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Compliance Advisor

## What every HR leader should know about compliance



### New IRS Form 7200 Families First Coronavirus Response Act Leave Tax Credit and Coronavirus Aid, Relief, and Economic Security Act Employee Retention Tax Credit

The Internal Revenue Service (IRS) recently released IRS [Form 7200](#) along with completion [Instructions](#). Form 7200 may be used by an employer to request an advance payment of tax credits for paid leave under the Families First Coronavirus Response Act (FFCRA) and under the Coronavirus Aid, Relief, and Economic Security Act's (CARES Act) employee retention tax credit (ERTC) provisions. The Instructions to Form 7200 are straightforward and provide line-by-line completion guidance.

#### **FFCRA Tax Credits**

Under the FFCRA, an employer is entitled to a tax credit equal to 100percent of the paid sick and family leave paid to qualifying employees between April 1, 2020, and December 31, 2020. The maximum tax credit attributable to an employee's paid leave under the Emergency Paid Sick Leave Act (EPSLA) is \$2,000 or \$5,110 (depending on the employee's qualifying reason for leave) for the two week period. Under the Emergency Family and Medical Leave Expansion Act (EFMLEA), the maximum tax credit attributable to an employee's paid child care leave is \$10,000 for the ten-week period of paid leave.

The employer is able to use the FFCRA tax credit presently by reducing the current quarterly payroll tax obligation by the amount of the FFCRA tax credit, without the need to wait until the employer's annual tax return is filed. Form 7200 is not required to be filed in order for the employer to use the tax credit now as opposed to when the employer's annual tax filing is made.

#### **Employee Retention Tax Credit**

The Employee Retention Tax Credit (ERTC) provides employers with a credit against employment taxes on qualifying wages paid to an employee after March 12, 2020, and before January 1, 2021, which includes health insurance benefits paid by the employer. Employers eligible for the ERTC are those whose operations are fully or partially suspended 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 employers that experience a significant decline in gross receipts during the calendar quarter.

The tax credit is equal to 50 percent of qualifying wages not in excess of \$10,000 per employee for 2020, which caps the tax credit at \$5,000 per employee. If an employer employs 100 or fewer employees, qualifying wages includes all wages whether or not in the form of paid leave or for the performance of services. Employers employing 100 or more employees may only include paid leave in the determination of qualifying wages for ERTC purposes. The employer is able to use the tax credit presently by reducing the current quarterly payroll tax obligation by the amount of the tax credit, without the need to wait until the employer's annual tax return is filed. Form 7200 is not required to be filed in order for the employer to use the tax credit now as opposed to waiting until the filing of the employer's annual return.

### **Tax Credit Advances**

Employers may receive an advance payment of tax credits if the employer's employment tax obligation is less than the amount of the FFCRA tax credit and the ERTC to which the employer is entitled. Eligible employers should first reduce their quarterly employment tax deposits to account for the tax credits. Thereafter, an employer may request payment of an amount determined by subtracting the employment tax liability from the available tax credits. In the event the employment tax liability is less than the tax credits, the employer may use Form 7200 to request a refund of the excess. Alternatively, the employer may wait to obtain the refund until the employer claims the tax credits on the employer's annual tax return.

As an example, the IRS instructions to Form 7200 provide that if an employer is entitled to an ERTC of \$10,000 and was required to deposit \$8,000 in employment taxes, the employer could retain the entire \$8,000 of taxes as a portion of the refundable tax credit to which the employer was entitled and file a request for an advance payment for the remaining \$2,000.

An employer may request advance payment of the tax credits anticipated for a calendar quarter, at any time before the end of the month following the quarter in which the employer paid the qualified wages. An employer may file Form 7200 several times during each calendar quarter if necessary. The Form 7200 is filed by faxing the completed document to 855-248-0552.

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