

## Topical Page Federal COVID-19 Coverage 04/03/2020

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#### Federal COVID-19 (Coronavirus) Responses

Curated by

Susan Zengerle, J.D., LL.M., Managing Editor, Wolters Kluwer

In response to the COVID-19 (coronavirus) pandemic and its impact on the economy and the filing season, Congress and the President, the IRS, and the Treasury Department have taken or are considering several actions.

Congress has passed and the President has signed the Families First Coronavirus Response Act, requiring paid sick leave and compensating employers and the self-employed through tax credits, as explained in this briefing: [Coronavirus Tax Relief](#). Detailed coverage is provided below.

Congress has also passed and the President signed a larger relief package, the Coronavirus Aid, Relief, and Economic Relief (CARES) Act ([P.L. 116-136](#)<sup>[1]</sup>). The bill provides tax relief and tax incentives to individuals and businesses alike.

The most well-publicized provision is the \$1,200 recovery rebate for individual taxpayers. The rebate amounts are advance refunds of credits against 2020 taxes, and equal to \$1,200 for individuals, or \$2,400 for joint filers, with a \$500 amount for each child. There is a phase-out provision based upon 2018 adjusted gross income (AGI), unless a 2019 return has already been filed.

Other individual relief provisions include:

- A waiver of the early distribution penalty for coronavirus-related distributions;
- A waiver of 2020 required minimum distributions;
- An above-the-line charitable contribution deduction for 2020;
- Increases in the percentage-of-AGI limitations for charitable deductions for 2020; and
- An exclusion from income for employers' repayments of employees' student loans.

The Act also makes some changes related to health, allowing high-deductible health savings accounts (HSAs) to pay for telehealth and other remote care services without deductibles in 2020 only, and requiring HSAs and other reimbursement plans to pay for menstrual products, starting in 2020.

Business relief provisions include:

- An employee retention credit;
- Deferral of the time payroll taxes need to be paid;
- Five-year carryback for net operating losses (NOLs) arising in 2018, 2019, and 2020 with no 80 percent of taxable income limitation until 2021;
- Acceleration of the time for use of minimum tax credits for corporations; and
- An increase in the business interest limitation

The Act also contains a correction of the so-called retail glitch, and treats qualified improvement property as 15-year property, correcting an oversight in the TCJA. See [General Depreciation Rules](#). In addition, qualified improvement property placed in service after 2017 will qualify for the 100 percent bonus depreciation rate. See [Property Qualifying for Bonus Depreciation](#).

See [CARES Act](#) for our latest briefing.

The Treasury Department and IRS have extended the due date for [federal income tax returns and payments](#)<sup>[2]</sup> otherwise due April 15, 2020, to July 15, 2020. Similarly, the due date for filing [federal gift tax returns and paying gift or generation-skipping transfer \(GST\) tax](#)<sup>[3]</sup> is extended to July 15, 2020. Associated interest, additions to tax, and penalties for late payment are also suspended until July 15, 2020.

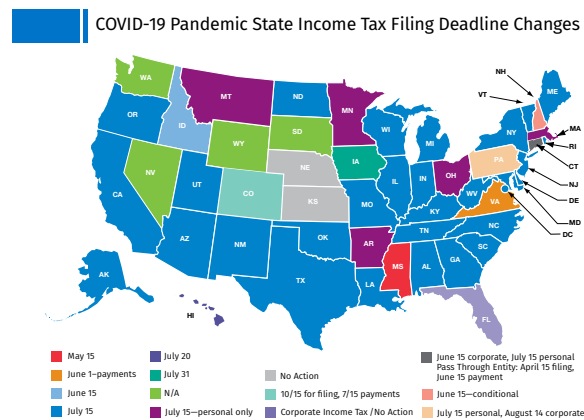
#### Compliance Note

State governments have also taken action to extend filing and payment dates.



## Income Tax Filing Deadline Changes Due to Coronavirus/COVID-19 Pandemic

The IRS also has announced what it is calling the People First Initiative, under which it will take steps ranging from postponing certain payments related to installment agreements and offers in compromise to collection and limiting certain enforcement actions. At the same time, the IRS has warned of some limitations in its operations. According to the IRS, due to staff limitations, the Practitioner Priority Service (PPS) line, the e-Services Help Desk line and the e-Services, FIRE and AIR system help desks are closed until further notice. In addition, the IRS is temporarily suspending acceptance of new Income Verification Express Services (IVES) requests and is experiencing delays with existing IVES processing as well as CAF number authorizations.



In addition, the IRS has provided [emergency relief](#)<sup>[4]</sup> for health savings accounts (HSAs) and COVID-19 health plans costs. Under this relief, health plans that otherwise qualify as high-deductible health plans (HDHPs) will not lose that status merely because they cover the cost of testing for or treatment of COVID-19 before plan deductibles have been met. In addition, any vaccination costs will count as preventive care and can be paid for by an HDHP.

