

## Client Alert

### IRS Issues Guidance on Payroll Tax Credit under the Families First Coronavirus Response Act

March 28, 2020

The U.S. Internal Revenue Service (“**IRS**”) has released initial guidance regarding the mechanics of the payroll tax relief under the Families First Coronavirus Response Act (the “**Act**”). As discussed in our [prior alert](#), the Act, among other things, requires employers with fewer than 500 employees (“**Covered Employers**”) to provide paid sick leave and expanded family and medical leave to employees who cannot work or telework for qualifying reasons related to COVID-19 (collectively, “**FFCRA Leave**”), and in return reimburses employers for the cost of providing FFCRA Leave through a refundable payroll tax credit (the “**FFCRA Tax Credit**”). The FFCRA Leave requirements become effective on April 1, 2020 and remain in effect through December 31, 2020. The DOL has issued its initial guidance regarding the FFCRA Leave requirements, which we discussed in [this client alert](#).

The IRS guidance regarding the FFCRA Tax Credit takes the form of announcement [IR-2020-57](#) and [Notice 2020-21](#). This alert summarizes the key aspects of the FFCRA Tax Credit and significant takeaways from the IRS guidance.

### FFCRA TAX CREDIT

The FFCRA Tax Credit is a refundable tax credit for Covered Employers (including self-employed individuals) that comply with the FFCRA Leave requirements, which reduces their liability for the employer portion of Social Security payroll tax (6.2%) (but see below regarding a potential expansion of the credit’s applicability). A Covered Employer’s total FFCRA Tax Credit for each calendar quarter is an amount equal to the sum of:

- (i) the wages it pays for FFCRA Leave for such calendar quarter (which are subject to dollar caps);
- (ii) contributions it pays or incurs to provide and maintain a group health plan that are excluded from its employees' taxable gross income, but only to the extent such contributions are "properly allocable" to wages paid for FFCRA Leave (the Act does not prescribe how this allocation should be calculated, but provides that a pro-rata allocation based on the number of covered employees and periods of coverage is one permissible method); and
- (iii) the amount of Medicare tax (1.45%) imposed on wages paid for FFCRA Leave.

If the above credit exceeds the employer's total Social Security wage tax liability for all employees for any calendar quarter, the excess credit is refundable to the employer.

Finally, the Act exempts all wages paid for FFCRA Leave from the employer's portion of Social Security tax.

## **EFFECTIVE DATE AND SUNSET**

The IRS has confirmed that the FFCRA Tax Credit will apply to wages paid for the period beginning on April 1, 2020 and ending on December 31, 2020. This corresponds to the period during which the Act requires Covered Employers to provide FFCRA leave.

## **POTENTIAL EXPANSION OF FFCRA TAX CREDIT USE**

As discussed above, the Act provides that the FFCRA Tax Credit may be taken against the Covered Employer's liability for the employer portion of the Social Security payroll tax. The IRS, however, has signaled a potential expansion of the use of the FFCRA Tax Credit, stating that it intends to permit such credit to be taken against all withheld federal income taxes and both the employee and employer portions of Social Security and Medicare taxes with respect to all employees. This would significantly increase the immediacy of the payroll tax relief by allowing Covered Employers to retain (and not pay over as payroll taxes) more cash and reducing the need to apply and wait for a tax refund check from the government.

## **STREAMLINED FFCRA TAX CREDIT REFUND PROCESS**

The IRS has also indicated that it will simplify and streamline the process by which Covered Employers may apply for and obtain a refund of any excess FFCRA Tax Credit that they are unable to deduct from their quarterly payroll tax liability. Specifically, the IRS announced its intent to soon release a streamlined tax refund claim form and an expedited procedure to process FFCRA Tax Credit refund requests in 2 weeks or less.

## NEXT STEPS

Covered Employers should make arrangements to provide FFCRA Leave but must await further IRS guidance to confirm certain aspects of the FFCRA Tax Credit (such as exactly what payroll taxes it may reduce). Such guidance will almost certainly be issued before April 1, 2020.

If you require any additional information about the FFCRA Tax Credit or any related matters, please contact any of the attorneys listed below.

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Morrison Cohen LLP has also created the COVID-19 Resource Taskforce, a multidisciplinary taskforce comprised of attorneys with deep expertise in a broad range of legal areas, to assist clients navigating the challenging and uncertain business and legal environment caused by the COVID-19 pandemic. We encourage clients to utilize our capabilities by reaching out to their primary Morrison Cohen attorney contact, who will put you in touch with the appropriate Taskforce person. You may also reach out directly to Joe Moldovan and Alec Nealon, the Taskforce co-chairs:

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