

## **COVID-19 PAYROLL TAX CREDIT AND REPORTING ISSUES**

In response to the COVID-19 Pandemic, Congress passed several legislative acts in 2020 to provide several stimulus packages to assist small businesses and enable them to continue to operate, keep their workforce in place, and help maintain a positive cash flow during the Pandemic. The legislation enacted will affect how employers will report payroll activity for 2020 and how they report and pay their required federal employment tax deposits. Following is a brief discussion of various aspects of the new laws enacted in 2020.

### **SBA PAYCHECK PROTECTION PROGRAM:**

Section 1102 of The Coronavirus Aid, Relief, and Economic Security (CARES) Act established this SBA program whereby small employers could apply for Paycheck Protection Program Loans equal to 2.5 times their average monthly payroll. Currently the Loans will be 100% forgivable as long as the employer uses at least 60% of the loan proceeds for qualified payroll costs, maintain their pre-COVID employee levels during the Covered Period, and use the remaining proceeds for other allowable costs such as rent, utilities, mortgage interest, etc. However, the IRS's current position is that the amount of expenses allowed to be deducted on the business federal income tax return must be reduced by the amount of loan proceeds forgiven by the SBA that were used to pay the qualified expenses. It is anticipated Congress may enact further legislation to reverse the IRS's position but as of yet, this has not occurred. If you would like assistance with computing and submitting your PPP Loan Forgiveness application, Frankel Zacharia has a team in place to help assist you with this process. Please call 402-496-9100 and ask to speak with Chris Lambert.

### **EMPLOYEE RETENTION CREDIT:**

If an eligible employer DOES NOT receive a PPP Loan, they can receive a credit for 50% of the qualified wages paid to an employee for wages paid during the period March 13, 2020 through December 31, 2020. The credit is capped at \$10,000 per employee, thereby limiting the allowable credit to \$5,000 per employee. Eligible employers are those employers who have paid wages to employees whose 1) business has been suspended due to COVID-19 related orders, OR 2) have had gross receipts decline by more than 50% from the same quarter of the prior year. If the employer has 100 or fewer FTE (full-time equivalent) employees the qualified wages include all wages paid to their employees. If the employer has more than 100 FTEs, the qualified wages include only those wages paid to employees who are NOT providing services due to COVID-19. Qualified wages include amounts paid for qualified health plan costs by the employer and not included in the employee's wages that are allocable to the amount of qualified wages paid. The employer must reduce the deduction for wages on its federal income tax return filed for 2020 by the amount of credit received.

### **FAMILY PAID SICK LEAVE CREDIT:**

Under the Emergency paid Sick Leave Act, an employer with less than 500 employees is required to pay up to 80 hours of sick pay to employees who are unable to work or telework due to the employee being quarantined or experiencing COVID-19 symptoms and seeking a medical

diagnosis. The employer is required to pay 100% of the employee's regular rate of pay, (capped at \$511 per day) for 10 days. The employer can then claim a credit for the wages paid against the 6.2% employer's portion of the social security tax due on the wages. The credit is capped at \$5,110 per employee if the sick pay is received as a result of the employee being affected by the COVID-19 virus.

If the employee is unable to work or telework because they are caring for an individual subject to quarantine, a child whose school or place of care is closed, or whose child-care is unavailable due to COVID-19, the employer is required to pay up to 80 hours of sick pay, limited to 2/3 of the employee's regular pay, capped at \$200 per day. This maximum credit is therefore capped at \$2,000 per employee. The credit is increased by the allocated portion of qualified health plan expenses not included in the employee's wages and the employer's 1.45% portion of Medicare (HI) tax imposed on the sick leave wages.

#### **FAMILY MEDICAL PAID LEAVE CREDIT:**

Under the Emergency Family and Medical Leave Expansion Act, an employer with less than 500 employees is required to pay employees who have worked for the employer for at least 30 days up to 10 weeks of family leave pay if the employee cannot work or telework because they need to care for a child affected by COVID-19 or whose child care provider is unavailable due to COVID-19. The credit is equal to 2/3's of the employee's regular rate of pay, capped at \$200 per day. Therefore, an employer can receive a tax credit of up to \$10,000 per employee for the 10-week time period. The amount of this credit is also increased by the allocated portion of qualified health plan expense not included in the employee's wages and the employer's 1.45% portion of Medicare (HI) tax imposed on the family leave wages.

Employers with less than 50 employees may seek an exemption to the requirement to pay sick AND family leave if they can show this obligation would jeopardize the viability of the business. Part-time employees are entitled to sick leave based upon the average number of hours worked in a two-week time period.

#### **CLAIMING THE CREDITS:**

The three credits addressed above are claimed when the employer files Form 941 at the end of each quarter and reconcile the amount of taxes owed against the amount of taxes paid with their employment tax deposits. To receive the credit, the employer may calculate the projected amount of credit and either: 1) reduce the amount of employment taxes deposited via EFTPS by the amount of the anticipated credit, 2) continue to make their required amount of employment tax deposits, and apply for a refund when filing their quarterly Form 941 at the end of the quarter, or 3) remit all required employment tax deposits and file the new Form 7200 and request an expedited credit for the anticipated credit amount. The IRS has indicated they will process all Form 7200 expedited refund applications within two weeks of receiving the completed form. The amount of credit that exceeds the 6.2% employer's share of Medicare Social Security tax will be considered a refundable credit. Any credit received will be reported on the employer's income tax return in their gross taxable income.

**REPORTING REQUIREMENTS:**

The amount claimed for all three credits, the Employee Retention Credit, the Sick Leave Credit and Family Sick Leave Credit are all claimed on the employer's quarterly payroll tax return filed for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2020. The Credit is calculated and reconciled on Worksheet 1 of Form 941 and is carried over to page 1 and 2 of Form 941. The amount of Sick Leave and Family Leave wages paid to employees by the employer is required to be reported in box 14 of the employee's 2020 Form W-2.

**IF YOU NEED ASSISTANCE WITH ANY EMPLOYMENT RELATED ISSUES DUE TO THE COVID-19 PANDEMIC, PLEASE CONTACT PAT CALVERT AT 402-963-4315.**