## Recovery Rebate Credit

Eligible individuals are entitled to a [Recovery Rebate Credit](#)<sup>[5]</sup> for their first tax year beginning in 2020. However, the government will make advance payments of the credit as soon as possible, with eligibility and credit amounts based on information from 2019 or 2018. The Recovery Rebate Credit is fully refundable, but it is phased out for higher-income taxpayers.

The maximum credit is \$1,200 for each eligible individual (so \$2,400 for two eligible individuals who file a joint return), plus \$500 for each qualifying child. However, the maximum credit amount is reduced (but not below zero) by five percent of the taxpayer's AGI that exceeds:

- \$150,000 for joint filers—so the \$2,400 credit phases out completely at \$198,000
- \$112,500 for a head of household—so the \$1,200 credit phases out completely at \$136,500
- \$75,000 for any other taxpayer—so the \$1,200 credit phases out completely at \$99,000.

Eligible individuals are all individuals other than an individual who qualifies as another taxpayer's dependent for a tax year beginning during the calendar year in which the individual's tax year begins, a nonresident alien; or an estate or trust. Eligible individuals and qualifying children must also have valid identification numbers.

Although the Recovery Rebate Credit applies to the 2020 tax year, the government will issue advance refunds of the credit as quickly as possible, based on pre-2020 information. The Treasury Secretary may certify and disburse advance credits electronically to any account that the payee authorized on or after January 1, 2018, to receive federal tax refunds or other federal payments via direct deposit. Disbursing officials may modify this information as necessary to facilitate the accurate and efficient delivery of the advance credits. The advance

Recovery Rebate Credits are generally based on 2019 tax returns. A taxpayer who was an eligible individual for 2019 is treated as having made a tax payment for 2019 equal to the amount of his or her advance refund. The advance refund amount is the amount that would have been allowed as a credit for 2019 if the Recovery Rebate Credit had applied to the 2019 tax year. However, if an eligible individual has not filed a 2019 return by the time the advance credits are determined, the advance credit is based on the individual's 2018 tax return. If the individual has not filed a 2018 return by the time the advance payments are determined, the [advance payment](#)<sup>[6]</sup> is based on information provided for calendar year 2019 in Form SSA-1099, Social Security Benefit Statement, or Form RRB-1099, Payments by the Railroad Retirement Board.

For further discussion, see [2020 Recovery Rebate Credit](#).

## Individual Tax Relief

The CARES Act makes several changes related to retirement plans. To allow taxpayers access to their funds, the 10-percent additional tax on early distributions is waived for any qualified coronavirus-related distributions from a retirement plan. Eligible individuals who take such distributions can include them in gross income over a three-year span and have three years to repay the amount. The aggregate amount of distributions received by an individual which may be treated as coronavirus-related distributions for any tax year shall not exceed \$100,000. To qualify as a coronavirus-related distribution, the distribution must be from an eligible retirement plan made on or after the date of the enactment of the CARES Act and before December 31, 2020. In addition, it must be made to an individual who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (Covid-19) by a test approved by the Centers for Disease Control and Prevention; (2) whose spouse or dependent is diagnosed with such virus or disease by such a test, or (3) who experiences adverse financial consequences as a result the coronavirus. Adverse financial consequences can include consequences from being quarantined; being furloughed or laid off or having work hours reduced due to such virus or disease; being unable to work due to lack of child care due to such virus or disease; closing or reducing hours of a business owned or operated by the individual due to such virus or disease; or other factors as determined by the Secretary of the Treasury. Eligible retirement plans include individual retirement accounts or annuities (IRAs), qualified employer-sponsored retirement plans, 403(a) annuity plans, 403(b) tax-sheltered annuity plans, and 457(b) plans. The threshold limit on loans from an employer-sponsored retirement plan for a qualified individual affected by the coronavirus also is increased to the lesser of \$100,000 or 100 percent of the present value (but not less than \$10,000) of the plan participant's benefits under the plan. In addition, if a qualified individual has a loan repayment due date after the date of enactment of the CARES Act and before December 31, 2020, on an outstanding loan, the payment due date is delayed one year (or, if later, until the date which is 180 days after the date of the enactment of the CARES Act), and the later payments are adjusted. See [Early Distributions from Retirement Plans](#).

Second, for the 2020 calendar year, the required minimum distribution (RMD) requirements generally applicable to retirement plans are suspended with respect to defined contribution retirement plans, including IRAs. As a result, plan participants and beneficiaries will not be required by law to take RMDs for the year. If the participant dies before minimum distributions have begun, and the entire remaining interest must be distributed within five years of the participant's death, then 2020 will be excluded from the five-year period. For additional rules and more details, see [Required Minimum Distributions \(RMD\) from IRAs](#) and [Required Minimum Distributions \(RMD\) from 401\(k\)s](#).

