

Coronavirus Tax Relief

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This article discusses action taken by Congress and the IRS to provide **coronavirus tax relief** including H.R. 6201 and high deductible health plan guidance. Also included is a discussion of the [IRC Section 139 tax](#) benefits and the potential **tax** filing extension.

Families First Coronavirus Response Act (H.R. 6201)

On March 14, 2020, House lawmakers passed emergency legislation titled the Families First **Coronavirus** Response Act (the Act) to provide support to American families impacted by the **coronavirus**, including a new **tax** credit for employers who provide emergency paid sick leave for their workers. On March 16, 2020 a House Resolution was submitted making corrections to the House Bill. On March 18, 2020 the Act was passed by the Senate and signed by the President. The following is a detailed analysis of the **tax** related provisions in the Act.

Tax Credit for Employers Providing Paid Sick Leave

The Act, Section 7001(a) establishes a refundable **tax** credit for employers equal to 100 percent of qualified paid sick leave wages required to be paid by the Emergency Paid Sick Leave Act, set forth in Division E of the Act (the EPSL Act), that are paid by an employer for each calendar quarter. The **tax** credit is allowed against the **tax** imposed by [IRC Section 3111\(a\)](#), which is the employer portion of Social Security **taxes**, or [IRC section 3221\(a\)](#), which is the employer portion of the railroad retirement **tax**.

Note the multiple limitations on the amount of the credit. H.R. 6201, 7001(b). Generally, the amount of wages that are eligible for this credit are limited to \$200 per day. H.R. 6201, § 7001(b)(1). However, the daily wage limit can be as high as \$511 if the employee was:

- Subject to a Federal, State, or local quarantine or isolation order related to **Covid-19**
- Advised by a health care provider to self-quarantine due to concerns related to **Covid-19** –or–
- Was experiencing symptoms of **Covid-19** and seeking a medical diagnosis

In addition to the limit on the amount of daily wages which are eligible for the credit, there are limits to the number of days for which the credit may be awarded to the excess, if any, of:

- 10, over
- The aggregate number of days taken into account for all preceding calendar quarters

H.R. 6201, § 7001(b)(2)

Any excess in the amount of the credit is treated as an overpayment that will be refunded pursuant to [IRC Sections 6402\(a\)](#) and [6413\(b\)](#). The amount of the credit is increased for any amounts paid by the employer to maintain health insurance benefits for employees if such amounts are allocable to qualified sick leave wages. H.R. 6201, § 7001(d)(1). The task of determining the proper means of allocation was delegated to the Treasury Secretary, but a pro rata allocation among covered employees and the periods of coverage shall be deemed as properly made. H.R. 6201, § 7001(d)(3).

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Qualified sick leave wages are wages (as defined in [IRC section 3121\(a\)](#)) and compensation (as defined in [IRC section 3231\(e\)](#)) paid by an employer which are required to be paid by reason of the EPSL Act. H.R. 6201, § 7001(c)

Employers are prohibited from deriving double benefits with these credits. Specifically, the credit established by the Act may not be combined with the credit available under [IRC section 45S](#). H.R. 6201, § 7001(e). Also, the employer must take any credit amounts into gross income for the taxable year claimed.

Tax Credit for Self-Employed Individuals Requiring Sick Leave

To compliment the credit for employers in Section 7001, the Act provides for a refundable **tax** credit for self-employed individuals equal to 100 percent of a qualified sick leave equivalent amount for eligible self-employed individuals. H.R. 6201, § 7002(a). The self-employed individuals who qualify for the credit as those who must:

- Self-isolate
- Obtain a diagnosis –or–
- comply with a self-isolation recommendation with respect to **coronavirus**.

For eligible self-employed individuals caring for a family member or for a child whose school or place of care has been closed due to **coronavirus**, a refundable **tax** credit is provided equal to 67% of a qualified sick leave equivalent amount. H.R. 6201, § 7002(c)(1)(B)(ii).

The first step in determining if a taxpayer is entitled to this credit is to determine if they are an eligible self-employed individual. An eligible self-employed individual is an individual who:

- 1 Regularly carries on any trade or business within the meaning of [IRC section 1402](#) –and–
- 2 Would be entitled to receive paid leave during the taxable year pursuant to the EPSL Act if the individual were an employee of an employer (other than himself or herself). H.R. 6201, § 7002(b).

The next step in the analysis is to determine the amount of qualified sick leave equivalent the eligible self-employed individual is entitled to claim. Qualified sick leave equivalent is an amount equal to the number of days for which the eligible self-employed individual was unable to perform their trade or business multiplied by the lesser of:

- \$200 –or–
- 67% for those eligible self-employed individuals who were caring for another family member (or 100% of an increased amount of \$511 per day for eligible self-employed individuals who sick or quarantined themselves) of the average self-employment income for the year. H.R. 6201, § 7002(c).

