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Effective Date for Employment Tax Credits Under the Families First Coronavirus Response Act

Notice 2020-21

I. PURPOSE

This notice provides that the tax credits for qualified sick leave wages and qualified family leave wages required to be paid by the Families First Coronavirus Response Act will apply to wages paid for the period beginning on April 1, 2020, and ending on December 31, 2020. This notice also provides that days occurring during the period beginning on April 1, 2020, and ending on December 31, 2020, will be taken into account for credits for qualified sick leave equivalent amounts and qualified family leave equivalent amounts for certain self-employed individuals.

II. BACKGROUND

The Families First Coronavirus Response Act (the Act), P.L. 116-127, 134 Stat. 178, was enacted on March 18, 2020. Division C (Emergency Family and Medical Leave Expansion Act) and Division E (Emergency Paid Sick Leave Act) of the Act require certain employers to provide expanded family and medical leave and paid sick leave to employees unable to work or telework due to certain circumstances related to COVID-19. The Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act are administered by the U.S. Department of Labor (DOL).

Division G (Tax Credits for Paid Sick and Paid Family and Medical Leave) of the Act provides for a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code (Code) for each calendar quarter in an amount equal to 100 percent of the “qualified sick leave wages” and “qualified family leave wages” required to be paid under the Act (or the equivalent amounts thereof for certain self-employed individuals). Specifically, sections 7001 and 7003 of Division G of the Act provide for refundable tax credits for most employers with fewer than 500 employees that pay qualified sick leave wages and qualified family leave wages to their employees, as required by the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act. Sections 7002 and 7004 of Division G of the Act also provide comparable credits for self-employed individuals carrying on any trade or business within the meaning of section 1402 of the Code if the self-employed individual would be entitled to receive paid leave under the Emergency Paid Sick Leave Act or the Emergency Family and Medical Leave Expansion Act if the individual were an employee of an employer (other than him or herself).

Sections 7001(g) and 7003(g) of Division G of the Act provide that the tax credits for employers for qualified sick leave wages and qualified family leave wages “apply only to wages paid with respect to the period beginning on a date selected by the Secretary of the Treasury (or the Secretary’s delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.” Section 3106 of Division C and Section 5108 of Division E of the Act provide

that the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act are effective not later than 15 days after the date of enactment of the Act. DOL has published guidance providing that the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act requirements take effect on April 1, 2020.

Sections 7002(e) and 7004(e) of Division G of the Act provide that the comparable credits for qualified sick leave equivalent amounts and qualified family leave equivalent amounts for self-employed individuals are determined based only on “days occurring during the period beginning on a date selected by the Secretary of the Treasury (or the Secretary’s delegate) which is during the 15-day period beginning on the date of the enactment of this Act, and ending on December 31, 2020.”

III. IMPLEMENTATION OF SECTIONS

With respect to the period “beginning on a date selected by the Secretary (or the Secretary’s delegate) which is during the 15-day period beginning on the date of the enactment of this Act” as specified in sections 7001(g), 7002(e), 7003(g), and 7004(e) of Division G of the Act, the date selected by the Secretary is April 1, 2020. This date is coordinated with the DOL’s determination of the effective date for employers’ compliance with the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act requirements. Accordingly, the refundable tax credits for employers apply to qualified sick leave wages and qualified family leave wages paid for the period from April 1, 2020 to December 31, 2020. Additionally, the self-

employment tax credit is determined based on days occurring during the period beginning on April 1, 2020, and ending on December 31, 2020.

IV. DRAFTING INFORMATION

The principal author of this notice is NaLee Park of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact NaLee Park at (202) 317-6798 (not a toll-free call).