The Act also makes changes related to charitable deductions. First, for tax years beginning after 2019, an eligible individual may claim an [above-the-line deduction](#)<sup>[7]</sup> in computing adjusted gross income of up to \$300 for any qualified charitable contribution. Second, the percentage limitation on the charitable deduction contribution base for individuals is suspended for 2020. See [Charitable Deductions](#).

Payments made before January 1, 2021, by an employer to either an employee or a lender to be applied toward an employee's student loans [can be excluded](#)<sup>[8]</sup> from the employee's income. The payments can be of principal or interest on any qualified education loan. An employer may pay up to \$5,250 each tax year toward

an employee's student loans, and that amount would be excludable from the employee's income. The \$5,250 cap applies to the new benefit for student loan repayment assistance and other educational assistance already provided, such as for tuition, fees, and books. Any excess of benefits is subject to income and employment taxes. For additional rules and more details, see [Educational Assistance Programs](#).

## Business Tax Relief

The CARES Act grants eligible employers a credit against employment taxes equal to 50 percent of qualified wages paid to employees who are not working due to the employer's full or partial cessation of business or a significant decline in gross receipts. This employee retention credit is available to be claimed on a quarterly basis, but the amount of wages, including health benefits, for which the credit can be claimed, is limited to \$10,000 in aggregate per employee for all quarters. The credit applies to wages paid after March 12, 2020, and before January 1, 2021. Qualifying employers can be [immediately reimbursed](#)<sup>[9]</sup> for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit. Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941, Employer's Quarterly Federal Tax Return, beginning with the second quarter. If the employer's employment tax deposits are not sufficient to cover the credit, the employer may receive an advance payment from the IRS by submitting [Form 7200](#), Advance Payment of Employer Credits Due to COVID-19. See [Withholding-- Employment Taxes: FICA Taxes](#).

The CARES Act also defers the payment of payroll taxes. Payroll taxes due from March 27, 2020 (the date the CARES Act was signed), and ending on December 31, 2020, are deferred. The deferral applies to the employer portion of the 6.2 OASI portion of payroll taxes, as well as 50 percent of the equivalent self-employment tax. Half of the deferred taxes are due on December 31, 2021, and half are due December 31, 2022. See [Withholding-- Employment Taxes: Deposits and Reporting](#).

Any net operating loss (NOL) arising in a tax year beginning after December 31, 2017, and before January 1, 2021, may be [carried back](#)<sup>[10]</sup> five years unless the carryback period is waived. For NOLs that arose in tax years beginning in 2018 or 2019, the time for making the waiver election is extended to the due date (including extensions) for filing the taxpayer's return for the first tax year ending after March 27, 2020. Normally, the election is required by the due date (including extensions) of the return for the tax year in which the NOL arose. The carryforward period for NOLs remains unlimited. A technical correction clarifies that the unlimited carryforward period applies to tax years beginning after 2017 and not to tax years ending after 2017. The twenty year carryforward period for NOLs arising in tax years beginning before 2018 is unchanged.

The rule limiting an NOL deduction that arises in a tax year beginning after December 31, 2017, to 80 percent of taxable income in a carryback or carryforward year is [suspended](#)<sup>[11]</sup> in a tax year beginning after December 31, 2017, and before January 1, 2021. The 80 percent limitation will now begin to apply to NOLs arising in tax years beginning after 2017 in the 2021 tax year.

See [Net Operating Losses](#).

The limitation on the deduction of [excess business losses](#)<sup>[12]</sup> for noncorporate taxpayers will not apply for tax years beginning in 2018, 2019, and 2020. The deduction limitation will apply for tax years beginning after December 31, 2020. The excess farm loss rules, which were replaced by the excess business loss rules for 2018 through 2025, will continue to not apply for tax years 2018 through 2020. See [Excess Business Losses](#).

The [business interest deduction limit](#)<sup>[13]</sup> is increased to 50 percent of the taxpayer's adjusted taxable income (ATI) for the 2019 and 2020 tax years. In the case of a partnership, however, the 50 percent limitation applies only for the 2020 tax year. A taxpayer may also elect for the 2020 year only to use its 2019 ATI in calculating the limitation. A taxpayer may elect not to have the increased limitation apply in 2019 or 2020. The time and manner for the election for the 2020 tax year will be determined by the IRS, but if the election is made it can only be revoked with the consent of the IRS. In the case of a partnership, the election not to have the increased

limitation apply for the 2020 tax year is made by the partnership and not the partners. See [Business Interest Deduction Limit](#) and [Business Interest Deduction Limit for Partnerships](#).

