



CARES Act Tax Relief for Businesses

April 9, 2020

In an effort to promote social distancing to slow the advance of COVID-19, many state and local governments have enacted orders limiting the size of gatherings, placing restrictions on travel, and instructing individuals to stay at home except to conduct essential activities. Although these orders have allowed for "Essential Businesses"[1] to remain in operation, many non-essential businesses have been forced to shut down or limit their operations.[2] The recently enacted Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") contained multiple tax relief provisions intended to support both non-essential and essential businesses and encourage them to keep employees on their payrolls.

Employee Retention Tax Credit

Section 2301 of the CARES Act created the Employee Retention Tax Credit for Employers Subject to Closure Due to COVID-19. Eligible employers can claim a refundable tax credit equal to 50% of qualified wages to offset their employment taxes for each quarter.

This credit is available to any employer (including nonprofits) whose operations have been fully or partially suspended due to an applicable governmental order limiting travel, group gatherings, or commerce. The credit is also available to any employer who has experienced a significant decline in gross receipts (defined as a 50% reduction of quarterly gross receipts, measured on a year-over-year basis, and lasting until the quarter in which gross receipts return to at least 80% of the prior year for that quarter). The credit may not be claimed by employers receiving Small Business Interruption Loans, including one under the Paycheck Protection Program as set forth in the CARES Act, or by state and local governments or associated instrumentalities.[3]

For large employers (defined as an employer whose average number of full-time employees during 2019 was greater than 100), the employer may claim a credit for wages paid to an employee who is furloughed or working reduced hours. For small employers (100 or fewer full-time employees), the employer may claim the credit for wages paid to any employees, regardless of whether the employee is still working. The employer may continue to claim the credit for the period the business is closed due to a governmental order, or for the quarters with reduced gross receipts.



The credit may be claimed for all wages and compensation, including health benefits, up to \$10,000 per employee. Qualified wages must have been paid after March 12, 2020, and before January 1, 2021. Qualified wages do not include wages taken into consideration for the payroll credits for required paid sick leave or required paid family leave under the Families First Coronavirus Response Act, or wages taken into account for the employer credit for paid family and medical leave under Section 45S of the Code.

In recently issued guidance,[4] the IRS has provided that employers may reduce their required deposits of payroll taxes in an amount equal to their anticipated employee retention credit. Employers are to report their total qualified wages for each quarter on their quarterly employment tax returns, Form 941. If the withheld required deposits are not sufficient to cover the credit, the employer may request an advance payment from the IRS by submitting Form 7200.

Delay of Payment of Employer Payroll Taxes

Section 2302 of the CARES Act allows employers and self-employed individuals to defer payments of certain payroll taxes from the date of enactment through December 31, 2020. The provision provides that employers shall pay fifty percent (50%) of the deferred payroll taxes by December 31, 2021 and the remaining fifty percent (50%) of the deferred payroll taxes by December 31, 2022. Qualifying payroll taxes that may be deferred include the employer portion of Federal Insurance Contributions Act (FICA) taxes, the employer and employee representative portion of Railroad Retirement taxes (to the extent attributable to the FICA rate), and 50% of Self-Employment Contributions Act (SECA) tax liability. This delay of employer payroll taxes is not available to taxpayers who have received loan forgiveness under sections 1106 or 1109 of the CARES Act.

For more information regarding the tax relief provisions of the CARES Act, please contact Nick Anderson, John Mueller, Colin Halpin, Real Estate & Tax Credit Practice Group Chair Chris Pierce, or your regular Lathrop GPM contact.

[1] The term "Essential Business" is used in the Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, issued March 19, 2020, however a number of jurisdictions use different but analogous terms.

[2] For more information regarding state stay-at-home orders please see: <https://www.lathropgpm.com/newsletter-72501.html>. For an updated listing of exceptions to stay-at-home orders for "Essential Business" please see: <https://www.lathropgpm.com/f-39.html>.

[3] For more information regarding the SBA Loan programs under the CARES Act, please see: <https://www.lathropgpm.com/f-42.html>.



[4] IRS: Employee Retention Credit available for many businesses financially impacted by COVID-19, please see: <https://www.irs.gov/newsroom/irs-employee-retention-credit-available-for-many-businesses-financially-impacted-by-covid-19>.