

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (“CARES”) ACT: PAYROLL TAX IMPLICATIONS

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The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act includes two very important payroll tax provisions: an Employer Payroll Tax Delay and an Employee Retention Payroll Tax Credit.

Employer Payroll Tax Deferral

What it is: For the remainder of the year, employers may elect to defer the employer’s portion of social security taxes, effectively 6.2% of employees’ covered wages. Employers may start deferring these payroll taxes for employee compensation paid on or after **March 27, 2020**.

When deferred payroll taxes are due: Half of the deferred amount will be due by **December 31, 2021**, and the other half of the deferred amount will be due by **December 31, 2022**.

Eligible Employers: Employer Payroll Tax Deferral

Employers who receive forgiveness of Paycheck Protection Program (“PPP”) loans (SBA 7(a) loans) under the CARES Act are not eligible for payroll tax deferral. Employers will not know for some time whether their PPP loans will be forgiven, and accordingly, some employers may not know whether

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they are eligible for payroll tax deferral in the near term. Additional guidance is needed to determine the impact on employers who defer payroll taxes and then have PPP loans forgiven.

Employee Retention Payroll Tax Credit

What it is: Certain employers are entitled to receive a payroll tax credit based on “qualified wages” paid after **March 12, 2020**, and before **January 1, 2021**. The credit is claimed each calendar quarter. If the amount of the credit exceeds the employer’s liability, the excess will be refundable to the employer.

Eligible Employers: Employee Retention Payroll Tax Credit

- Employers whose business was fully or partially suspended in 2020 due to COVID-19;
- Employers who experience a significant decline in gross receipts, meaning gross receipts for any particular calendar quarter in 2020 are less than 50% for that same quarter in 2019 due to COVID-19; and
- Tax exempt employers.
- Employers who receive a PPP loan are not eligible to receive the Employee Retention Payroll Tax Credit.

Qualified Wages and the Amount of the credit: The determination of “qualified wages” eligible for the credit depends on the number of employees employed each calendar quarter.

- For employers with **more than 100 employees**, qualified wages are wages paid to employees not providing services due to COVID-19.
- For employers with **100 or fewer employees**, “qualified wages” are essentially all wages paid, regardless of whether or not the employee is providing services. In all cases, the credit is limited to \$5,000 per employee for the year.

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