

## ALERT

### The CARES Act - Employee Retention Credit and Employer Payroll Tax Deferral

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We have been fielding questions from our clients who do not qualify as “small businesses” or for one of the three (3) main relief programs outlined in our *Alerts* regarding the CARES Act. Many are questioning where the relief is for them. This *Alert* addresses the two (2) employment tax benefits that are not limited to small businesses. Section 2301 of the CARES Act provides a refundable payroll tax credit for certain wages paid to employees from March 13 to December 31, 2020. Section 2302 of the CARES Acts allows employers of any size to defer the deposit of certain employment taxes for up to two (2) years. Once again, these provisions are designed to encourage employers to retain employees and continue to pay their wages.

#### Employee Retention Credit – Section 2301

Under Section 2301 of the CARES Act, eligible employers may receive a payroll tax credit of up to \$5,000 per employee. The credit is equal to 50% of “qualified wages” paid to an employee during a quarter, but is capped at \$10,000.

Qualified wages are based on the definition of wages utilized for FICA taxes, plus the amount paid by the employer for health plan expenses. However, wages cannot exceed what the employee would have been paid for working an equivalent amount of time during the preceding 30 days.

The credit amount allowed for qualified wages depends on the number of employees that the employer has. An employer with 100 or more full-time employees on average during 2019, can only obtain a credit for wages paid to employees who are not providing services. For employers with less than 100 full-time employees, all wages paid to employees, regardless of whether the employees are providing services, would qualify for the credit. An employer’s number of employees is determined by IRC Section 4980H as enacted by the Affordable Care Act.

In order to be deemed an eligible employer, an employer must (1) be carrying on a trade or business during 2020 and (2) during the calendar quarter and either (a) experienced business operations that were fully or partially suspended as a result of orders from a governmental authority limiting commerce, travel, or group meetings due to COVID-19, or (b) whose business gross receipts for the quarter were less than 50% of the gross receipts for the same calendar quarter in the prior year. When the gross receipts of an employer increases to 80% of the gross receipts for the same calendar quarter in 2019, an employer will no longer be eligible for the tax credit.

The IRS has said that an employer that pays qualified wages to its employees in a calendar quarter before it is required to deposit federal employment taxes with the IRS for that quarter may reduce the amount of federal employment taxes it deposits for that quarter by half of the amount of the qualified wages paid in that calendar quarter. This allows the employer to receive the credit by reducing its federal employment tax deposit versus waiting to claim the refundable tax credit. These credits will ultimately be reconciled against the total tax liabilities when employers file their quarterly Form 941 or other employment tax returns.

Additionally, IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19 allows employers to request a rapid refund for both the employee retention credit and the FFCRA paid sick and child care leave tax credits. Form 7200 can be filed (by fax) to request an advance of payments at any time before the end of the month following the quarter in which the qualifying wages were paid.

### **Employer Payroll Tax Deferral – Section 2302**

Section 2302 of the CARES Act permits employers of any size to forgo the timely payment of employer portions of Social Security and RRTA taxes that would be due from March 27, 2020, through December 31, 2020, without penalty or interest charges. Employers will be required to pay 50% of the deferred amount by December 31, 2021, and the remaining 50% by December 31, 2022.

Any business that utilizes the Paycheck Protection Program and whose loan is forgiven is ineligible for the Section 2302 payroll tax deferral.

If you have any questions or would like any further clarification on the CARES Act, its impacts and/or qualification and application processes, please feel free to reach out to us.

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