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Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: How to Claim the Credits

Note: These FAQs address the tax credits available under the American Rescue Plan Act of 2021 (the "ARP") by employers with fewer than 500 employees and certain governmental employers without regard to the number of employees ("Eligible Employers") for qualified sick and family leave wages ("qualified leave wages") paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, as well as the equivalent credits available for certain self-employed individuals. For information about the tax credits that may be claimed for qualified leave wages paid with respect to leave taken by employees prior to April 1, 2021, under the Families First Coronavirus Response Act ("FFCRA") and the COVID-related Tax Relief Act (the "Relief Act"), see Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021 FAQs.

Although the requirement that Eligible Employers provide leave under the Emergency Paid Sick Leave Act ("EPSLA") and Emergency Family and Medical Leave Expansion Act ("Expanded FMLA") under the FFCRA does not apply after December 31, 2020, the tax credits under sections 3131 through 3133 of the Internal Revenue Code ("the Code") are available for qualified leave wages an Eligible Employer provides with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, if the leave would have satisfied the requirements of the EPSLA and Expanded FMLA, as amended for purposes of the ARP.

Throughout these FAQs, the use of the word "work," unless otherwise noted, is inclusive of telework.

52. How does an Eligible Employer claim the refundable tax credits for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes)? (added June 11, 2021)

Eligible Employers report their total qualified leave wages for each calendar quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return. The Form 941 is used to report income and social security and Medicare taxes withheld by the Eligible Employer from employee wages, as well as the employer's share of social security and Medicare taxes. Eligible Employers report their total qualified leave wages for each calendar quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return. The Form 941 is used to report income and social security and Medicare taxes withheld by the Eligible Employer from employee wages, as well as the employer's share of social security and Medicare taxes. Some Eligible Employers will use other federal employment tax returns, such as the Form 944, Employer's Annual Federal Tax Return, Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, or Form CT-1, Employer's Annual Railroad Tax Return, to report the amount of total qualified leave wages paid.

In anticipation of claiming the credit, Eligible Employers can (1) reduce federal employment taxes, including withheld taxes that would otherwise be required to be deposited with the IRS, and (2) when the amount of the credit exceeds the applicable federal employment taxes, request an advance payment of the credit from the IRS for the amount of the credit remaining after reducing federal employment tax deposits, by filing the applicable version of Form 7200, Advance Payment of Employer Credits Due to COVID-19 for the relevant calendar quarter.

53. May an Eligible Employer that pays qualified leave wages reduce its federal employment tax deposits in anticipation of claiming the leave credits? (added June 11, 2021)

An Eligible Employer that pays qualified leave wages to its employees in a calendar quarter before it is required to deposit federal employment taxes with the IRS for that quarter may reduce the amount of federal employment taxes it deposits for that quarter by the amount of the qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) paid in that calendar quarter in anticipation of the credit. The Eligible Employer must account for the reduction in deposits on the Form 941, Employer's Quarterly Federal Tax Return, for the quarter.

Example: In the second quarter of 2021, an Eligible Employer paid $5,000 in qualified leave wages and has $10,000 in federal employment taxes, including taxes withheld from all of its employees, that would otherwise be required to be deposited with the IRS for wage payments made during the same quarter. The Eligible Employer reasonably anticipates a credit of $6,000 (100 percent of qualified sick and family leave wages plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages). The Eligible Employer may keep up to $6,000 of taxes the Eligible Employer was going to deposit, and it will not owe a penalty for keeping the $6,000. The Eligible Employer is then only required to deposit the remaining $4,000 on its required deposit date. The Eligible Employer will later account for the $6,000 it retained when it files Form 941, for the quarter.

For more information about relief from failure to deposit penalties for failure to timely deposit certain federal employment taxes, see Notice 2021-24 and "May an Eligible Employer reduce its federal employment tax deposit by the qualified leave wages that it has paid without incurring a failure to deposit penalty?"