As for individuals, the rules for charitable deductions for corporations are loosened. the percentage limitation on the charitable deduction contribution base for corporations is increased from 10 percent to 25 percent for 2020. In addition, the limitation on the deduction for food inventory also is increased to 25 percent, also for 2020. See [Charitable Deductions](#) and [Charitable Contribution Deduction for Corporations](#).

Corporations can recover refundable [minimum tax credits](#)<sup>[14]</sup> in tax years beginning in 2018 or 2019. The refundable credit amount is equal to 50 percent (100 percent for tax years beginning in 2019) of the excess of the minimum tax credit for the tax year, over the amount allowable for the year against regular tax liability. Corporations can elect to take the entire refundable credit amount in tax years beginning in 2018. In this case, the regular tax liability limitation does not apply. See [Corporate Alternative Minimum Tax](#).

## Extended Due Date

The due date for filing [federal income tax returns and federal income tax payments](#)<sup>[15]</sup> otherwise due on April 15, 2020, is extended to July 15, 2020, as a result of the ongoing Coronavirus (COVID-19) emergency. The IRS has also made this extension applicable to [federal gift tax returns](#)<sup>[16]</sup> and gift and GST tax payments. The extension is automatic and available to all taxpayers, including individuals, trusts and estates, corporations and other non-corporate entities, as well as those who pay self-employment tax. Any interest, penalty, or addition to tax for failure to file or pay tax will not accrue until July 16, 2020, as a result of the extension.

## Federal Income Tax Returns

The filing deadline extension to July 15, 2020, applies to the filing of all *federal income tax returns* otherwise due April 15, 2020 (1040 series, 1041 series, 1120 series, as well as [Form 8960](#) for the net investment income tax (NIIT) and [Form 8991](#) for BEAT erosion payments). The extension is automatic, and a taxpayer does not need to file [Form 4868](#) or [Form 7004](#) or call the IRS to receive the extension. If a taxpayer needs additional time to file beyond the July 15 deadline, they can request an extension by filing the appropriate form. The filing extension does not apply to the filing of any federal information return due on or before April 15, 2020. It also does not apply to any business or other entity that have filing due date of May 15, June 15, or some other filing date.

## Planning Note

If the taxpayer needs more time to file their income tax return [after July 15, 2020](#), they can request an automatic extension of time to file using [Form 4868](#) or [Form 7004](#). The extension must be requested by July 15, 2020 (it does not need to be made by April 15, 2020). If the taxpayer properly estimates 2019 tax liability using the information available to them and file for an extension by July 15, 2020, the tax return will be due on October 15, 2020 (and additional 3 months, not an additional 6 months).

See [Filing Returns and Paying Taxes](#).

## Comment

The extension of the filing deadline also extends the deadline for making contributions to individual retirement accounts (IRAs), as well as health savings account (HSA) and Archer medical savings accounts (MSAs). Because the due date for filing federal income tax returns is now July 15, 2020, taxpayers may make contributions to IRAs, HSAs, and Archer MSAs for 2019 at any time up to July 15, 2020.

## Federal Income Tax Payments

The deadline for making *federal income tax payments*, including payments of tax on self-employment income, is also extended to July 15, 2020, for payments otherwise due on April 15, 2020. The extension applies to the

payment of federal income taxes for the 2019 tax year, as well estimated income tax payments for the 2020 tax year that are due on April 15, 2020. It also applies to transition tax installment payments and BEAT erosion payments due on April 15, 2020. The extension is not available for the payment or deposit of any other type of federal tax, such as payroll or excise taxes.

### **Comment**

There is no dollar limitation on the amount of any federal income tax payment that may be postponed. Previous guidance from the IRS limited the extension to payments to up to \$10 million for corporations and \$1 million for individuals and non-corporate entities. That guidance has been superseded and no dollar limitation applies to the extension.

### **Comment**

Despite the extension, the Treasury and IRS are encouraging encourages taxpayers to who are expecting a refund to file their federal income tax returns as soon as possible to help stimulate the economy. "Even with the filing deadline extended, we urge taxpayers who are owed refunds to file as soon as possible and file electronically," said IRS Commissioner Chuck Rettig.

## **Gift and GST Taxes**

The due date for filing federal gift tax returns<sup>[17]</sup> (Form 709) and paying gift or generation-skipping transfer tax is also extended to July 15, 2020, as a result of the COVID-19 crisis. Any person with a federal gift tax or GST tax payment due or the requirement to file Form 709 on April 15, 2020, is eligible for the extension. The extension is automatic and there is no requirement to file Form 8892. A taxpayer may file Form 8892 by July 15, 2020, to obtain an extension to file Form 709 by October 15, 2020 (an additional 3 months, not an additional 6 months). Any gift tax or GST tax postponed is still due on July 15, 2020.

