

Client Alert

UPDATE – Payroll Tax Relief under the CARES Act and Other Tax Considerations in Connection with the Paycheck Protection Program

On Friday, March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law in response to the Coronavirus (COVID-19) pandemic.

In addition to providing significant financial relief for small businesses, individuals and families through various loans and aid programs, the CARES Act also makes available certain payroll tax credit and deferral programs for eligible businesses.

Employee Retention Payroll Tax Credit

The Act grants to eligible employers a refundable credit against the employer's share of Social Security taxes (only the 6.2% tax and not the 1.45% Medicare tax) for each calendar quarter in an amount equal to 50% of the qualified wages of each employee during the calendar quarter. An eligible employer is any employer that was carrying on a trade or business during 2020 and, with respect to a calendar quarter (a) had the operation of its business fully or partially suspended due to orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19, or (b) had decline in its gross receipts of more than 50% from its gross receipts for the corresponding calendar quarter of the prior year. The qualification under test (b) above ends in the calendar quarter following the calendar quarter in which the gross receipts are greater than 80% of the gross receipts for the same calendar quarter in the prior year. Qualified wages means, (x) in the case of an employer having an average number of full-time employees greater than 100, wages paid with respect to its employees who are not providing services due to the circumstances described in (a) and (b) above, and (y) in the case of an employer have 100 or fewer full time employees, the wages of all employees. All persons treated as a single employer under Internal Revenue Code rules are aggregated for these purposes. Qualified wages, including group health plan expenses paid by the employer, for each employee cannot exceed \$10,000 resulting in a maximum credit per employee of \$5,000. The credit only applies with respect to wages paid

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after March 12, 2020 and before January 1, 2021. An employer is not eligible for this benefit if it takes a PPP loan or if the employer is entitled to a Work Opportunity Credit with respect to these wages.

Partial Deferral of Payment of Payroll Taxes

The Act permits employers to defer payment on a portion of their payroll taxes. This provision only applies to the employer's 6.2% Social Security tax and does not apply to the 1.45% Medicare portion. The applicable payroll tax for the period beginning March 27, 2020 and ending before January 1, 2021 may be deferred by paying 50% of that amount by December 31, 2021 and the remaining 50% by December 31, 2022. For self-employed individuals, a similar provision applies for one-half of the self-employment Social Security tax (50% of the 12.4% tax). This deferral provision does not apply if the employer obtains a PPP loan and has indebtedness on that loan forgiven. An employer that applies for a PPP loan can take advantage of the payroll tax deferral provision until such time as the employer receives a decision from the lender that the PPP loan is forgiven, at which time any deferred payroll taxes continue to be deferred but no new payroll taxes can be deferred. Since many borrowers under the PPP anticipate having some of that loan forgiven, borrowers should consider this provision in connection with seeking such forgiveness and deferral.

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