

Appendix to Tax Talk 2020-19 Employer payroll tax credits, loans, and other CARES Act incentives

Coronavirus Benefit Coordination

Congress recently passed both the Families First Coronavirus Response Act (the “FFCRA”) and the Coronavirus Aid, Relief, and Economic Security (the “Act”). Combined, these two acts provide multiple relief programs designed to ease the burden of employee expenses and help businesses weather the economic storm created by the coronavirus. While each benefit has its pros and cons, many are mutually exclusive, and clients will need to determine which benefit makes the most sense for them.

The following provides a summary of these benefits, who is eligible to take each benefit, and how the benefit coordinates with others. Please see Tax Talk 2020-19 for a more robust explanation of the provisions below.

Description of the benefit	Who can use the benefit	Coordination with other benefits
Paycheck Protection Program ("PPP") This is a small business loan issued by private lenders and fully guaranteed by the federal government. The principal purpose of this loan is to help employers retain their employees. The loans are intended to cover 8 weeks of payroll expenses, applied for at any date between February 15 and June 30, 2020. A key component of the loan is that it may be fully or partially forgiven 8 weeks after taking out the loan if borrowers verify the loan proceeds were properly used for payroll and other related costs. The extent of forgiveness depends on factors relating to employee retention.	A small business (as defined by the Small Business Admin. (“SBA”)) with 500 or fewer employees or a small business that otherwise meets the SBA’s size standards (if employing >500 employees). Section 501(c)(3) nonprofits with 500 or fewer employees; sole proprietors; independent contractors; gig economy workers; and self-employed individuals. Restaurants, hotels, and other “accommodation and food services” coded businesses are eligible if each location has 500 or fewer employees. Independently owned franchises with under 500 employees, who are approved by the SBA, are also eligible.	Employers taking out a small business loan under the PPP will not be permitted to take the Employee Retention Credit. Loans forgiven under the PPP will prohibit an employer from utilizing the Payroll Tax Deferral. Borrowers may apply for a PPP loan in addition to: • other SBA financial assistance, so long as the PPP loan is not used for the same purpose as the other SBA loan(s); and • an Emergency EIDL (see below), so long as: (1) the PPP loan is not used for the same purpose, and (2) any grant received under the EIDL reduces the forgiveness amount of the PPP loan.
Employee Retention Credit This refundable credit allows eligible employers to take a quarterly credit against the employer’s 6.2% share of the Social Security (FICA) payroll tax. The credit is refundable if it exceeds the employer’s liability for payroll taxes. The credit is available to employers who, as a result of COVID-19, have had operations fully or partially suspended or have experienced a significant decline in gross receipts over the PY. The amount of the credit is 50% of qualified wages.	The determination of qualified wages depends on the number of employees: For 100 employees or less: all amounts paid to employees, whether they’re able or unable to work, while the employer is fully or partially suspended or has experienced a significant decline in gross receipts over the PY. For more than 100 employees: only amounts paid to employees who are unable to work due to the business being shut down or a significant decline in gross receipts because of COVID-19.	Employers taking the Employee Retention Credit cannot: • take a small business loan under the PPP, or • utilize the Work Opportunity Tax Credit. Additionally, in calculating this credit, employers may not use the same wage expenses used to qualify for the IRC section 45S employer credit for paid family and medical leave (no double-dipping).

Payroll Tax Deferral The Act allows employers to defer payment of the employer's 6.2% share of the Social Security (FICA) payroll tax—50% of deferred payroll tax liability would be due by Dec. 31, 2021, with remaining 50% due by Dec. 31, 2022.	There is no type or employment size restriction.	Employers with loans forgiven under the PPP cannot take advantage of the payroll tax deferral.¹
Emergency Paid Sick Leave Credit This refundable payroll tax credit is designed to assist with the cost of providing up to two weeks of paid coronavirus-related sick leave to employees. The credit is limited to 10 days and is in effect for wages paid from April 1 to Dec. 31, 2020. The credit is limited to \$5,110 per sick and/or quarantined employee and \$2,000 per employee caring for either a sick and/or quarantined individual or a minor child.	This credit applies to all employers with fewer than 500 employees and all governmental employers.	Employers taking the emergency paid sick leave credit can also take the emergency paid FMLA credit, when applicable. In calculating this credit, employers may not use the same wage expenses used to qualify for the IRC section 45S employer credit for paid family and medical leave (no double-dipping).
Emergency Paid Family and Medical Leave Credit This refundable payroll tax credit is designed to compensate employers for providing paid coronavirus-related family leave to employees as required under the Emergency Family and Medical Leave Expansion Act. This credit is in effect for wages paid from April 1 to Dec. 31, 2020. The credit is limited to \$10,000 per employee.	This credit applies to all employers with fewer than 500 employees and all governmental employers.	Employers taking the emergency paid FMLA credit can also take the emergency paid sick leave credit, when applicable. In calculating this credit, employers may not use the same wage expenses used to qualify for the IRC section 45S employer credit for paid family and medical leave (no double-dipping).
Work Opportunity Tax Credit This pre-existing nonrefundable credit is available to employers for hiring individuals from certain targeted groups who have consistently faced significant barriers to employment. The maximum amount of the credit varies by target group (veteran or non-veteran, further broken down into subcategories) and is calculated based on a percentage of qualified wages for employees meeting certain employment requirements.	The WOTC has no general restrictions, but due to its nonrefundable nature, it can only be utilized by for-profit employers with tax liabilities. A special rule exists for qualified tax-exempt entities, allowing for them to take the credit against their 6.2% employer share of FICA.	Employers taking this credit will be disallowed from taking the Employee Retention Credit.

Emergency Economic Injury Disaster Loan (“EIDL”)

This is a loan up to \$2 million at lower interest rates provided through the SBA; principal and interest may be deferred. An EIDL is available to pay for expenses that could have been met by the business had the disaster not occurred, including payroll and other operating expenses.

The Act also establishes an emergency grant of up to \$10,000 to EIDL applicants in advance of the loan to cover certain sick pay, maintain payroll, meet increased costs to obtain materials, make rent or mortgage payments, and repay obligations that cannot be met due to revenue losses.

An EIDL is available to businesses in operation on Jan. 31, 2020 with 500 or fewer employees, and includes sole proprietors, independent contractors and non-profits.

Employers may take this loan on conjunction with a PPP loan so long as is not used for the same purpose as the PPP loan.

This loan is generally chosen when an employer has significant non-payroll costs not covered by a forgivable SBA loan and/or it's in lieu of another loan that won't be forgiven due to the EIDL's favorable terms.

Footnotes:

- 1 The interaction between the payroll tax deferral and a PPP loan when loan forgiveness is intended and/or pending is unclear and needs to be addressed. We are awaiting further guidance to clarify this situation.