## **Penalties and Interest**

All penalties, interest, and additions to tax for failure to file federal income tax returns, federal gift tax returns, pay federal income taxes, or pay federal gift or GST tax is postponed and will not begin to accrue until July 16, 2020. The period from April 15, 2020, to July 15, 2020, will be disregarded as a result of the extension.

### **Comment**

Penalties that will not apply during the extension period include the penalty<sup>[18]</sup> for failure to file or pay taxes, as well as the penalties for failure to pay individual<sup>[19]</sup> or corporate<sup>[20]</sup> estimated taxes.

## **State Returns and Payments**

The relief provided by the IRS has no effect on state tax payments or state filing deadlines. Taxpayers are urged to check with their state tax agencies for those details. See Tax Filing and Tax Payment Relief for Coronavirus/COVID-19 Pandemic for a summary of filing delays allowed by the federal and state governments.

## **Employment Tax Credits**

*Employers with fewer than 500 employees* can claim refundable credits against the *employer's portion* of the Old-Age, Survivors, and Disability Insurance (OASDI) tax<sup>[21]</sup>, or of the Railroad Retirement Tax Act (RRTA) Tier 1 tax<sup>[22]</sup>, for each calendar quarter, equal to:

- 100 percent of the qualified sick leave wages paid by the employer for that calendar quarter, under Section 7001 of the Families First Coronavirus Response Act (P.L. 116-127<sup>[23]</sup>); and

- 100 percent of the qualified family leave wages paid by the employer with respect to that calendar quarter, under Section 7003 of P.L. 116-127<sup>[24]</sup>.

Only wages paid for the period that begins on April 1, 2020<sup>[25]</sup>, and ends on December 31, 2020, may be considered.

Similarly, *eligible self-employed individuals* can claim a refundable income tax credit for any tax year for:

- a qualified sick leave equivalent amount, under Section 7002 of the Families First Coronavirus Response Act (P.L. 116-127<sup>[26]</sup>); and/or
- 100 percent of a qualified family leave equivalent amount, under Section 7004 of P.L. 116-127<sup>[27]</sup>.

Only days occurring during the period that begins on April 1, 2020<sup>[28]</sup>, and ends on December 31, 2020, may be considered in determining these equivalent amounts.

## Compliance Note

In a news release<sup>[29]</sup> issued on March 20, 2020, the Treasury and IRS announced that:

- Eligible employers can claim the credits based on qualifying leave they provide between the effective date and December 31, 2020.
- Eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS. Payroll taxes available for retention include withheld federal income taxes, the *employee's* share of Social Security and Medicare taxes, and the *employer's* share of Social Security and Medicare taxes.
- If there are insufficient payroll taxes to cover the cost of qualified leave paid, employers can file a request for an accelerated payment (advance), which the IRS expects to process in two weeks or less. Form 7200, Advance Payments of Employer Credits Due to COVID-19, is used for this purpose.
- Self-employed individuals will claim the equivalent sick leave credit and family care credit (child care credit) on their income tax return, and that the credits will reduce estimated tax payments.

The IRS has provided penalty relief<sup>[30]</sup> for failure to deposit employment taxes to employers entitled to these tax credits, as well as the employer retention credit provided by the CARES Act. The relief is provided the extent that the amounts not deposited are equal to or less than the amount of refundable tax credits to which the employer is entitled under the Families First Act and the CARES Act.

The Treasury and IRS expect to release further guidance soon.

## Paid Leave Credits for Employers

**Employer Credit for Paid Sick Leave.** For the employer credit for required paid sick leave, *qualified sick leave wages* are wages<sup>[31]</sup> and compensation<sup>[32]</sup> required to be paid by the Emergency Paid Sick Leave Act (Division E of P.L. 116-127<sup>[33]</sup>). Under this Act, employers with fewer than 500 employees must provide an employee with paid sick time if the employee cannot work or telework due to a need for leave for the reasons described below. The per-day amount of qualified sick leave wages taken into account for each employee for the credit is limited based on the reason for the leave.

The limit is \$511 per day if:

- (1) the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- (3) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

The limit is \$200 per day if:

- (1) the employee is caring for an individual who (i) is subject to a federal, state, or local quarantine or isolation order related to COVID-19, or (ii) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (2) the employee is caring for his or her son or daughter if the child's school or place of care has been closed, or the child care provider is unavailable, due to COVID-19 precautions; or
- (3) the employee is experiencing a substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Treasury and Labor Secretaries.

### **Compliance Note**

Small businesses with fewer than 50 employees will be eligible for an exemption<sup>[34]</sup> from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue. The Labor Department will provide emergency guidance and rulemaking to clearly articulate the standard for the exemption.

