Payroll Tax Credits

To assist employers who are required to provide emergency paid sick leave or FMLA leave under the programs described above, the Act provides for a refundable tax credit applicable against the employer’s portion of Social Security or Railroad Retirement Tax Act (RRTA) tax for amounts paid under those programs. The credit is equal to 100% of the compensation paid in each calendar quarter to employees who are not working for the reasons enumerated above, subject to the following limitations:

For payments to an employee who needs time off for self-isolation, diagnosis, or care of a COVID-19 diagnosis, or compliance with a health care provider’s recommendation or order, the credit is capped at $511 of eligible wages per employee per day. For payments to an employee who needs time off to care for a family member who has been exposed to or diagnosed with the COVID-19, or a child under age 18 whose school or place of care has been closed, the credit is capped at $200 of eligible wages per employee per day. For expanded FMLA, the credit is capped at $200 of eligible wages per employee per day and $10,000 for all calendar quarters.

Both of the credits are increased by any amounts paid or incurred by the employer to maintain a group health plan, to the extent those expenses are (1) excluded from the employee’s gross income under the tax code and (2) “properly allocable” to the respective qualified sick or FMLA wages required to be paid under the Act. The exact method of allocation will be provided by regulation at a later date, but the Act provides that the allocation will be treated as properly made if done “on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage.”

If the credit exceeds the employer’s total liability for Social Security or RRTA tax for all employees for any calendar quarter, the excess is refundable to the employer. The employer may choose not to apply the credit. Further, to prevent a double benefit, the employer cannot obtain a deduction for the amount of the credit. In addition, employers may not receive the credit in connection with wages for which a credit is allowed under Section 45S (credit for paid family and medical leave).

Similar rules apply to a self-employed individual that allow a refundable tax credit against the individual’s self-employment tax. The credit is capped at the lesser of the amounts that apply to eligible wages per employee or the individual’s lost self-employment income. The House-passed version of the Act provides guidance on how to determine the individual’s lost income due to the corona virus.

Quick Facts – Payroll Tax Credits

- Act provides for a refundable tax credit applicable against the employer’s portion of Social Security or Railroad Retirement Tax Act (RRTA) tax for amounts paid under those programs.
- Credit can be as much as 100% of the compensation paid for sick leave and FMLA leave under the Act.
- Different caps on wages apply from $511 per day (sick leave) to $200 per day (FMLA leave).
- Credit is refundable if it exceeds the total amount of Social Security Taxes owed by the Employer.
- Self-employed are eligible for this credit due to lost income or employee wages.
  - Guidance is provided in the Act regarding how to calculate lost income.

COVID-19, or a child under age 18 whose school or place of care has been closed, the credit is capped at $200 of eligible wages per employee per day. The credit for emergency paid sick leave wages is only available for a maximum of 10 days per employee over the duration of the program. For expanded FMLA, the credit is capped at $200 of eligible wages per employee per day and $10,000 for all calendar quarters.

Both of the credits are increased by any amounts paid or incurred by the employer to maintain a group health plan, to the extent those expenses are (1) excluded from the employee’s gross income under the tax code and (2) “properly allocable” to the respective qualified sick or FMLA wages required to be paid under the Act. The exact method of allocation will be provided by regulation at a later date, but the Act provides that the allocation will be treated as properly made if done “on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage.”

If the credit exceeds the employer’s total liability for Social Security or RRTA tax for all employees for any calendar quarter, the excess is refundable to the employer. The employer may choose not to apply the credit. Further, to prevent a double benefit, the employer cannot obtain a deduction for the amount of the credit. In addition, employers may not receive the credit in connection with wages for which a credit is allowed under Section 45S (credit for paid family and medical leave).

Similar rules apply to a self-employed individual that allow a refundable tax credit against the individual’s self-employment tax. The credit is capped at the lesser of the amounts that apply to eligible wages per employee or the individual’s lost self-employment income. The House-passed version of the Act provides guidance on how to determine the individual’s lost income due to the corona virus.
Notably, required payments for emergency paid sick leave or FMLA under the Act will not be considered wages for purposes of calculating the employer’s portion of the Social Security or RRTA tax. In addition, the tax credits available to an employer are increased by the amount of the employer’s liability for Medicare tax on wages paid under the Act, effectively exempting the emergency sick leave and FMLA payments from that tax as well. In this way, the Act provides employers with two tax benefits: (1) refundable credits against the employer’s portion of Social Security or RRTA tax; and (2) an exemption from, or credit against, the employer’s portion of Social Security or RRTA and Medicare taxes on the wages required to be paid under the Act.

However, the law does not exempt these payments from the definition of wages for the purpose of other taxes (including the employee’s portion of Social Security, RRTA and Medicare taxes).

The Act ensures there is no negative impact to the Social Security program caused by the tax credit or the exemption of sick pay and family leave pay from Social Security tax by authorizing a transfer of funds from the General Fund to the Social Security and disability insurance trust funds to replace the lost employer contributions. The tax provisions discussed herein will apply beginning on a date to be determined by the Secretary of the Treasury after the enactment of the Act and ending on December 31, 2020.