54. May an Eligible Employer reduce its federal employment tax deposits in anticipation of the leave credit without incurring a penalty for failing to deposit federal employment taxes? (added June 11, 2021)

Yes. An Eligible Employer that pays qualified leave wages in a calendar quarter will not be subject to a penalty under section 6656 of the Code for failing to deposit federal employment taxes if:

- the Eligible Employer paid qualified leave wages to its employees in the calendar quarter before the required deposit,

- the total amount of federal employment taxes that the Eligible Employer does not timely deposit is less than or equal to the amount of the Eligible Employer's anticipated credit for the qualified leave wages for the calendar quarter as of the time of the required deposit, and
- the Eligible Employer did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to any portion of the anticipated credits it relied upon to reduce its deposits.

For more information, about the relief from the penalty for failure to deposit federal employment taxes on account of qualified wages, see Notice 2021-24.

Example: In its first payroll period of the third quarter of 2021, Employer F pays $3,500 in qualified sick and family leave wages under sections 3131 and 3132 of the Code and $10,000 in qualified wages for purposes of the employee retention credit, among other wages for the payroll period. Employer F has $9,000 of federal employment taxes available for deposit for the first payroll period of the third quarter of 2021. Employer F reasonably anticipates a $4,250 paid leave credit (100 percent of qualified sick and family leave wages plus allocable qualified health expenses, certain collectively bargained contributions, and Employer F's share of social security and Medicare taxes imposed on the qualified leave wages) and a $7,000 employee retention credit (70 percent of qualified wages) thus far for the third quarter.

Employer F reduces the $9,000 federal employment tax deposit obligation by the $4,250 anticipated paid leave credit, and then further reduces it to zero for $4,750 of the $7,000 anticipated employee retention credit. Employer F may request an advance of the remaining employee retention credit.

Employer F will not incur a failure to deposit penalty under section 6656 of the Code for reducing its federal employment tax deposit for the first payroll period of the third quarter to $0.

For more information on requesting an advance for credit in excess of federal employment tax, see "May an Eligible Employer get an advance payment of the leave credits?"

55. May an Eligible Employer get an advance payment of the leave credits? (added June 11, 2021)

Yes. Some Eligible Employers may not have sufficient federal employment taxes set aside for deposit to the IRS to cover their qualified leave wages through reduction of the amount to be deposited. Accordingly, the IRS has a procedure for obtaining an advance payment of the refundable credits. The Eligible Employer can file the applicable version of Form 7200, Advance Payment of Employer Credits Due to COVID-19 for the relevant calendar quarter, to request an advance payment of the credit for the remaining qualified leave wages it has paid for which it did not have sufficient federal employment tax deposits.

If an Eligible Employer fully reduces its required deposits of federal employment taxes otherwise due on wages paid in the same calendar quarter to its employees in anticipation of receiving the credits, and it has not paid qualified leave wages in excess of this amount, it should not file a Form 7200. If it files a Form 7200, it will need to reconcile this advance payment of the credit and its deposits with the qualified leave wages on Form 941, Employer's Quarterly Federal Tax Return (or other applicable federal employment tax return such as Form 944, Employer's Annual Federal Tax Return, or Form CT-1, Employer's Annual Railroad Retirement Tax Return, and it may have an underpayment of federal employment taxes for the quarter.

Example: During the second quarter of 2021, Employer G paid $7,000 in qualified leave wages and is otherwise required to deposit $8,000 in federal employment taxes on all wages paid. Employer G reasonably anticipates a $9,000 leave credit (100 percent of qualified leave wages plus allocable qualified health expenses, certain collectively bargained contributions, and Employer G's share of social security and Medicare taxes imposed on the qualified leave wages). Employer G can keep the entire $8,000 of employment taxes that Employer G was otherwise required to deposit without penalty as a portion of the credits it is otherwise entitled to claim on the Form 941. Employer G may file a request for an advance payment for the remaining $1,000 by completing Form 7200. If Employer G does not request an advance payment of the credit, it may request that any overpayment be credited or refunded when it files its third quarter Form 941, and claims the credit on its return. Employer G must report all qualified wages, the credit for qualified sick and family leave wages, and any advance credit received from Form 7200 filed for the quarter on the Form 941 for the quarter.

