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The Employer Playbook To Coronavirus Relief – Tax Credits

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The recently-enacted spending package, The Consolidated Appropriations Act (Act), contains additional emergency coronavirus relief including provisions that extend, modify or clarify provisions of both the Family First Coronavirus Relief Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This alert is intended to be an overview of some of the tax provisions of the over 5,500 page Act. The tax credits described below require the satisfaction of certain conditions and some have a limited shelf-life.

I. The employer tax credit for paid family and medical leave under the Family and Medical Leave Act (originally scheduled to expire at the end of 2020) is now extended through December 31, 2025. This permits employers to take a business credit based upon a percentage of eligible FMLA wages paid to qualifying employees.

II. The mandate to provide paid family leave and sick leave under the Families First Coronavirus Response Act (FFCRA) ends on December 31, 2020, but the refundable tax credits for providing such leave (as if the FFCRA mandate were still in effect) are now extended through March 31, 2021. This means that eligible employers that extend paid family leave and sick leave to employees through March 31, 2021 may continue to receive the refundable tax credits. See: https://www.saul.com/publications/alerts/paid-sick-and-family-leave-enacted-law-response-coronavirus. The tax credits provided under the FFCRA against self-employment tax for certain eligible self-employed individuals are also extended until March 31, 2021. See guidance issued after the FFCRA was enacted and updated before the Act became law: https://www.irs.gov/newsroom/special-issues-for-employees#specific-provisions-related-self-employed-individuals.

III. The CARES Act employee retention tax credit (ERTC) is modified and extended through June 30, 2021. This refundable tax credit is available if you have to reduce or suspend operations due to COVID-19 or have a decline in your gross receipts. The amount of the credit was based on a percentage of "qualified wages," the size of your workforce and whether qualifying wages were paid to employees continuing to work for you or employees who were not working. (See: blog on ERTC here). Here are some of the highlights of the ERTC in effect from January 1, 2021 through June 30, 2021:

- Permits employers with up to 500 employees (increased from 100) to utilize the credit;
- Increases the allowable credit from 50 percent of qualified wages to 70 percent of qualified wages;
- The term "qualified wages" is clarified to include group health care expenses paid on behalf of an employee, even if the employee is not receiving wages;
- Increases the limit on creditable wages from $10,000 a year to $10,000 a quarter;

- Decreases the reduction in gross receipts needed to qualify for the credit from 50 percent to 20 percent and provides for an election to use the prior quarter's gross receipts.
- Confirms prior guidance that employers who receive Paycheck Protection Program (PPP) loans can qualify for the ERTC on any wages that are not paid with proceeds forgiven by the PPP.

IV. If you operated your business in an area that was declared a major disaster by the President (other than due to COVID-19) because of a disaster event that occurred during the period beginning December 28, 2019 and ending 60 days after the date the Act becomes law, you are entitled to a tax credit of 40 percent of the wages (up to a maximum of $6,000 per employee) paid to qualified employees.

If you have questions about whether your business qualifies for any of the tax credits described in this alert or how you might take advantage of any COVID-19 relief provided by the Act, contact the authors.

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