

Summary of Payroll and Payroll Tax Benefits to Small Business

[H.R. 748 S.3548 CARES ACT](#)

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was enacted on March 27, 2020, in response to the COVID-19 emergency. The CARES Act provides \$2 trillion of economic support and stimulus. What follows is focused specifically on the CARES Act's **provisions related to taxation of employee benefits, compensation, and wages** as follows:

- Payroll tax deferral
 - Employee retention tax credits
 - Executive compensation limitations related to the CARES Act's business loans
 - Paycheck Protection Program Loan
 - EIDL Emergency EIDL Program Loan
 - Employer-provided tuition payment programs
1. **Payroll tax deferral | Defer payment of social security tax 6.2 % of wages, for up to two years.** <https://www.congress.gov/bill/116th-congress/house-bill/748/text#H9DA420060D444C78A8B451F3062E8827>
 - a. 50% payment due by 12-31-21 <https://www.congress.gov/bill/116th-congress/house-bill/748/text#HE65BC593D38B4080A46C108CBFB9A347>
 - b. Balance due by 12-31-22 <https://www.congress.gov/bill/116th-congress/house-bill/748/text#H76275C5084BD41CDBE1BC51E9048E3B4>

[Relief from Penalty for Failure to Deposit Employment Taxes](#): CARES Act Section 2302 delays the timing of required federal tax deposits for certain employer payroll taxes and self-employment taxes incurred between March 27, 2020 (the date of enactment) and December 31, 2020. Amounts will be considered timely paid if 50% of the deferred amount is paid by December 31, 2021, and the remainder by December 31, 2022.

How to Apply: The IRS is expected to revise Form 941, Employer's Quarterly Federal Tax Return, to track the employer's decision to defer tax deposits.

Applicable employment taxes include the employer's share of Old-Age, Survivors, and Disability Insurance Tax (Social Security) under IRC Section 3111(a), which is 6.2% of wages up to the wage base (\$137,700 in 2020)

Deferral is available for employers remitting payroll taxes through an agent under IRC Section 3504 or a certified professional employer organization (CPEO). In these cases, the employer can direct the agent or CPEO to defer the applicable tax payments. Employers will be solely liable for making the deposits timely under the deferred deadlines, including with respect to worksite employees performing services for a CPEO customer.

There is no dollar cap on the wages that are counted in calculating the taxes that may be deferred. The payroll tax deferral does not apply to federal income tax withholding, the

Hospital Insurance (Medicare) tax, or the employee's portion of Social Security tax. **In addition, the payroll tax deferral is not available to a taxpayer that obtains a Small Business Act loan under the Paycheck Protection Program established by the CARES Act if the loan is later forgiven.**

2. Employee Retention Tax Credit | Refundable tax credit for up to 50% of wages paid.

CARES Act Section 2301 creates a new employee retention credit (the Retention Credit) for wages paid from March 13, 2020 to December 31, 2020, by employers that are subject to closure or significant economic downturn due to COVID-19. The credit amount takes into account up to 50% of qualified wages, up to \$10,000. Thus, the maximum Retention Credit amount is \$5,000 per employee. The refundable payroll tax credit summary:

- Up to \$5,000 per employee per quarter
- Conditions:
 - be an ongoing concern at the beginning of 2020,
 - experienced a whole or partial shutdown, and
 - saw a drop in revenue of at least 50 percent in the first quarter compared to the first quarter of 2019.

The Retention Credit applies to:

- The employer's share of Social Security tax under IRC Section 3111(a) (6.2% of wages)
- The portion of the employer's and employee representative's share of RRTA tax under IRC Sections 3211(a) and 3221(a) that corresponds to the 6.2% Social Security tax rate due

If the Retention Credit exceeds the employer's Social Security or RRTA tax liability for the quarter, the excess may be refunded to the employer. In the case of an employer for whom wages are paid by a CPEO, the Retention Credit belongs to the customer, not the CPEO.