56. If the credit allowed for qualified leave wages (plus allocable qualified health plan expenses, certain collectively bargained contributions, and the employer's share of social security and Medicare taxes imposed on the qualified leave wages) exceeds the Eligible Employer's share of Medicare tax owed for a quarter, how does the Eligible Employer get a refund of the excess credit? Does this affect what the Eligible Employer puts on its Form 941? (added June 11, 2021)

If the amount of the credit exceeds the Eligible Employer's share of Medicare tax, then the excess is treated as an overpayment and refunded to the Eligible Employer under sections 6402(a) or 6413(b) of the Code. Consistent with its treatment as an overpayment, the excess will be applied to offset any remaining tax liability on the Form 941, Employer's Quarterly Federal Tax Return, and the amount of any remaining excess will be reflected as an overpayment on the Form 941. Like other overpayments of federal taxes, the overpayment will be subject to offset under section 6402(a) of the Code prior to being refunded to the Eligible Employer.

57. How does an Eligible Employer obtain Form 7200 and where should it send its completed form to receive the advance credit? Is there a minimum advance amount that can be claimed on a Form 7200? (added June 11, 2021)

An Eligible Employer may obtain the applicable version of Form 7200, Advance Payment of Employer Credits Due to COVID-19 for the relevant calendar quarter online and may fax its completed form to 855-248-0552. The minimum advance amount that can be claimed on a Form 7200 is $25. A Form 7200 requesting an advance payment of less than $25 will not be processed. Taxpayers can claim credits of less than $25 on the Form 941, Employer's Quarterly Federal Tax Return.

58. Who can sign a Form 7200? Should a taxpayer submit additional documents to confirm that a person is authorized to sign a Form 7200? (added June 11, 2021)

The instructions for Form 7200, Advance Payment of Employer Credits Due to COVID-19, provide information on who may properly sign a Form 7200 for each type of entity. For corporations, the instructions provide that the president, vice president, or other principal officer who is duly authorized may sign a Form 7200. For partnerships (including an LLC treated as a partnership) or unincorporated organizations, a responsible and duly authorized partner, member, or officer having knowledge of the entity's affairs may sign a Form 7200. For a single-member LLC treated as a disregarded entity for federal income tax purposes, the instructions provide that the owner or a principal officer who is duly authorized may sign the form. For trusts or estates, the instructions provide that the fiduciary may sign the Form 7200. Additionally, the instructions provide that a Form 7200 may be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

In many circumstances, whether the person signing the Form 7200 is duly authorized or has knowledge of the partnership's or unincorporated organization's affairs is not apparent on the Form 7200. To help expedite and ensure proper processing of Form 7200, if a taxpayer has duly authorized an officer, partner, or member to sign Form 7200 (and that person is not otherwise explicitly permitted to sign the Form 7200 by nature of their job title), the taxpayer should submit a copy of the Form 2848, Power of Attorney and Declaration of Representative, authorizing the person to sign the Form 7200 with the Form 7200.

59. When should the name and EIN of a third-party payer be included on Form 7200? (added June 11, 2021)

Eligible Employers who file Form 7200, Advance Payment of Employer Credits Due to COVID-19, to claim an advance payment of credits are required to include on the form the name and EIN of the third-party payer they use to file their federal employment tax returns (such as the Form 941, Employer's Quarterly Federal Tax Return) if the third-party payer uses its own EIN on the federal employment tax returns. This will ensure advance payment of the credits received by the common law employer is properly reconciled to the federal employment tax return filed by the third-party payer for the calendar quarter for which the advance payment of the credits is received.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the federal employment tax return for the calendar quarter, only those third-party payers who will file a federal employment tax return on behalf of an Eligible Employer using the third-party payer's name and EIN should be listed on the Form 7200. Typically, certified professional employer organizations (CPEOs), professional employer organizations (PEOs), and other section 3504 agents fall into this category of third-party payers.