Average self-employment income is an amount equal to:

- The net earnings from self-employment of the individual for the taxable year, divided by
- 260. H.R. 6201, § 7002(c)(2).

Similar to the credit for employers, any excess credits for self-employed individuals are also refundable to the taxpayer. Additionally, there are similar rules that prevent the taxpayer from deriving any inappropriate double benefits. H.R. Section 7002(d)(3).

In both Section 7001 and 7002, the Act empowers the Treasury Secretary to promulgate rules as necessary to carry out the purpose of the Act.

Payroll Credit for Required Paid Family Leave

Under the Act, employers are allowed, for each calendar quarter, a credit against the payroll **taxes** (imposed by [IRC Section 3111\(a\)](#) or [3221\(a\)](#)) in an amount equal to 100 percent of the qualified family leave wages paid by the employer for such calendar year. H.R. 6201, § 7003.

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Note that the amount of qualified family leave wages taken into account for the credit for any individual is subject to limitations. The amount of qualified family leave wages for any individual cannot exceed the following:

- \$200 for any day or portion of a day for which the individual is paid qualified family leave wages
- A total of \$10,000 for all calendar quarters

In addition, the credit for any calendar year cannot exceed the payroll **taxes** paid by the employer for that calendar year, reduced by certain allowable credits, on the wages paid with respect to the employment of all the employer's employees. If the credit exceeds the limit for any calendar quarter, the excess is treated as an overpayment and will be refunded.

Certain health plan expenses of an employer also qualify for the required family leave credit. The amount of the credit is increased by so much of an employer's qualified health plan expenses that are properly allocable to the qualified family leave wages for which the credit is so allowed. Qualified health plan expenses are amounts paid or incurred by the employer to provide and maintain a group health plan, but only to the extent that such amounts are excluded from the gross income of employees as employer contributions to accident or health plans.

Be aware that the Act prevents a double benefit to employers. Also, an employer can elect for the credit not to apply. Note that the credit does not apply to the employees of:

- The U.S. government,
- Any state government or a political subdivision of the state, or any agency –or–
- Any instrumentality of the federal government or any state or political subdivision thereof as an employer.

The Treasury Secretary or the Secretary's delegate is authorized to issue regulations or other guidance on the credit.

Note that the application of the required family leave credit is temporary. The credit applies only to wages paid for the period beginning on a date selected by the Secretary of the Treasury or the Secretary's delegate which is during the 15-day period that starts on the date that the Act is enacted and ending on December 31, 2020.

The Act provides for the transfer of funds to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account of amounts equal to the reduction in revenues to the Treasury because of required family leave credit.

Credit for Family Leave for Certain Self-Employed Individuals

As mentioned, the Act provides a family leave credit for certain self-employed individuals. An eligible self-employed individual, for any taxable year, is allowed a credit against income **taxes** in an amount equal to 100 percent of the qualified family leave equivalent amount with respect to the individual. An eligible self-employed individual is an individual who regularly carries on any self-employed trade or business and who would be entitled to receive paid leave during the taxable year pursuant to the Emergency Family and Medical Leave Expansion Act if the individual were an employer, other than himself or herself. Provisions of the Act define the terms qualified family leave equivalent amount and average daily self-employment income for purposes of the credit. The Act provides that the credit will be treated as a credit allowed to the taxpayer as a refundable credit under the Internal Revenue Code.

Note that to qualify for the credit, a self-employed individual must provide certain documentation establishing such individual as an eligible self-employed individual. Also, provisions of the Act are aimed at preventing a double benefit to an individual who receives wages and compensation paid by an employer that are required to be paid by reason of the Emergency Family and Medical Leave Expansion Act.

Be aware that the application of the credit for family leave for self-employed individuals is temporary. The Act provides that only days occurring during the period starting on a date selected by the Treasury Secretary or the Secretary's delegate that is during the 15-day period beginning on the date of that the Act was enacted and ending on December 31, 2020, may be taken into account in applying the credit.

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The credit will only apply in certain U.S. possessions. If a U.S. possession has a mirror code **tax** system, the Secretary or the Treasury's delegate will pay to such U.S. possession amounts equal to the loss (if any) to the possession by reason of the application of the credit. If a U.S. possession does not have a mirror code **tax** system, the Secretary or Secretary's delegate will pay to each such possession amounts estimated by the Secretary or Secretary's delegate as being equal to the aggregate benefits (if any) that would have been provided to such possession's residents by reason of the Act's provisions if a mirror code **tax** system had been in effect in the possession.

