



COVID-19-Related Employee Retention Credits: How to Claim the Employee Retention Credit FAQs

Alert



Note that the Taxpayer Certainty and Disaster Tax Relief Act of 2020, enacted December 27, 2020, amended and extended the employee retention credit (and the availability of certain advance payments of the tax credits) under section 2301 of the CARES Act. These FAQs do not currently reflect the changes made by the Taxpayer Certainty and Disaster Tax Relief Act of 2020; however, please continue to check back on this page for any updates related to the change in law.

This FAQ is not included in the Internal Revenue Bulletin, and therefore may not be relied upon as legal authority. This means that the information cannot be used to support a legal argument in a court case.

72. How does an Eligible Employer claim the Employee Retention Credit for qualified wages?

Eligible Employers will report their total qualified wages for purposes of the Employee Retention Credit for each calendar quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return. Employers also report any qualified sick leave and qualified family leave wages for which they are entitled to a credit under FFCRA on Form 941. The Form 941 is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's share of social security and Medicare tax.

In anticipation of receiving the Employee Retention Credit, Eligible Employers can fund qualified wages by: (1) accessing federal employment taxes, including withheld taxes that are required to be deposited with the IRS, and (2) requesting an advance of the credit from the IRS for the amount of the credit that is not funded by accessing the federal employment tax deposits, by filing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#).

For more information, see [Deferral of employment tax deposits and payments through December 31, 2020](#).

The IRS recently posted Frequently Asked Questions addressing the employer's ability to defer the deposit of all of the employer's share of social security taxes due before January 1, 2021 under section 2302 of the CARES Act and reduce other employment taxes required to be deposited in an amount equal to the FFCRA sick leave and family leave credits and the Employee Retention Credit.

Example: Employer E paid \$10,000 in qualified wages (including qualified health plan expenses) and, after deferral of the employer's share of social security tax, is otherwise required to deposit \$8,000 in federal employment taxes for all of its employees for wage payments made during the same quarter as the \$10,000 in qualified wages. Employer E has no paid sick or family leave credits under the FFCRA. Employer E may keep up to \$5,000 of the \$8,000 of taxes Employer E was going to deposit, and it will not owe a penalty for keeping the \$5,000. Employer E will later account for the \$5,000 it retained when it files Form 941, Employer's Quarterly Federal Tax Return, for the quarter.

73. May an Eligible Employer reduce its federal employment tax deposit by the qualified wages that it has paid without incurring a failure to deposit penalty?

Yes. An Eligible Employer that pays qualified wages in a calendar quarter will not be subject to a penalty under section 6656 of the Internal Revenue Code (the "Code") for failing to deposit federal employment taxes if:

1. the Eligible Employer paid qualified wages to its employees in the calendar quarter before the required deposit,
2. the total amount of federal employment taxes that the Eligible Employer does not timely deposit, reduced by (a) any amount of the employer's share of social security tax deferred under section 2302 of the CARES Act, and (b) any amount of federal employment taxes not deposited in anticipation of the credits claimed for paid sick and/or family leave under the FFCRA, is less than or equal to the amount of the Eligible Employer's anticipated Employee Retention Credit for the qualified wages for the calendar quarter as of the time of the required deposit, and
3. the Eligible Employer did not seek payment of an advance credit by filing [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), with respect to any portion of the anticipated credits it relied upon to reduce its deposits.

For more information, about the relief from the penalty for failure to deposit federal employment taxes on account of qualified wages, see [Notice 2020-22](#) [PDF](#) and FAQs addressing the deferral of the deposit of all of the employer's share of social security taxes under section 2302 of the CARES Act and the reduction in deposits for credits, [Deferral of employment tax deposits and payments through December 31, 2020](#).

Example: Employer F is an Eligible Employer that does not receive a Paycheck Protection Program loan. In its first payroll period of the second quarter of 2020, Employer F pays \$10,000 in qualified wages and \$3,500 in qualified sick and family leave wages under the FFCRA, among other wages for the payroll period. Employer F has a federal employment tax deposit obligation of \$9,000 for the first payroll period of the second quarter of 2020 (of which \$1,500 relates to the employer's share of social security tax) prior to (a) any deferral of the deposit of the employer's share of social security tax under section 2302 of the CARES Act and (b) any amount of federal employment taxes not deposited in anticipation of credits for qualified sick and family leave wages under the FFCRA. Employer F reasonably anticipates a \$5,000 Employee Retention Credit (50 percent of qualified wages) and a \$3,500 credit for paid sick and family leave (100 percent of qualified sick and family leave wages) thus far for the second quarter.