If a third-party payer will file the federal employment tax return on an Eligible Employer's behalf using the Eligible Employer's name and EIN and not the name and EIN of the third-party payer, the Eligible Employer should not include the name and EIN of the third-party payer on the Form 7200. Typically, reporting agents and payroll service providers fall into this category of third-party payers.

60. If a common law employer that is an Eligible Employer uses a third-party payer for only a portion of its workforce, should the Eligible Employer list the third-party payer on the Form 7200? (added June 11, 2021)

In some cases, a common law employer may use the services of a third-party payer (such as a CPEO, PEO, or other section 3504 agent) to pay wages for only a portion of its workforce. In those circumstances, the third-party payer files an employment tax return (such as the Form 941, Employer's Quarterly Federal Tax Return) for wages it paid to employees under its name and EIN, and the common law employer files an employment tax return for wages it paid directly to employees under its own name and EIN.

If the common law employer is claiming advance payments of credits for both wages paid directly to employees that will be reported on its own employment tax return and wages paid to other employees by a third-party payer that will be reported on the third-party payer's employment tax return, two separate Forms 7200, Advance Payment of Employer Credits Due to COVID-19, should be filed: one for the wages paid by the common law employer with the name and EIN of the employer, and one for the wages paid by the third-party payer with the name and EIN of both the common law employer and the third-party payer.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the employment tax return when an employer uses a third-party payer such as a CPEO, PEO, or other section 3504 agent for only a portion of its workforce, a common law employer should include the name and EIN of the third-party payer only on the Form 7200 for advance payment of the credits for wages paid by the third-party payer and reported on the third-party payer's employment tax return. The common law employer should not include the name and EIN of the third-party payer on the Form 7200 for advance payments of the credits claimed for wages paid by the common law employer and reported on the common law employer's employment tax return.

61. What is the last day taxpayers may submit a Form 7200 requesting an advance payment of leave credits? (added June 11, 2021)

Taxpayers filing a Form 941, Employer's Quarterly Federal Tax Return, may submit the applicable version of Form 7200, Advance Payment of Employer Credits Due to COVID-19, with respect to qualified leave wages paid in the second quarter of 2021 up to the earlier of August 2, 2021 or the date they file the Form 941 for the second quarter of 2021; or with respect to qualified leave wages paid in the third quarter of 2021, up to the earlier of November 1, 2021, or the date they file the Form 941 for the third quarter of 2021 to request an advance payment of the leave credits. Taxpayers filing a Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, Form 944, Employer's Annual Federal Tax Return, or Form CT-1, Employer's Annual Railroad Retirement Tax Return, may submit a Form 7200 with respect to qualified leave wages paid in the second quarter up to August 2, 2021, and with respect to wages paid in the third quarter, up to November 1, 2021.

62. What if an Eligible Employer does not initially pay an employee qualified leave wages when the employee is eligible for those wages, but pays those wages at a later date? (added June 11, 2021)

An Eligible Employer can claim the credits under the ARP once it has paid the employee for the period of paid sick leave or paid family leave, as long as the qualified leave wages paid are with respect to leave taken by the employee beginning on April 1, 2021, through September 30, 2021.

63. In what order should an Eligible Employer apply the tax credits for qualified sick leave wages and qualified family leave wages against its share of Medicare taxes? (added June 11, 2021)

When applying the credits against the Eligible Employer's share of Medicare taxes, the Eligible Employer should first apply its available credit for qualified sick leave wages and then its available credit for qualified family leave wages.

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