To be eligible for the Retention Credit, an employer must carry on a trade or business in 2020 that experiences one of the two following COVID-19-related occurrences: (1) operations were fully or partially suspended on orders from a governmental authority due to COVID-19 (COVID-19 Shutdown), or (2) the business experienced a 50% reduction in gross receipts for a calendar quarter as compared to the same calendar quarter in the prior year (Gross Receipts Decline). The gross receipts test is governed by IRC Section 448(c), which evaluates gross receipts on an aggregated basis, combining parents and subsidiaries, brother and sister entities, combined groups, and affiliated service groups, under the rules of IRC Section 52(a) and (b), and IRC Section 414(m) and (o). Tax-exempt organizations may be eligible for the Retention Credit to the extent the organizations' operations experience a COVID-19 Shutdown. **Governmental employers and any employer that receives a Paycheck Protection Program loan are not eligible for the Retention Credit.**

Important:

1. Tax-exempt organizations: the entity's whole operations must be taken into account when determining eligibility.

2. NOTE: employers receiving Paycheck Protection Program loans are **not eligible** for these credits.

Advance Payment of Employer Credit: The IRS issued a new form and [instructions](#) for employers to use to obtain advance payments of three tax credits that were created to help businesses cope with the coronavirus pandemic. Employers may file new [Form 7200](#), *Advance Payment of Employer Credits Due to COVID-19*, to obtain advances of employment taxes that are refundable as a result of the new tax credits: the employee retention credit, the qualified sick leave credit, and the qualified family leave wages credit. Employers file Form 7200 by faxing the completed form to 855-248-0552.

Filing Form 7200

According to the IRS, employers can file the form for advance credits anticipated for a quarter at any time before the end of the month following the quarter in which the employer paid the qualified wages. **Employers are permitted to file Form 7200 several times during each quarter. Employers should not file Form 7200 after they file Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2020, or file 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, for 2020 and should not file the form to request advance credits for any anticipated credit for which the employer has already reduced its employment tax deposits.**

For employers of more than 100 employees, qualified wages are wages (as defined under the Federal Insurance Contributions Act) paid for services an employee is not providing due to a COVID-19 Shutdown or Gross Receipts Decline. The wages taken into account for such employers are limited to the amount the employee would have been paid for an equivalent amount of work in the 30 days immediately preceding the period for which the employee is paid.

For employers of 100 or fewer employees, qualified wages are wages paid to any employee during a COVID-19 Shutdown or during a calendar quarter of Gross Receipts Decline, without regard to whether the employee is providing services. In determining how many employees are employed, the average number of full-time employees during 2019, as determined under IRC Section 4980H, applies.

In either case, qualified wages include qualified health plan expenses paid or incurred by the employer for health coverage excludable under IRC Section 106(a). These expenses are allocated to qualified wages as prescribed by the Treasury Secretary, but absent a contrary provision by the Secretary, a pro rata allocation among employees is permitted.

The Retention Credit is subject to a number of rules to prevent double-dipping. An employer's deduction for wages must be reduced by the amount of the Retention Credit. In addition, an employer may not take into account the following:

- Wages taken into account under sections 7001 and 7003 of the Families First Act, which provides payroll tax credits for paid leave required to be provided by small employers (see Tax Alert 2020-0586)

- Wages taken into account under IRC Section 45S (income tax credit for paid family and medical leave)
- Wages paid to certain related individuals specified in IRC Section 51(i)(1)
- Wages of an employee for whom a work opportunity tax credit is claimed

IRS Employee Retention Credit: <https://www.irs.gov/newsroom/irs-employee-retention-credit-available-for-many-businesses-financially-impacted-by-covid-19> Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit.

Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter. If the employer's employment tax deposits are not sufficient to cover the credit, the employer may receive an advance payment from the IRS by submitting [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#).

Eligible employers can also request an advance of the Employee Retention Credit by submitting [Form 7200](#).

More information here: <https://taxnews.ey.com/news/2020-0761-cares-act-includes-new-provisions-on-employee-benefits-compensation-and-wages>

3. **Business Loan Programs | Payment deferral and/or forgiveness:**

Guidance & Loan Resources: <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources#section-header-2>

EIDL Loan Application: <https://covid19relief.sba.gov/#/>

The Paycheck Protection Program is a loan designed to provide a direct incentive for small businesses and nonprofits (501c3) to keep their workers on the payroll. This program is for any small business with less than 500 employees (including sole proprietorships, independent contractors and self-employed persons), private non-profit organization 501(c)(3) or 501(c)(19) veterans organizations affected by coronavirus/COVID-19.

