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IRS ISSUES GUIDANCE FOR PAYROLL TAX CREDITS AND RAPID REFUNDS FOR EMPLOYERS MAKING FEDERALLY-MANDATED LEAVE PAYMENTS UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT (H.R. 6201)

The federal government is trying to get much-needed cash into the hands of employers and employees affected by COVID-19 as quickly as possible. To do so, it is utilizing employers' existing payroll systems to minimize the employers' cash flow hardship that might otherwise have occurred from having to pay new, mandatory federal paid sick and child care leave to certain employees. Specifically, the IRS has just clarified that employers can subtract the cost of the new mandated paid leave (plus the cost of keeping affected employees' health care coverage in place during that leave) from any payroll taxes that are otherwise due to the IRS.

IRS Information Release (IR) 2020-57 (March 20, 2020) outlines the system that will promptly reimburse employers for the benefits required under the Act. IR 2020-57 also states that eligible employers are entitled to an additional tax credit based on costs to maintain health insurance coverage for the eligible employee during the mandated federal paid sick and child care leave period.

Background

Businesses and tax-exempt organizations with fewer than 500 employees that are required to provide emergency paid sick and child care leave through December 31, 2020, under the Families First Coronavirus Response Act (Act) (H.R. 6201), can claim a refundable federal tax credit to recover 100% of those payments. Equivalent credits are available to self-employed individuals based on similar circumstances.

Mechanics of Tax Credit Refunds

Generally, employers are required to withhold federal income taxes, Social Security and Medicare taxes from their employees' paychecks. Normally, employers must timely remit to the IRS the withheld taxes, along with the employer's share of Social Security and Medicare taxes. But the IRS will release guidance the week of March 23 allowing employers who pay mandated federal paid sick or child care leave to decrease their federal payroll tax deposit by the cost incurred. The IRS also said that the cost of providing such leave can include the cost of continuing health care coverage during the federally mandated sick and child care leave period.

Source of Tax Credit Refunds

Employers can deduct the cost of providing such leave from their total federal tax deposit amount from all employees (not just from those who take the federally mandated leave). Specifically, employers can deduct the cost of providing such leave from: (1) federal income taxes withheld from all employees' pay; (2) the employees' share of Social Security and Medicare taxes; and (3) the employer's share of Social Security and Medicare taxes.

Self-Employed

Equivalent tax credits are available to self-employed individuals for federally mandated paid sick and child care leave. But self-employed individuals will deduct their tax credits from their estimated tax payments or can claim a refund on their federal income tax return (i.e., their 2020 Form 1040).

As a result, employers (including self-employed individuals) will have more cash in-hand (by not remitting taxes that are otherwise due) to cover the cost of providing the federal paid sick and child care leave.

Rapid Refunds

IR 2020-57 also said that if the payroll tax off-set is not sufficient to cover 100% of those costs, employers can request a refund of their tax credit for any remaining amount. The IRS expects to process such refunds within two weeks.

Examples. Here are two examples from IR 2020-57:

Example 1: If an eligible employer paid \$5,000 in federally mandated paid sick or child care leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes that it was otherwise going to deposit to make the qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

Example 2: If an eligible employer paid \$10,000 in federally mandated paid sick or child care leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes that it was otherwise going to deposit to make qualified leave payments and could file a request for an accelerated refund for the remaining \$2,000.

New Small Business Exemption

According to IR 2020-57, small businesses with fewer than 50 employees will be eligible for an exemption from the federally mandated child care leave if complying with those requirements would jeopardize the ability of the business to continue as a going concern. The exemption will be available on the basis of simple and clear criteria, which the U.S. Department of Labor will provide in emergency guidance.

Non-Enforcement Period

IR 2020-57 says that the U.S. Department of Labor will issue a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. For at least the initial 30 days (i.e., through April 20), the Labor Department will not bring any enforcement action against any employer for violating the Act, so long as the employer acted reasonably and in good faith to comply with the Act.