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CLIENT ALERT

Mnuchin Encourages Businesses to Take Advantage of Payroll Retention Credit, and IRS Paves the Way with New Guidance and Form

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Secretary Mnuchin promoted the credit on March 31, 2020, saying “We encourage businesses to take full advantage of the Employee Retention Credit to keep employees on their payroll during these challenging times. This new credit is available to all employers, regardless of size of business, and covers up to 50 percent of up to $10,000 in wages.”

That same day, the IRS issued Notice 2020-22, FAQs, and new Form 7200 on March 31, 2020, providing instructions on how to receive the benefits of the credit immediately, by reducing their employment tax deposits without penalty and allowing for advance payment of the credit.

- Taxes related to wages include employer and employee portions of social security, Medicare, and income tax withholdings.
- While employment taxes are typically reported on Form 941 and paid quarterly, deposits of employment taxes are made by employers on a monthly, bi-weekly, or daily basis.
- First, Section 2302 of the CARES Act delayed employers’ obligation to pay the employer portion of social security taxes due on wages paid from March 27, 2020 to December 31, 2020 until December 31, 2021 (50%) and December 31, 2022 (remainder). Taxes paid on those dates will be considered timely paid and timely deposited. Employers can therefore stop deposits of employer portion FICA (6.2%) on wages for the remainder of 2020.
- Second, under Notice 2020-22, the IRS issued guidance to allow employers to reduce their employment tax deposits in anticipation of the credits.
    - Employers who paid qualified wages under CARES or Families First during a particular quarter may reduce the amount of their federal employment tax deposits for that quarter by the amount of qualified wages paid for that quarter, so long as that amount does not exceed the anticipated credits under the CARES payroll tax credit, and the Families First Qualified Leave credit for the quarter.
    - If the amount not deposited is less than or equal to the amount of reasonably anticipated credit, the employer will not be subject to a failure to deposit penalty under IRC 6656.
- If the amount of anticipated credit exceeds the remaining federal employment tax deposits for the quarter, employers may file Form 7200 to apply for an advance of the credit.
    - Employers should only seek advance payment of amounts that exceed the reduction in deposits possible for a particular quarter. For example, if an employer paid $10,000 in qualified wages for a quarter, and is anticipating a credit of $5,000, but is only able to reduce its employment tax deposits by $3,000, it may apply for advance payment of $2,000 (not the full $5,000). An employer must not fully reduce deposits if it has not paid qualified wages during that quarter. Doing so could result in penalties.
- Employers will report the qualified wages and applicable credits on the form on which it reports federal employment taxes, usually quarterly Form 941. Credits for qualified wages will be applied to employment taxes due on all employees,

even those whose wages do not qualify for the credit. Any credit that exceeds the employment taxes due will be treated as an overpayment and applied to any remaining employment tax reported on that return, or any other outstanding tax liabilities. Any remaining amounts will be refunded to taxpayer per usual refund procedures.

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