- Loan Amount: 2.5 x monthly payroll
- **How Apply: local banks**
- Loans available April 3, 2020
- Available: through June 30, 2020

SBA will forgive loans if all employees are kept on the payroll for eight weeks after the loan. Amount is forgiven by SBA loan administrator paying the forgiven amount to the lender. The money is used for payroll, benefits, rent, mortgage, mortgage interest, or utilities. Employers will have loans forgiven in whole or part if they:

- maintain employment for the 8 weeks after origination of loan, or
- rehire employees by June 30 (laid off between 2/15 and 4/26)

Limits on amount forgiven:

- Cannot exceed principal of the loan

- Reduced by ratio where the numerator is average number of FTEs for the 8-week period beginning on the date of the loan and the denominator is the average number of FTEs for 2/15/19 – 6/30/19 or 1/1/20 – 2/29/20
- Further reduced by reductions in salary in excess of 25% for employees employed during the quarter preceding the date of loan whose pay did not exceed \$100,000
 - Disregarded if reduction in force or reduction in salary during 2/15/20 – 4/26/20, and rehire/restored by 6/30/20
- Must apply for PPL forgiveness
- Decision on application with 60 days
- Guidance to be issued by April 26, 2020

Businesses in certain industries may have more than 500 employees if they meet the SBA's size standards for those industries.

The loan will be fully forgiven if the funds are used for payroll costs, interest on mortgages, rent, and utilities (due to likely high subscription, at least 75% of the forgiven amount must have been used for payroll). Loan payments will also be deferred for six months. No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees.

Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease.

This loan has a maturity of 2 years and an interest rate of .5%.

If you wish to begin preparing your application, you can [download a sample form](#) to see the information that will be requested from you.

In addition, there are two **Emergency** Economic Injury Disaster Loans Program, these are loans without forgiveness options:

1. Normal EIDL (Emergency EIDL Program)
2. Emergency EIDL Grants

1. Details of the Normal EIDL:
 - Who eligible: private nonprofit
 - Loan Amount: up to \$2 million
 - **How to Apply:** [SBA online](#)
 - Available: through December 31, 2020
 - Based on credit score
 - Waives personal guarantee up to \$200,000
 - **Forgiveness: No**
2. Details of Emergency EIDL Program:
 - Who eligible: private nonprofit
 - Loan Amount: up to \$10,000 in 3 days
 - **How to Apply:** [SBA online](#)

- Available: through December 31, 2020
- **Forgiveness: No**

4. **Employer-provided tuition payment programs** | <https://www.congress.gov/bill/116th-congress/house-bill/748/text#H6EC2102D2A4E4392B16B6F05A7D9B433>

From March 27 through Dec. 31, 2020, the CARES Act expands tax code Section 127 to allow employers to reimburse employees up to \$5,250 for most student loan payments, which can be excluded from taxable income. Employer must have written plan.

IRC Section 127 excludes up to \$5,250 per year of employer-provided educational assistance from an employee's income. CARES Act Section 2206 amends IRC Section 127 to temporarily treat an employer's payment of principal or interest on an employee's student loan as excludable employer-provided educational assistance. To be excluded, the payments must be made after March 27, 2020 and before January 1, 2021. The income exclusion, including the loan payments, remains capped at \$5,250 per year.

The new law stipulates:

- The payments must be for a student loan incurred for the education of the employee (i.e., they cannot be for an employee's child's or spouse's student loans).
- The rules for education-assistance programs under Section 127 will apply. For instance, an employer must adopt a written plan describing the benefit and communicate the terms of the program to eligible employees, and the program cannot favor highly compensated employees.

The law also allows most holders of federal student loans to suspend their monthly payments through Sept. 30, 2020, without any interest accruing.

Implications: For many years, employers have sought ways to help their employees repay their student loans in a tax-favored manner. Despite the CARES Act's very limited scope, some employers may view this as a steppingstone for future expansion.