

Eye on Washington Regulatory Update

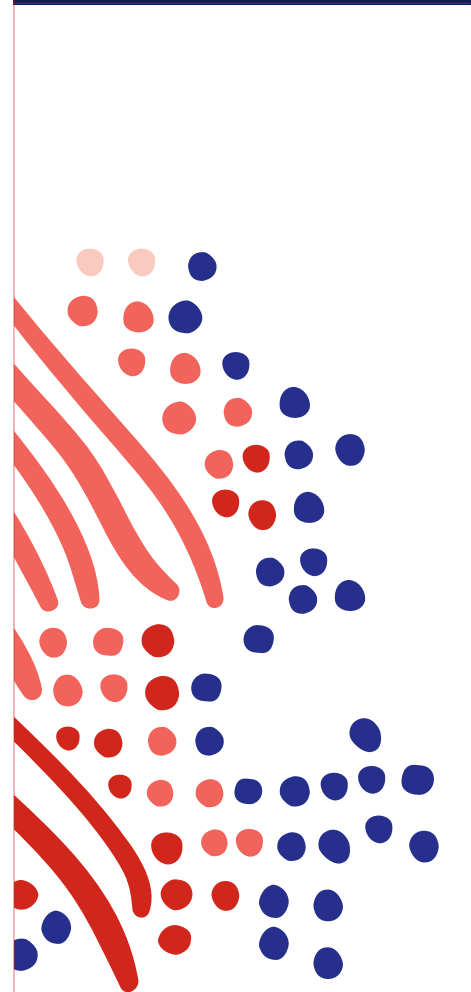
IRS Form 941 Revised to Account for FFCRA and CARES Act Tax Credits

Substantial changes have been proposed to IRS Form 941, which was released in draft form on April 29, 2020, with draft instructions released on May 1, 2020. The changes are necessary to account for and reconcile FFCRA and CARES Act Tax Credits, as well as advance payments of such credits using Form 7200. The new Form 941 will be effective beginning with the Form 941 due for the quarter ended June 30, 2020, although it will feature new reporting elements for CARES Act Employee Retention Credit wages paid as early as March 13. In contrast, the credit for FFCRA-qualified paid sick leave wages and qualified paid family leave wages can only be taken beginning April 1 through December 31, 2020.

As background, three payroll tax credits were enacted as part of the Families First Coronavirus Response Act (FFCRA, P.L. 116-127, March 18, 2020) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136, March 27, 2020). The CARES Act also permits all employers to defer employer Social Security taxes beginning March 27, 2020 through December 31, 2020. Such taxes are due in two equal installments, in December 2021 and 2022.

There are at least fifteen new lines and reporting elements added to the Form 941 (plus new intermediate subtotal lines). Form 941 previously featured a total of 20 elements, so it will expand from two pages to three. The following lines are new and related to the FFCRA and CARES Act programs:

- Qualified sick leave wages
- Qualified family leave wages
- Nonrefundable portion of credit for qualified sick and family leave wages from Worksheet 1
- Nonrefundable portion of employee retention credit from Worksheet 1
- Deferred amount of the employer share of Social Security tax
- Refundable portion of credit for qualified sick and family leave wages from Worksheet 1
- Refundable portion of employee retention credit from Worksheet 1
- Total advances received from filing Form(s) 7200 for the quarter
- Qualified health plan expenses allocable to qualified sick leave
- Qualified health plan expenses allocable to qualified family leave wages



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- Qualified wages for the employee retention credit
- Qualified health plan expenses allocable to wages reported on Line 21
- Credit from Form 5884-C, Line 11, for this quarter
- Qualified wages paid March 13 through March 31, 2020, for the employee retention credit (second quarter 2020 only)
- Qualified health plan expenses allocable to wages reported on line 24 (second quarter 2020 only)

Form 7200, Advance Payment of Employer Credits Due to COVID-19

IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19, is used to request advance payments from the IRS of tax credit amounts. This would generally be applicable to employers with significant reductions in employees in active work status, but that may be paying FFCRA paid sick or paid family leave wages to employees that are sick or caring for others due to COVID-19. If an employer estimates that tax credits arising from the Employee Retention Credit and/or FFCRA paid sick or family leave wages will be significantly higher than their expected total federal employment tax liability for the quarter, a request for advance payment via Form 7200 may result in faster receipt of funds.

Any Form 7200 requests must be carefully coordinated with ADP to prevent related tax credits from being both applied to current tax liabilities and paid directly to the employer by the IRS. This may result in significant tax underpayments and IRS penalties and interest.

Form 7200 can only be faxed to the IRS. It cannot be mailed in paper form or electronically filed. Interested clients should prepare and submit Forms 7200 directly to the IRS, but should advise their ADP service team of any such submission on the same day.

Form 941 Schedule R Revised

Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, will also be substantially revised to accommodate all of the new reporting lines. Schedule R previously featured eight columns to collect relevant tax data for each employer included in the Form 941. The new Schedule R has 24 columns of data for each employer. Schedule R is used by aggregate filers such as Professional Employer Organizations and others to separately report the employment taxes of each client.

Draft Form 941 Instructions Contain Important Details

Employer Social Security Tax Deferral

Instructions for Line 13b. Deferred Amount of the Employer Share of Social Security Tax, note that "... you can't defer tax that you already paid" and "The deferred amount of the employer share of Social Security tax is a deferral of deposits and payments, not a deferral of liability. You won't receive a refund or credit of any amount of the employer share of Social Security tax already deposited for the quarter."

Instructions for this line also remind employers that once they receive a determination of forgiveness of a Paycheck Protection Loan, the employer may no longer defer employer Social Security taxes due after that date. Amounts deferred up to that date remain deferred until December 2021 and December 2022, in equal shares. The instructions advise how to make payments of deferred amounts via EFTPS when such amounts are invoiced by the IRS.

For more information, go to [IRS.gov/ETD](https://www.irs.gov/ETD).

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FFCRA Tax Credit for Employees That Have Met the Social Security Taxable Wage Limit

The instructions contain a new worksheet through which certain FFCRA and CARES Act provisions are addressed. For example, FFCRA Qualified sick and family leave wages are generally reported on Form 941, Part 1, Line 5a(i) and Line 5a(ii), respectively, Column 1, which implies that FFCRA Qualified sick and family leave wages paid to individuals that have already met the Social Security taxable wage limit for 2020 (\$137,700) would result in no FFCRA credit. The worksheet provides Lines 2a(i) and 2e(i) to calculate the credit for such wages not included on Form 941, Part 1, Line 5a(i) or Line 5a(ii), Column 1, because the wages reported on that line were limited by the Social Security wage base.

ADP Compliance Resources

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