

## Payroll Tax Relief During The COVID-19 Pandemic

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The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act provides employers valuable payroll tax relief for 2020 that should be considered. The relief is available without regard to the size of the company and extends to tax-exempt employers.

### 1. Deferral of Employment Taxes

Employers can defer the deposit and payment of the employer’s share of Social Security taxes (not Medicare taxes) under Section 2302 of the CARES Act. The deferral applies to deposits and payments required between March 27, 2020 through December 31, 2020. Draft Form 941 for the second quarter will reflect the relief.

**Who is eligible?** All employers are eligible (including employers taking a Paycheck Protection Program (“PPP”) loan, regardless of whether the loan is forgiven, as a result of a change in the Paycheck Protection Program Flexibility Act (H.R. 7010)). This relief is in addition to the employee retention credit described below and the paid sick and family leave wages (FFCRA) credits.

**When are the taxes due?** The deferred taxes are due (1) December 31, 2021 for 50% of the deferred amount, and (2) December 31, 2022 for the remaining amount.

This permits employers to use these funds for other purposes until the extended due date is reached, with no interest or penalties for the delay in payment.

### 2. Refundable Employee Retention Credit

Employers that have experienced an economic hardship due to COVID-19 are eligible for a refundable tax credit equal to 50% of up to \$10,000 in qualified

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wages paid to each employee -- that is \$5,000 per employee. The credit is optional and is described in Section 2301 of the CARES Act.

**Who is eligible?** An employer (including tax-exempt employers) that is carrying on a trade or business in 2020, other than a governmental employer or an employer that took a PPP loan and did not return the PPP loan by May 14th (regardless of whether the loan is forgiven), that either:

- fully or partially suspended operations due to a government order limiting commerce, travel, or group meetings due to COVID-19, or
- experienced a significant decline in gross receipts (e.g., begins in the first quarter of 2020 where gross receipts are less than 50% of its gross receipts for the same quarter for 2019, and ends the first quarter in 2020 after the quarter in 2020 which the gross receipts are greater than 80% for the same 2019 quarter)

is eligible for the credit. The rules apply on a controlled group basis (generally 50% ownership threshold).

**How to calculate the credit?** The credit is based on qualified wages paid after March 12, 2020 through December 31, 2020. The qualified wages depend on the average number of full-time employees in 2019 (e.g., based on the employer shared responsibility rules under Code section 4980H ). If 100 or fewer, the credit is based on wages paid to all employees, regardless if they worked or not. If over 100, the credit is based only on wages paid to employees for time they did not work as a direct result of COVID-19. The same wages that receive the FFCRA credit do not count. Qualified wages are FICA wages under Code section 3121(a) and include tax-free qualified health plan expenses under Code section 106(a) that are allocable to these wages (generally, both the employer and employee cost of health coverage and contributions to an HRA and FSA, but not HSA contributions). They exclude (1) payments paid to former employees following termination of employment, (2) wages paid to an employee that is exempt from FICA taxes, (3) wages paid to related individuals (e.g., family members or 50% owners), (4) wages taken into account for Work Opportunity Tax Credit or for the paid family leave credit under Code section 45S, (5) any increase in wage rate if over 100 full-time employees, and (6) qualified disaster payments under Code section 139.

**How to take the credit?** File Form 941 to reduce the employer's Social Security tax deposits otherwise required to be made, with the ability to get an advance payment of the credit on Form 7200 if the deposits are not sufficient. (Check with your payroll agent - they are able to take advantage of the credit for you.) A refund is available if the credit exceeds the employer's share of Social Security taxes due. Employers should retain records to support the credit. Note that the credit reduces the employer's deduction for such wages paid (i.e., no double dipping).

Notably, there are nearly [100 FAQs](#) that describe the workings of the credit (including a line of [O&As regarding eligible qualified wages](#) (such as extra pay, paid time off programs, severance payments),

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eligible health plan expenses, how the controlled group aggregation rules work), and the JCT Report (JCX-12R-20 (Apr. 23, 2020)) also has details on the credit. [Draft Forms 941](#) are available with final Forms 941 still pending.

## Next Steps

Talk with your payroll team and third party provider to consider taking advantage of these favorable payroll tax relief provisions.

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