The total number of days taken into account for the calendar quarter for an employee cannot be more than the excess (if any) of 10 over the total number of days taken into account for *all* preceding calendar quarters.

The credit allowed for required paid sick leave cannot be more than the OASDI tax or RRTA tax imposed on the employer, reduced by any allowed payroll credits for qualified veterans employment<sup>[35]</sup> and for qualified small business research expenditures<sup>[36]</sup> for that calendar quarter on the wages paid for all the employer's employees.

If the credit amount is more than the OASDI tax or RRTA tax on the employer (reduced as described above), the excess is treated as a refundable overpayment.

The credit allowed is *increased* by so much of the employer's qualified health plan expenses that are properly allocable to the qualified sick leave wages for which the credit is allowed. Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan<sup>[37]</sup>, but only to the extent those amounts are excluded<sup>[38]</sup> from the employees' income as coverage under an accident or health plan.

### **Key Rates and Figures**

For paid sick leave<sup>[39]</sup>, eligible employers may receive a refundable credit of:

- up to \$511 per day (\$5,110 in the aggregate), for a total of 10 days, for an employee who is unable to work because of a COVID-19 quarantine or self-quarantine or has COVID-19 symptoms and is seeking a medical diagnosis;
- up to \$200 per day (\$2,000 in the aggregate), for a total of 10 days, for an employee who is caring for someone with COVID-19, or for a son or daughter whose school or child care facility is closed, or whose child care provider is unavailable, due to COVID-19.

Eligible employers are also entitled to an additional tax credit based on costs to maintain health insurance coverage for the eligible employee during the leave period.

For additional rules and more details, see Withholding—Employment Taxes: FICA Taxes.

**Employer Credit for Paid Family Leave (Child Care Leave).** For the employer credit for required paid sick leave, *qualified family leave wages* are wages<sup>[40]</sup> and compensation<sup>[41]</sup> required to be paid by the Emergency Family and Medical Leave Expansion Act (Division C of P.L. 116-127<sup>[42]</sup>).

Under this Act, employers with fewer than 500 employees must provide leave under the Family and Medical Leave Act of 1993 (FMLA) when there is a qualifying need related to a public health emergency. This occurs when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because, due to a public health emergency declared for COVID-19, either:

- the child's school or place of care has been closed; or



- the child's care provider is unavailable.

### **Compliance Note**

Small businesses with fewer than 50 employees will be eligible for an exemption<sup>[43]</sup> from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue. The Labor Department will provide emergency guidance and rulemaking to clearly articulate the standard for the exemption.

To be eligible for this paid leave, an employee must have been on the job for at least 30 days. The first 10 days of leave may be unpaid. After the initial 10 days, the employee will receive a benefit from the employer of at least two-thirds of the employee's usual pay for the duration of the period provided in the Emergency Family and Medical Leave Expansion Act (maximum of 10 weeks).

The maximum amount of qualified family leave wages eligible for the employer credit for required paid sick leave is limited, for each employee, to:

- \$200 for any day for which the employee is paid qualified family leave wages; and
- \$10,000 in total for all calendar quarters.

The credit is not allowed for unpaid leave.

The credit allowed for required paid family leave cannot be more than the OASDI tax or RRTA tax imposed on the employer, reduced by any allowed payroll credits for qualified veterans employment<sup>[44]</sup>, for qualified small business research expenditures<sup>[45]</sup>, and for required paid sick leave due to COVID-19 (discussed above), for that calendar quarter on the wages paid for all the employer's employees.

If the credit amount is *more than* the OASDI tax or RRTA tax imposed on the employer (reduced as described above), the excess is treated as a refundable overpayment.

The credit allowed is *increased* by so much of the employer's qualified health plan expenses that are properly allocable to the qualified family leave wages for which the credit is allowed. Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan<sup>[46]</sup>, but only to the extent those amounts are excluded<sup>[47]</sup> from the employees' income as coverage under an accident or health plan.

### **Key Rates and Figures**

For paid family leave (child care leave)<sup>[48]</sup>, eligible employers may receive a refundable credit of up to \$200 per day (\$10,000 in the aggregate) for up to 10 weeks of an employee's qualifying leave.

Eligible employers are also entitled to an additional tax credit based on costs to maintain health insurance coverage for the eligible employee during the leave period.

For additional rules and more details, see [Withholding—Employment Taxes: FICA Taxes](#).

### **Paid Leave Credits for Self-Employed**

**Self-Employed Credit for Qualified Sick Leave.** A self-employed individual can claim the qualified sick leave credit if he or she:

- regularly carries on any trade or business<sup>[49]</sup> for self-employment tax purposes; and
- would be entitled to receive paid leave during the tax year under the Emergency Paid Sick Leave Act (Division E of P.L. 116-127<sup>[50]</sup>) if the individual were an employee of an employer (other than himself or herself) that is subject to the Act.

