



EMPLOYER TAX CREDITS FORM EMPLOYEE RETENTION CREDIT GUIDANCE POSTED

The IRS on Tuesday (April 7, 2020) issued a new form and instructions (www.irs.gov/pub/irs-pdf/i7200.pdf) 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 (<https://www.irs.gov/pub/irs-pdf/f7200.pdf>), 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. The qualified sick leave credit and the qualified family leave wages credit were enacted by the Families First Coronavirus Response Act, P.L. 116-127. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136, created the employee retention credit and provided for advance repayment of the first two credits. The IRS also issued guidance on the employee retention credit.

ELIGIBLE CREDITS

Qualified family leave credit: The Families First Coronavirus Response Act requires employers with fewer than 500 employees to provide public health emergency leave under the Family and Medical Leave Act, P.L. 103-3, when an employee is unable to work or telework due to a need for leave to care for a son or daughter under age 18 because the school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency related to COVID-19. (Employers with fewer than 50 employees can be exempted from the requirement.) Subject to certain limitations, an employer receives a payroll tax credit equal to 100% of the qualified family leave wages paid by the employer. Self-employed individuals can get the credit as well but cannot use Form 7200 to obtain it.

Qualified paid sick leave credit: The Families First Coronavirus Response Act also requires employers with fewer than 500 employees to provide up to 80 hours of paid sick time through the end of this year if an employee is unable to work due to being quarantined or self-quarantined or having COVID-19 or because the employee is caring for someone who is quarantined or self-quarantined or has COVID-19 or if the employee is caring for children whose school has been closed because of COVID-19 precautions. (Employers with fewer than 50 employees can be exempted from the requirement.) Subject to certain limitations, an employer can receive a payroll tax credit equal to 100% of the qualified sick leave wages paid by the employer. Self-employed individuals are also permitted to receive this credit.

Employee retention credit: The employee retention credit is available for employers that close or have much-reduced gross receipts due to the coronavirus pandemic. The credit is designed to encourage businesses to keep employees on their payroll by providing a refundable tax credit of 50% of up to \$10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19. (For more, see "Guidance on Employee Retention Credit," below.)

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. Employers file Form 7200 by faxing the completed form to 1-855-248-0552.

Guidance on Employee Retention Credit

The IRS also issued its first informal guidance on the employee retention credit, which was just enacted last week ([IR-2020-62 \(https://www.irs.gov/newsroom/irs-employee-retention-credit-available-for-many-businesses-financially-impacted-by-covid-19\)](https://www.irs.gov/newsroom/irs-employee-retention-credit-available-for-many-businesses-financially-impacted-by-covid-19)). The credit is available to all employers regardless of size, including tax-exempt organizations, but not to state and local governments and their instrumentalities and small businesses that take small business loans.

Qualifying Employers Must Fall Into One of Two Categories:

- The employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter; or
- The employer's gross receipts are below 50% of the comparable quarter in 2019. Once the employer's gross receipts go above 80% of a comparable quarter in 2019, the employer no longer qualifies after the end of that quarter. These measures are calculated each calendar quarter.

The amount of the credit is 50% of qualifying wages paid up to \$10,000 in total. Wages paid after March 12, 2020, and before Jan. 1, 2021, are eligible for the credit. Wages also include a portion of the cost of employer-provided health care.

Qualifying wages are based on the average number of a business's employees in 2019. However, for purposes of the credit, eligible wages do not include wages counted for purposes of the paid sick leave and paid family leave payroll tax credits. Also, if an employer receives a covered paycheck protection program loan under Section 1102 of the CARES Act, the employer is not eligible to claim an employee retention credit.

Employers with fewer than 100 employees: *If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless of whether they worked or not. If the employees worked full time and were paid for full-time work, the employer still receives the credit.*

Employers with more than 100 employees: *If the employer had more than 100 employees on average in 2019, then the credit is allowed only for wages paid to employees who did not work during the calendar quarter.*

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 exceed the credit, the employer may receive an advance payment from the IRS by submitting Form 7200.