

IRS Payroll Tax Credits

The US Treasury Department, Internal Revenue Services and the US Department of Labor announced that small and midsize employers can take advantage of two new refundable payroll tax credits which are designed to be immediately and fully reimbursable, dollar-for-dollar, for the cost of providing coronavirus-related leave to their employees.

First, by way of background, the Families First Coronavirus Response Act (FFCRA) contains laws that require covered employers to provide paid sick leave to employees who are unable to work due to a COVID-19 quarantine, are seeking medical diagnosis for coronavirus symptoms, or as a result of needing to care for a child whose school or child care provider is closed. For more detailed information with regard to the paid sick leave under FFCRA, please see the information prepared by our Workplace Law group on the Bodman website.

Payroll Tax Credits - General

In general, an employer will qualify for a dollar-for-dollar reimbursement through payroll tax credits for all "qualifying wages" paid to employees under FFCRA. Qualifying wages are those amounts paid to an employee who takes paid sick leave for a qualifying reason (e.g., due to quarantine). An employer may receive a refundable credit against the tax imposed by Section 3111(a) (the employer portion of Social Security taxes) or 3221(a) (the excise tax relating to the Railroad Retirement Act) for each calendar quarter in an amount equal to 100% of the qualified wages paid by the employer with respect to that period. The tax credit is subject to a per diem and aggregate cap on a per employee basis.

The tax credit applies for a period that begins no later than April 2, 2020 and ends December 31, 2020.

The amount of such tax credit may be increased by an amount paid or incurred to maintain health insurance coverage for the employee during the leave period (see discussion below).

The credit for any calendar quarter may not exceed the tax imposed under Code sections 3111(a) and 3221(a). However, the Act provides that such credit is refundable for amounts exceeding any tax liability and the employer will be able to file a request for accelerated refund from the Service, which is anticipated to be processed within two weeks.

Further, the gross income of the employer should be increased by the amount of the credit to offset the employer's deduction for compensation expense.

Any wages required to be paid pursuant to the sick leave and child care leave benefits described above do not constitute wages for purposes of Code sections 3111(a) or 3221(a). As such, any payments of qualifying wages are exempt from the employer portion of Social Security tax. The Act further provides that the payroll tax credits are increased by the amount of tax imposed by Code section 3111(b) (the employer portion of Medicare tax) on the qualifying wages for which such credits are permitted, thereby offsetting the employer's Medicare tax obligations.

Tax Credits include Qualified Group Health Plan Expenses

Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage. As long as the health benefit payments by the employer relate directly to qualifying wages and are made pursuant to a group health plan, employer expenses under a qualified health plan are included in the wage base used to calculate the allowable payroll tax credits.

Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent such amounts are excluded from the employees' income as coverage under an accident or health plan. The Internal Revenue Code generally defines a group health plan broadly as "a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families." Each employer will need to evaluate its health plan to ensure that the plan at issue qualifies, but the Internal Revenue Code definition is relatively broad.

Qualified health plan expenses to be included in the credit, therefore, are those specifically allocable to qualified wages and guidance will be issued with regard to the method of allocation. Until the Secretary of Treasury issues more detailed guidance, the current view is that a pro rata allocation made as described above is appropriate.

Income Tax Versus Payroll Taxes

The deferral of income taxes due for 2019 and the first quarter estimate of federal income taxes for 2020 are separate and distinct from the payroll tax credits allowed for specified payments made under the FFCRA and the two types of taxes need to be evaluated separately.

If you have any questions, please contact Bodman attorneys Wayne Roberts at (248) 743-6039 or wroberts@bodmanlaw.com or Emily Kwolek (248) 743-6048 or ekwolek@bodmanlaw.com.

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