DATE: MARCH 24, 2020

RE: FFCRA - Summary of Employer Tax Credits for Required Paid Sick Leave and Required Paid FMLA Leave

CAUTION – THIS SUMMARY IS BASED ON THE LAW IN EFFECT AS OF 3/24/2020. IT WILL BE UPDATED AS AND WHEN ADDITIONAL LEGISLATION IS ENACTED AND/OR FORMAL GUIDANCE IS ISSUED BY THE IRS.

The following is a summary of the employer tax credits for required paid sick leave and required paid FMLA leave under the Families First Coronavirus Response Act enacted 3/18/2020 (FFCRA).

1. **Tax Withholding.** Required sick leave and/or required FMLA leave paid to current and/or former employees continue to be treated as W-2 wages subject to –

   - Federal income tax withholding.
   - Employee Social Security tax withholding
   - Employee Medicare tax withholding.

   Nothing in the FFCRA changes the regular tax withholding rules that apply to payments made to affected employees.

2. **Tax Credit.** The FFCRA employer tax credit applies to the EMPLOYER Social Security tax payable on W-2 wages for a calendar quarter. The tax credit does NOT apply to the EMPLOYER Medicare tax.

   **Amount of Tax Credit.** The dollar amount of the tax credit for a calendar quarter is equal to the sum of the following:

   - The dollar amount of the Required Sick Leave paid to employees, PLUS
   - The dollar amount of the Required FMLA Leave paid employees, PLUS
   - The dollar amount of health insurance premiums paid by the employer that are allocable to Required Sick Leave wages. (The IRS is supposed to explain how this allocable amount is determined).
Application of Tax Credit. The Tax Credit applies to the total EMPLOYER Social Security tax that is payable for a calendar quarter on W-2 wages paid to ALL employees during that quarter.

Refund of Excess Tax Credits. If the total amount of tax credits for a calendar quarter exceeds the total EMPLOYER Social Security tax payable for that quarter, then the EMPLOYER can claim the excess as a refundable overpayment.

How is the Tax Credit Claimed? Normally Social Security taxes are reported on IRS Form 941 - Employer’s QUARTERLY Federal Tax Return. Although the IRS has not done so yet, we expect that the IRS will revise this Form to include the Tax Credits and claims for refundable overpayments.

3. Employer Social Security and Medicare Tax Do NOT Apply to Required Sick Leave and Required FMLA Leave Payments. The FFCRA provides that required sick leave and required FMLA leave payments made to employees are NOT subject to the EMPLOYER Social Security and Medicare taxes.

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