Under that Act, as noted above, certain employers must provide an employee with paid sick time if the employee cannot work or telework due to a need for leave because:

- (1) the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (3) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- (4) the employee is caring for an individual who (i) is subject to a federal, state, or local quarantine or isolation order related to COVID-19, or (ii) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- (5) the employee is caring for his or her son or daughter if the child's school or place of care has been closed, or the child care provider is unavailable, due to COVID-19 precautions; or
- (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Treasury and Labor Secretaries.

For self-employed individuals, the qualified sick leave equivalent amount is equal to:

the number of days during the tax year that the eligible self-employed individual cannot perform services for which that individual would have been entitled to sick leave under the Emergency Paid Sick Leave Act if he or she were employed by an employer;  
multiplied by, as the case may be—

- the lesser of \$511 or 100 percent of the individual's average daily self-employment income for the tax year for paid sick time described in 1, 2, or 3, above; or
- the lesser of \$200 or 67 percent of the individual's average daily self-employment income for the tax year for paid sick time described in 4, 5, or 6, above.

For this calculation:

- The number of days taken into account for any tax year is the excess (if any) of 10 days minus the number of days taken into account in all preceding tax years.
- The individual's average daily self-employment income equals his or her net earnings from self-employment for the tax year divided by 260.

*Self-employed and employee.* If an eligible self-employed individual also receives *qualified sick leave wages* under Section 7001(c) of P.L. 116-127<sup>[51]</sup>, the qualified sick leave equivalent amount is *reduced* (but not below zero) to the extent that the sum of the qualified sick leave equivalent amount and the qualified sick leave wages received is more than:

- \$5,110 for any day any portion of which is paid sick time described in 1, 2, or 3, above;
- \$2,000 for any day any portion of which is paid sick time described in 4, 5, or 6, above.

For additional rules and more details, see [Self-Employment Tax](#).

**Self-Employed Credit for Qualified Family Leave.** A self-employed individual can claim the qualified family leave credit if he or she:

- regularly carries on any [trade or business](#)<sup>[52]</sup> for self-employment tax purposes; and
- would be entitled to receive paid leave during the tax year under the Emergency Family and Medical Leave Expansion Act (Division C of P.L. 116-127<sup>[53]</sup>) if the individual were an employee of an employer (other than himself or herself) that is subject to the Act.

Under that Act, as noted above, certain employers must provide public health emergency leave to an employees under the FMLA when there is a qualifying need related to a public health emergency. This occurs when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because, due to a public health emergency declared for COVID-19, either:

- the child's school or place of care has been closed; or
- the child's care provider is unavailable.

The first 10 days of leave may be unpaid. After the initial 10 days, the employee will receive a benefit from the employer of at least two-thirds of the employee's usual pay for the duration of the period provided in the Emergency Family and Medical Leave Expansion Act (maximum of 10 weeks).

For self-employed individuals, the qualified family leave equivalent amount is equal to:

the number of days (up to 50) during the tax year that the self-employed individual cannot perform services for which that individual would be entitled to paid leave under to the Emergency Family and Medical Leave Expansion Act if he or she were employed by an employer;  
multiplied by the *lesser* of—

- 67 percent of the individual's average daily self-employment income for the tax year; or
- \$200.

The individual's average daily self-employment income equals his or her net earnings from self-employment for the year divided by 260.

*Self-employed and employee.* If an eligible self-employed individual also receives *qualified family leave wages* under Section 7003 of P.L. 116-127<sup>[54]</sup>, his or her qualified family leave equivalent amount is *reduced* (but not below zero) to the extent that the sum of the qualified family leave equivalent amount and the qualified family leave wages received is more than \$10,000.

For additional rules and more details, see [Self-Employment Tax](#).

## People First Initiative

The Internal Revenue Service has announced a series of steps it will take to assist taxpayers affected by COVID-19 by providing relief on a variety of issues ranging from easing payment guidelines to postponing compliance actions. The projected start date of this initiative, which the IRS is calling the People First Initiative, is April 1, and it will run through July 15, 2020, at least initially. During this period, to the maximum extent possible, the IRS will avoid in-person contacts. However, the IRS will continue to take steps where necessary to protect all applicable statutes of limitations.

