeks of paid sick leave and 10 weeks of paid family leave. In exchange, these employers can take a dollar for dollar credit in an amount equal to 100% of the leave wages paid by the employer with respect to a calendar quarter, up to certain limits.

For purposes of the paid sick leave credit, qualifying sick leave wages are wages and compensation paid by an employer, as required by the FFCRA, because the employee (1) is under a quarantine or isolation order related to COVID-19, (2) has been advised by a health-care provider to self-quarantine due to COVID-19 related concerns, (3) is

experiencing symptoms of COVID-19 and is seeking a diagnosis, (4) is caring for an individual who is subject to such a quarantine or isolation order or who has been advised to self-quarantine, or (5) is caring for the employee's child due to school or child care closures or unavailability stemming from COVID-19 precautions (or a substantially similar situation, to be set out in the Regulations).

For purposes of this credit, an employer can count sick leave wages paid between April 1, 2020 and December 31, 2020, up to \$511/day for an employee falling under categories (1) through (3), and up to \$200/day for an employee falling into categories (4) or (5), for up to 10 days of work. For purposes of the paid family leave credit, qualifying family leave wages are wages and compensation paid by an employer, as required by the FFCRA, to an employee who is unable to work or telework due to a need to care for a child under 18 whose school or childcare is closed or unavailable due to an officially declared public health emergency with respect to COVID-19. This type of paid leave is available to an employee for up to 10 weeks but may not exceed \$200/day and \$10,000 in the aggregate.

The Employee Retention Credit

The third credit, the employee retention credit, is designed to encourage employers to retain employees despite a significant decline in business or closure due to COVID-19. This credit is available to employers (1) whose business is fully or partially closed during any calendar quarter pursuant to a government order limiting commerce, travel, or group gatherings due to COVID-19, or (2) who have suffered a significant decline of at least 50% in gross receipts as compared to the same calendar quarter in the prior year. Employers can take a credit equal to 50% of the amount of qualified wages paid to an employee from March 12, 2020 to January 1, 2021, for wages paid up to

\$10,000. This provides an employer with a credit equal to \$5,000/employee. However, it is important to note that an employer cannot take advantage of this credit and the new SBA Payroll Protection Program, which provides certain small and medium businesses the ability to borrow funds on extremely favorable terms (including the possibility of tax-free loan forgiveness) to cover costs such as payroll, health care benefits, other compensation, mortgage interest obligations, rent payments, utilities, and certain interest payments. Accordingly, this credit may be most useful to employers would not qualify for this program, such as large employers with more than 500 employees.

Is there any other relief for current payroll tax obligations?

Yes, in addition to the three new payroll tax credits, there is also a new provision allowing an employer to delay making certain payroll tax payments over two years. Generally, employers must regularly deposit payroll taxes representing both the amount withheld from employee checks and a portion paid directly by the employers. Under the CARES Act, employers can now delay payment of the employer-paid portion of these taxes incurred this year. For employers who choose to defer payroll taxes during 2020, the first 50% of the deferred amount must be paid by December 31, 2021, and the other 50% must be paid by December 31, 2022. Self-employed individuals can likewise defer up to 50% of the self-employment tax they would otherwise be required to regularly deposit through estimated tax payments.

Do the limitations on business losses and interest expense

deductions still apply this year?

Not completely, no. Under the Tax Cuts and Jobs Act (“TCJA”) enacted by Congress at the end of 2017, certain limitations were imposed on how businesses use losses and the amount businesses could deduct for their interest payments. The CARES Act relaxes these restrictions, amending the Internal Revenue Code to allow most businesses to carry back losses arising in taxable years beginning after December 31, 2017 and before January 1, 2021 to each of the five taxable years preceding the loss year. Carrying losses back allows a business to take advantage of a loss sooner, as compared to pre-CARES Act law, which only permitted businesses to carry losses forward. Likewise, the CARES Act also permits businesses to use losses to offset more than 80% of taxable income, and modifies the limitations on business interest expense deductions. Under the rules set out in the CARES Act, businesses can now figure their business interest expense by looking at 50% of adjusted taxable income (“ATI”), versus only 30% before, and based on 2019 ATI instead of 2020, given that many taxpayers may have significantly reduced income in 2020.

Should I worry about any unexpected tax if I have an SBA loan forgiven under the new Paycheck Protection Program (“PPP”)?

No, the debt forgiveness built into the SBA loans covered by the CARES Act will not trigger additional tax. Normally, when a lender forgives an outstanding debt, the borrower must pay tax on the forgiven portion of the liability, as taxable “cancellation of indebtedness” income. In this case, however, the CARES Act specifically provides that any forgiveness or cancellation of SBA loans made pursuant to its terms will not be treated as income for federal tax purposes.

For more information on this alert and its impact on your business, please call 405.552.2472 or [email](#) me.

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