Employer F first defers deposit of the \$1,500 employer's share of social security tax under section 2302 of the CARES Act. This preliminarily results in a remaining federal employment tax deposit obligation of \$7,500. Employer F then reduces this federal employment tax deposit obligation by the \$3,500 anticipated credit for qualified sick and family leave wages, leaving a federal employment tax deposit obligation of \$4,000. Finally, Employer F further reduces the deposit of all remaining federal employment taxes by \$4,000 for the \$5,000 anticipated Employee Retention Credit for qualified wages. Employer F will not incur a failure to deposit penalty under section 6656 of the Code for reducing its federal employment tax deposit for the first payroll period of the second quarter to \$0.

The amount of the excess \$1,000 in Employee Retention Credit available is refundable as an overpayment. Employer F may file a Form 7200 to request a credit or refund of this amount in advance of the close of the quarter (but not for any amount of the Employee Retention Credit that was already used to reduce the deposit obligation). If Employer F does not request an advance, it may request that the \$1,000 overpayment be credited or refunded when it files its second quarter Form 941, Employer's Quarterly Federal Tax Return.

Employer F may defer payment of the \$1,500 employer's share of social security tax (along with any other employer social security tax imposed under section 3111(a) for the quarter) on its Form 941 for the second quarter of 2020. Employer F will not be required to pay any portion of the deferred amount until December 31, 2021, at which time 50 percent is due (\$750), with the remaining amount (\$750) due December 31, 2022. If Employer F fails to pay the required amounts at those times, Employer F's deferred deposits will lose their deferred status and may be subject to failure to deposit penalties from their original due dates. Employer F may also be subject to failure to pay penalties accruing from the deferred due date for payment.

74. Can an Eligible Employer receive an advance of the Employee Retention Credit to fund the payment of qualified wages if the Eligible Employer does not have sufficient federal employment taxes set aside for deposit to cover those payments?

Yes. Because quarterly employment tax returns are not filed until after qualified wages are paid, some Eligible Employers may not have sufficient federal employment taxes set aside for deposit to the IRS to fund their qualified wages through reduction of the amount to be deposited, particularly after taking into account the permitted deferral of the employer's share of social security tax under section 2302 of the CARES Act. Accordingly, the IRS has a procedure for obtaining an advance of the refundable credits.

The Eligible Employer is permitted to defer the deposit and payment of the employer's share of social security tax under section 2302 of the CARES Act and may do so prior to reducing any deposits in anticipation of the credit. See [Deferral of employment tax deposits and payments through December 31, 2020](#). If the remaining employment tax deposits set aside, after taking into account any deferral of the employer's share of social security tax and any permitted reduction in employment tax deposits in anticipation of the FFCRA paid leave credits, are less than the qualified wages, the Eligible Employer can file a [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), to claim an advance credit for the remaining qualified wages it has paid for which it did not have sufficient federal employment tax deposits.

If an Eligible Employer fully reduces its required deposits of federal employment taxes otherwise due on wages paid in the same calendar quarter to its employees in anticipation of receiving the credits, and it has not paid qualified wages in excess of this amount, it should not file a Form 7200. If it files a Form 7200, it will need to reconcile this advance credit and its deposits with the qualified wages on Form 941, Employer's Quarterly

Federal Tax Return (or other applicable federal employment tax return such as Form 944 or Form CT-1), beginning with the Form 941 for the second quarter, and it may have an underpayment of federal employment taxes for the quarter.

Example: Employer G paid \$20,000 in qualified wages to two employees (each employee was paid \$10,000 in qualified wages), and is therefore entitled to a credit of \$10,000, and is otherwise required to deposit \$8,000 in federal employment taxes on all wages paid, after deferring its employer's share of social security tax under section 2302 of the CARES Act. Employer G has no paid sick or family leave credits under the FFCRA. Employer G can keep the entire \$8,000 of taxes that Employer G was otherwise required to deposit without penalty as a portion of the credits it is otherwise entitled to claim on the Form 941. Employer G may file a request for an advance credit for the remaining \$2,000 by completing Form 7200.

75. For Eligible Employers that include multiple entities aggregated and treated as one employer for purposes of the Employee Retention Credit, will the individual entities separately report their credit on their employment tax returns?

Yes. Each Eligible Employer will report its Employee Retention Credit on its employment tax return (or on its third party payer's employment tax return) without regard to its aggregation with other entities as one employer for purposes of determining its eligibility for the credit. Each Eligible Employer's credit will be the amount of the credit apportioned among the members of the aggregated group on the basis of each member's proportionate share of the qualified wages giving rise to the credit.

