



CORONAVIRUS

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IRS Reverses Course and Allows Eligible Employers to Count Health Costs for Furloughed Employees in Determining Retention Tax Credits

Under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), eligible employers are permitted to claim a retention payroll tax credit if they pay qualified wages after March 12, 2020, and before January 1, 2021. The Internal Revenue Service (“IRS”) recently modified FAQs, which are published on its website, to allow employers to include health plan expenses paid for furloughed employees as qualified wages for purposes of calculating the amount of the credit, without regard to whether the employees are receiving wage payments. This change undoes a contrary position that the IRS had taken, which counted health plan expenses qualified wages only during periods when an employee was receiving wage payments.

Who is Eligible for the Credit

The CARES Act defines an eligible employer for purposes of the employee retention credit as an employer that carries on a trade or business during 2020 (including a tax-exempt organization), if the employer suffers an economic hardship because the employer either: (i) fully or partially suspends its operations during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or (ii) experiences a “significant decline” in gross receipts during the calendar quarter. The

IRS has issued guidance as to what constitutes a suspension of operations due to a government order and how to measure a significant decline in gross receipts.

How is the Credit Calculated

Eligible employers that averaged more than 100 full-time employees in 2019 may only avail themselves of the credit for qualified wages paid to an employee that is not performing services. For eligible employers that averaged 100 or fewer full-time employees in 2019, qualified wages are wages paid to any employee during a period of economic hardship.

The amount of the retention tax credit is 50 percent of the qualified wages paid to each employee, up to a per-employee maximum of \$10,000 of qualified wages. The credits can be applied against all of the employer’s payroll tax deposit liabilities, including the employer’s share of Social Security and Medicare taxes, withheld income taxes, and the employee’s share of Social Security and Medicare taxes.

Who Benefits from the Change in the IRS Position

The change in the IRS’ position benefits eligible employers with furloughed employees who have stopped receiving wage payments but are continuing to receive employer-subsidized health plan coverage. It also, for example, assists an eligible

employer above the 100 full-time employee threshold that has reduced the hours of service and salary payments of a group of its employees by 25 percent but is continuing to provide unreduced health plan coverage. Under the revised guidance, the employer is allowed to treat 25 percent of the health plan expenses paid by the employer as qualified wages.

For additional information, please contact:

**Daniel L. Morgan, Washington, D.C. Office
Partner, Employee Benefits & Executive Compensation
202.420.4779 | dmorgan@blankrome.com**