

OBSERVATIONS

CARES Act – Business Tax Provisions 5

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As referenced in our prior Blogs, the CARES Act was signed by the President on Friday, March 27, and is now law. The Act has numerous provisions, one of which is the Paycheck Protection Program (PPP). PPP will provide loans to businesses for payroll and certain other costs. However, payroll taxes are not included in the definition of payroll costs with respect to calculating how much can be borrowed (blog 3) and how much can be forgiven (blog 4). Today's topic will be treatment of payroll taxes during this period and the provisions offered by the Act.

Please be aware that the Act and our interpretation are subject to any administrative interpretation issued by the Small Business Administration.

Payroll tax Deferral (Section 2302):

The Act provides the opportunity to delay payment of 50% of 2020 applicable employer payroll taxes until Dec. 31, 2021; the other 50% can be deferred until Dec. 31, 2022. For self-employment taxes, 50% of applicable taxes can be delayed until those same dates.

Applicable payroll taxes include:

- Employer portion of Social Security (6.2% of maximum wage base, \$137,200 in 2020)
- Equivalent Self-employment taxes: 50% of 12.4% self-employment tax (i.e. this portion is exempt from estimated payment requirements)

Applicable payroll taxes do NOT include the 1.45% Medicare tax or employee's portion of Social Security or any other withheld taxes.

Employers should contact their payroll agents if they want to elect to defer these taxes (i.e. it will not be automatic).

The above rules will NOT apply to any taxpayer that obtains a loan through the Paycheck Protection Program which is later forgiven¹. In short, employers who participate in the PPP program will receive funds to cover payroll costs, except payroll taxes. Those taxes will be due in the normal course, i.e. will not be deferred.

¹ Act Sec. 2302(a)(3)

Employee Retention Credit (Section 2301):

The Act creates an employee retention credit for wages paid from March 13, 2020 to December 31, 2020 by employers that close due to the coronavirus pandemic. The credit applies to 50% of wages up to \$10,000; thus the maximum credit is \$5,000. The credit can be applied against the employer's 6.2% portion of the Social Security payroll tax. The credit is refundable, so if the credit exceeds the employer's Social Security tax liability, the excess may be refunded.

Eligible employers are employers who were carrying on a trade or business during 2020 and for which the operation of that business is fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to the COVID-19 outbreak.

For employers with more than 100 employees, wages eligible for the credit are wages that the employer pays employees who are NOT providing services due to the suspension of the business or a drop in gross receipts. For employers with 100 or fewer full-time employees in 2019, all employee wages are eligible, even if employees haven't been prevented from providing services.

The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in eligible wages and compensation paid by the employer to an employee. Thus, the credit is a maximum \$5,000 per employee.

The credit is NOT available to employers receiving loans under the Paycheck Protection Program².

There are a number of limitations to prevent double-dipping, one of which being certain provisions provided in the Families First Act with respect to paid family and medical leave. Additionally, an employer's deduction for wages must be reduced by the amount of this credit.

So, companies should consider that if receiving a PPP loan, they will NOT qualify for payroll tax deferral or the Employee Retention Credit.

Given the complexity of the requirements and the importance and value that can be achieved by having procedures in place for compliance, we encourage clients to contact us.

We will be providing further blogs as information becomes available.

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² Act Sec. 2301(j)