76. How does an Eligible Employer report qualified wages paid in the first quarter of 2020?

An Eligible Employer that pays qualified wages in the first quarter of 2020 should report those wages on Form 941, Employer's Quarterly Federal Tax Return, for the second quarter of 2020.

77. How does an Eligible Employer obtain Form 7200, and where should it send its completed form to receive the advance credit? Is there a minimum advance amount that can be claimed on a Form 7200? (Updated July 2, 2020)

An Eligible Employer may obtain [Form 7200, Advance Payment of Employer Credits Due To COVID-19](#) online and may fax its completed form to [855-248-0552](tel:855-248-0552). After July 2, the minimum advance amount that can be claimed on a Form 7200 is \$25. A Form 7200 requesting an advance of less than \$25 will not be processed. Taxpayers can claim credits of less than \$25 on the Form 941.

77a. Who can sign a Form 7200? Should a taxpayer submit additional documents to confirm that a person is authorized to sign a Form 7200? (Updated July 9, 2020)

The instructions for [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), provide information on who may properly sign a Form 7200 for each type of entity. For corporations, the instructions provide that the president, vice president, or other principal officer who is duly authorized may sign a Form 7200. For partnerships (including an LLC treated as a partnership) or unincorporated organizations, a responsible and duly authorized partner, member, or officer having knowledge of the entity's affairs may sign a Form 7200. For a single-member LLC treated as a disregarded entity for federal income tax purposes, the instructions provide that the owner or a principal officer who is duly authorized may sign the Form. For trusts or estates, the instructions provide that the fiduciary may sign the Form 7200. Additionally, the instructions provide that a Form 7200 may be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

In many circumstances, whether the person signing the Form 7200 is duly authorized or has knowledge of the partnership's or unincorporated organization's affairs is not apparent on the Form 7200. To help expedite and ensure proper processing of Forms 7200, if a taxpayer has duly authorized an officer, partner, or member to sign Form 7200 (and that person is not otherwise explicitly permitted to sign the Form 7200 by nature of their job title), the taxpayer should submit a copy the Form 2848, Power of Attorney and Declaration of Representative, authorizing the person to sign the Form 7200 with the Form 7200.

77b. When should the name and EIN of a third-party payer be included on Form 7200? (added September 30, 2020)

Employers who file Form 7200, Advance Payment of Employer Credits Due to COVID-19, to claim an advance payment of credits are required to include on the form the name and EIN of the third party payer they use to file their employment tax returns (such as the Form 941) if the third party payer uses its own EIN on the employment tax returns. This will ensure advance payment of the credits received by the common law employer is properly reconciled to the employment tax return filed by the third-party payer for the calendar quarter for which the advance payment of the credits is received.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the employment tax return for the calendar quarter, only those third party payers who will file an employment tax return on behalf of an employer using the third party payer's name and EIN should be listed on the Form 7200. Typically, CPEOs, PEOs, and other 3504 agents fall into this category of third-party payers.

If a third party payer will file the employment tax return on an employer's behalf using the employer's name and EIN and not the name and EIN of the third party payer, the employer should not include the name and EIN of the third party payer on the Form 7200. Typically, reporting agents and payroll service providers fall into this category of third-party payers.

77c. If a common law employer uses a third-party payer for only a portion of its workforce, should the employer list the third-party payer on the Form 7200? (added September 30, 2020)

In some cases, a common law employer may use the services of a third-party payer (such as a CPEO, PEO, or other section 3504 agent) to pay wages for only a portion of its workforce. In those circumstances, the third party payer files an employment tax return (such as the Form 941) for wages it paid to employees under its name and EIN, and the common law employer files an employment tax return for wages it paid directly to employees under its own name and EIN.

If the common law employer is claiming advance payments of credits for both wages paid directly to employees that will be reported on its own employment tax return and wages paid to other employees by a third party payer that will be reported on the third party payer's employment tax return, two separate Forms 7200, Advance Payment of Employer Credits Due to COVID-19, should be filed: one for the wages paid by the common law employer with the name and EIN of the employer, and one for the wages paid by the third party payer with the name and EIN of both the common law employer and the third party payer.

To help expedite and ensure proper processing of Form 7200 and reconciliation of advance payment of the credits to the employment tax return when an employer uses a third party payer such as a CPEO, PEO, or other section 3504 agent for only a portion of their workforce, a common law employer should include the name and EIN of the third party payer only on the Form 7200 for advance payment of the credits for wages paid by the third party payer and reported on the third party payer's employment tax return. The common law employer should not include the name and EIN of the third-party payer on the Form 7200 for advance payments of the credits claimed for wages paid by the common law employer and reported on the common law employer's employment tax return.

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