Coronavirus / COVID-19 Response Team

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Update on Employment Tax Relief Provisions Under the CARES Act and FFCRA

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Today's Topics

- Employment Tax Deferral provided by the CARES Act
- Paid Leave Credits provided by the Families First Coronavirus Response Act ("FFCRA")
- Employee Retention Credits provided by the CARES Act

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Today's Goals

- Refresh on basic rules and benefits
- Discuss common qualification questions and related guidance from the IRS
- Discuss next steps and action items for qualifying employers

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CARES Act Employment Tax Deferral

The General Rule:

- The CARES Act permits employers to defer the deposit and payment of the employer's portion of social security taxes (6.2%) that otherwise would be due between March 27, 2020, and December 31, 2020.
- The first 50% of all of an employer's deferred amounts is due December 31, 2021.
- The remaining 50% of all of an employer's deferred amounts is due December 31, 2022.

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CARES Act Employment Tax Deferral

Who Qualifies:

- All employers (regardless of size, employee head count, for-profit/non-profit, etc.) qualify ***<u>except</u>*** employers that apply for a Paycheck Protection Program ("PPP") loan and have all or part of their PPP loan forgiven ***<u>(but see note on next slide)</u>***.

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CARES Act Employment Tax Deferral

Deferral Options for PPP Loan Recipients:

- PPP loan recipients may defer deposits and payments through the date their lender issues a decision to forgive all or a portion of the employer's PPP loan.
- After a decision to forgive all or a portion of the PPP loan is issued, the employer is no longer eligible to defer future deposits and payments.
- However, deposits and payments deferred through the date of the forgiveness decision will continue to be deferred, with 50% of the deferred amount due December 31, 2021 and the remaining 50% due December 31, 2022.

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CARES Act Employment Tax Deferral

Deferral Example for PPP Loan Recipients:

- Employer's PPP loan is funded April 20, 2020.
- 8-week forgivable spending period ends June 15, 2020.
- Employer applies for forgiveness on June 15, 2020.
- Lender issues forgiveness decision August 14, 2020 (60-days later).
- Employer may defer payment and deposit of the employer's share of social security taxes during the period beginning on March 27, 2020 and ending August 14, 2020.
- 50% of the deferred amount is due December 31, 2021.
- 50% of the deferred amount is due December 31, 2022.

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CARES Act Employment Tax Deferral

Next Steps:

- There are no immediate steps necessary to claim the benefit (e.g., no election is required).
- Employers can immediately stop depositing and paying the employer share of social security taxes.
- The IRS will issue revised quarterly employment tax return forms (Form 941) and additional guidance on reporting deferred depositing and payments later this year.

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FFCRA Paid Leave Credits

The General Rule:

- FFCRA requires certain employers to provide emergency paid sick leave and FMLA to employees for COVID-19 related reasons.
- FFCRA provides subject employers a fully refundable tax credit equal to:
  - 100% of any amounts the employer is required to pay as emergency sick leave or emergency FMLA under the FFCRA;
  - PLUS allocable qualified group health plan expenses;
  - PLUS the employer's 1.45% share of Medicare tax.
- The eligible employer is also not subject to the employer portion of social security tax (6.2%) on wages the employer is required to pay as emergency sick leave or emergency FMLA under FFCRA.

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FFCRA Paid Leave Credits

Who Qualifies:

- All employers required to provide emergency paid sick leave or FMLA under FFCRA qualify (which are generally employers that have fewer than 500 employee) ***<u>except</u>*** federal, state and local government employers.
- Note, employers that have completely shut down are not required to provide paid leave under FFCRA and therefore do not qualify for corresponding paid leave credits.

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FFCRA Paid Leave Credits

Next Steps:

- Eligible employers can claim benefits three ways:
  1. Reduce payroll deposits, including deposits of withheld employment taxes (employer's and employee's portion) and employee income tax withholding by the amount of anticipated credits;
  2. File a claim for an advance of anticipated credits prior to the end of a quarter (IRS Form 7200); or
  3. File a refund claim on the employers next quarterly payroll tax return (IRS Form 941).
  - This is a fully refundable credit, so these options should be utilized until the full amount of the credit has been received.

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FFCRA Paid Leave Credits

Next Steps (continued) - In order to substantiate credits:

- Certain information must be collected from employees receiving paid leave (Miller Johnson has forms available); and
- Employers must maintain records that include:
  - Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
  - Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
  - Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941).
- Employer should keep all such records for at least 4 years after the date the tax becomes due or is paid, whichever comes later.

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CARES Act Employee Retention Tax Credit

The General Rule:

- The Employee Retention Credit is a fully refundable tax credit equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that eligible employers pay their employees.
- Credit applies to qualified wages paid after March 12, 2020, and before January 1, 2021.
- The maximum amount of qualified expenses taken into account with respect to each employee for all calendar quarters is $10,000, so that the maximum credit per employee is $5,000.

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CARES Act Employee Retention Tax Credit

Qualifying Employers:

- Generally, all employers can qualify regardless of size except:
  - Employers receiving a PPP loan; and
  - Federal, state and local government employers.
- In order to qualify, an employer must experience:
  - a full or partial shutdown of its business due to a virus-related government order; or
  - a 50% decline in gross receipts for a calendar quarter in 2020 compared with the same calendar quarter in 2019.

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CARES Act Employee Retention Tax Credit

Additional Notes and Guidance for Employers Fully or Partially Shut Down by a Government Order:

- If an employer qualifies as a result of being subject to a government order, that employer continues to qualify so long as that order (or another order similarly restricting the employer's business) remains in place.
- The IRS issued guidance broadly interpreting the definition of a "partial shutdown" for purposes of identifying qualifying employers.
- Pre the IRS, an employer's business may be partially suspended if a government order imposes restrictions on the employer's business operations by limiting commerce, travel, or group meetings due to COVID-19 such that the operation can still continue to operate but not at its normal capacity.
- IRS Example of a Partial Shutdown: A restaurant that normally offers sit-down service, but can only serve customers via carry-out or delivery pursuant to an executive order.

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CARES Act Employee Retention Tax Credit

Additional Guidance for Employer's Meeting the Gross Receipts Test:

- If an employer experiences a 50% decline in gross receipts for a calendar quarter in 2020 compared with the same calendar quarter in 2019, that employer begins to qualify on the first day of such quarter and continues to qualify until the end of the calendar quarter in which gross receipts exceed 80% of gross receipts for the same quarter in 2019.

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CARES Act Employee Retention Tax Credit

Qualified Wages:

- The calculation of "qualified wages" depends on the average number of an employer's full-time equivalent employees ("FTEs") during 2019
  - An FTE is generally any employee averaging 30 hours per week.
- If an employer averaged more than 100 FTEs during 2019, qualified wages include only wages paid to employees while they are not working.
- If an employer had 100 or fewer FTEs during 2019, qualified wages include all wages paid to all employees (regardless of whether they are working).
- For all employers, wages used to claim an emergency sick leave or emergency FMLA payroll tax credit under FFCRA do not qualify (an employer can receive both credits, just not for the same wages).

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CARES Act Employee Retention Tax Credit

Next Steps:

- Eligible employers can claim benefits three ways:
  1. Reduce payroll deposits, including deposits of withheld employment taxes and income taxes by the amount of *<u>anticipated</u>* credits;
  2. File a claim for an advance of *<u>anticipated</u>* credits prior to the end of a quarter (IRS Form 7200); or
  3. File a refund claim on the employers next quarterly payroll tax return (IRS Form 941).

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