Highlights of the initiative include:

- For taxpayers under an existing Installment Agreement, payments due between April 1 and July 15, 2020, are suspended. Taxpayers who are currently unable to comply with the terms of an Installment Payment Agreement, including a Direct Deposit Installment Agreement, may suspend payments during this period if they prefer. Furthermore, the IRS will not default any Installment Agreements during this period. By law, interest will continue to accrue on any unpaid balances.
- The IRS will allow taxpayers until July 15 to provide requested additional information to support a pending offer in compromise (OIC). In addition, the IRS will not close any pending OIC request before July 15, 2020, without the taxpayer's consent.
- Taxpayers have the option of suspending all payments on accepted OICs until July 15, 2020, although by law interest will continue to accrue on any unpaid balances.
- The IRS will not default an OIC for those taxpayers who are delinquent in filing their tax return for tax year 2018. However, taxpayers should file any delinquent 2018 return (and their 2019 return) on or before July 15, 2020.
- Liens and levies (including any seizures of a personal residence) initiated by field revenue officers will be suspended. New automatic, systemic liens and levies also will be suspended. However, field revenue officers will continue to pursue high-income non-filers and perform other similar activities where warranted.
- RS will suspend new certifications to the Department of State for taxpayers who are seriously delinquent during this period.

- New delinquent accounts will not be forwarded by the IRS to private collection agencies to work during this period.
- The IRS will generally not start new field, office and correspondence examinations. We will continue to work refund claims where possible, without in-person contact. However, the IRS may start new examinations where deemed necessary to protect the government's interest in preserving the applicable statute of limitations.
- Taxpayers have until July 15, 2020, to respond to the IRS to verify that they qualify for the Earned Income Tax Credit or to verify their income. These taxpayers are encouraged to exercise their best efforts to obtain and submit all requested information, and if unable to do so, please reach out to the IRS indicating the reason such information is not available. Until July 15, 2020, the IRS will not deny these credits for a failure to provide requested information.

The IRS expects to provide more guidance shortly.

## HSAs and COVID-19 Costs

The IRS has provided emergency relief<sup>[55]</sup> for health savings accounts (HSAs) and COVID-19 health plans costs. Under this relief, health plans that otherwise qualify as high-deductible health plans (HDHPs) will not lose that status merely because they cover the cost of testing for or treatment of COVID-19 before plan deductibles have been met. In addition, any vaccination costs will count as preventive care and can be paid for by an HDHP. The IRS states that this relief applies only to HSA-eligible HDHPs.

Eligible individuals can deduct contributions to health savings accounts. One requirement to qualify as an individual is to be covered under an HDHP and have no disqualifying health coverage. An HDHP is a health plan that satisfies certain requirements, including requirements with respect to minimum deductibles and maximum out-of-pocket expenses. This relief provides flexibility to HDHPs to provide health benefits for testing and treatment of COVID-19 without application of a deductible or cost sharing. See Health Savings Accounts (HSA).

### Caution

Individuals participating in HDHPs or any other type of health plan should consult their particular health plan regarding benefits for testing and treatment of COVID-19, including the potential application of any deductible or cost sharing.

The CARES Act includes two provisions relating to HSAs. First, during the 2020 plan year, HSAs are able to pay for the cost of telehealth<sup>[56]</sup> or remote services without the employee first having to satisfy HDHP deductible requirements. Second, HSAs<sup>[57]</sup>, MSAs<sup>[58]</sup>, and FSAs<sup>[59]</sup> have to reimburse over-the-counter menstrual products as paid for medical care.

**Contribution timing.** Individuals can contribute to an HSA for the months for which they were eligible during a calendar year until April 15 of the following year. Because the due date for 2019 returns is pushed back to July 15, 2020, under Covid-19 filing relief, an individual has until July 15, 2020, to contribute for 2019.

### Citations

1. PL116-136
2. NOTICE2020-18
3. NOTICE2020-20
4. NOTICE2020-15
5. §6428

6. IR2020-61
7. §62(a)
8. §127(c)
9. IR2020-62
10. §172(b)(1)
11. §172(a)
12. §461(l)(1)
13. §163(j)
14. §53(e)(1)
15. NOTICE2020-18
16. NOTICE2020-20
17. NOTICE2020-20
18. §6651
19. §6654
20. §6655
21. §3111(a)
22. §3221(a)
23. PL116-127
24. PL116-127
25. NOTICE2020-21
26. PL116-127
27. PL116-127
28. NOTICE2020-21
29. IR2020-57
30. NOTICE2020-22
31. §3121(a)
32. §3231(e)
33. PL116-127
34. IR2020-57
35. §3111(e)
36. §3111(f)
37. §5000(b)(1)
38. §106(a)
39. IR2020-57
40. §3121(a)
41. §3231(e)
42. PL116-127
43. IR2020-57
44. §3111(e)
45. §3111(f)
46. §5000(b)(1)

- 47. §106(a)
- 48. IR2020-57
- 49. §1402
- 50. PL116-127
- 51. PL116-127
- 52. §1402
- 53. PL116-127
- 54. PL116-127
- 55. NOTICE2020-15
- 56. §223(c)(2)
- 57. §223(d)
- 58. §220(d)
- 59. §106(f)



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