In addition, the Act gives the Treasury Secretary or the Secretary's delegate authority to prescribe regulations or other guidance necessary to carry out the purposes of the credit.

*Special Rule Related to **Tax** on Employers*

If the employer makes payments required by the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act, these payments are not considered wages under [IRC Section 3111\(a\)](#) which pertains to social security **taxes** paid by employers. Note that these required payments are not considered compensation for purposes of [IRC Section 3221\(a\)](#) which pertains to the Tier 1 excise **tax** paid on the applicable percentage of compensation paid to employees. H.R. 6201, § 7005(a).

Employees should be aware that the payroll credit for required paid sick leave and the payroll credit for required paid family leave will each be increased by the amount of **tax** imposed by [IRC Section 3111\(b\)](#), which pertains to the employee excise **tax** for Medicare, on qualified sick leave wages, or qualified family leave wages, for which one of the above credits is allowed. H. Res. Sec 7005(b).

Utilizing [IRC Section 139](#)

President Trump declared the **coronavirus (COVID-19)** a national emergency on March 13, 2020 to authorize aid to state and local governments and to waive regulations that hinder access to health care. This declaration makes the **coronavirus** a qualified disaster. See [IRC §§ 139\(c\)](#) and [165\(i\)\(5\)\(A\)](#)). You should advise individuals and employers to take advantage of the **tax** benefits provided in [IRC Section 139](#) if possible.

For individuals, gross income does not include any amount received as a qualified disaster **relief** payment. [IRC § 139\(a\)](#). Employers will be able to take a deduction for these payments. A qualified disaster **relief** payment is any amount paid to or for the benefit of an individual:

- 1 To reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster.
- 2 To reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.
- 3 By a person engaged in the furnishing or sale of transportation as a common carrier by reason of the death or personal physical injuries incurred as a result of a qualified disaster.
- 4 If such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare.

However, these are qualified payments only if the payment is not otherwise compensated for by insurance or otherwise. [IRC § 139\(b\)](#). There are no regulations that clarify exactly which expenses qualify as disaster **relief** payments. You may want to review [Revenue Procedure 2003-12](#) which was issued to address payments to individuals living in flooded areas that were declared a disaster area. In this circumstance, grants were made to employees to reimburse them for reasonable and necessary medical, temporary housing and transportation expenses. Employer payments to reimburse employees for the following types of expenses connected to the **coronavirus** are likely to be excluded from income under [IRC Section 139](#):

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- Medical expenses including necessary critical care
- Funeral expenses
- Health maintenance expenses such as hand sanitizer, disinfectants, over-the-counter medications
- Child related expenses due to school closure such as childcare, tutoring, or on-line learning resources
- Telecommuting expenses such as internet, computer, phone and printer

Although not required, to ensure income exclusion for employees and a deduction for employers, you may want to advise employers to have some type of written program or set criteria indicating exactly what type of employee expenses would be reimbursed.

Be aware that [IRC Section 139](#) does not cover any type of wage replacement including paid sick leave.

High Deductible Health Plans

The IRS has issued [Notice 2020-15](#) regarding the **Coronavirus (COVID-19)** in relation to high deductible health plans (HDHP). The purpose of the notice is to help remove any barriers that may prevent the testing or treatment of **COVID-19**.

A HDHP under [IRC Section 223\(c\)\(2\)\(A\)](#) will not fail to be an HDHP because the health plan provides health benefits associated with testing for and treatment of **COVID-19** without satisfying the applicable minimum deductible, or with a deductible below the regular minimum deductible. Likewise, individuals covered by a HDHP will not fail to be eligible individuals under [IRC Section 223\(c\)\(1\)](#) merely because of the benefits provided for testing and treatment of **COVID-19**.

Filing and Payment Deadlines

On March 11, 2020, President Trump asked for an extension of the income **tax** filing deadline and instructed the U.S. Department of the Treasury to allow deferred **tax** payments by affected individuals and businesses without penalties or interest. Treasury Secretary Steven Mnuchin stated: "We are looking at providing substantial **relief** to certain taxpayers and small businesses who will be able to get extensions on their **taxes**."

Currently, the **tax** return filing deadline remains April 15. On Tuesday, March 17, 2020 Mnuchin encouraged the public to electronically file their **tax** returns by April 15 and get their refunds or request extensions if they owe payments. Anyone can request an automatic 6-month extension of the income **tax** filing deadline by filing Form 4868.

In his March 17, 2020 statement Mnuchin urged a three-month deferral on the payment of 2019 **taxes**. Mnuchin clarified that IRS rules allow individuals and pass-through businesses owing up to \$1 million in federal income **taxes** and corporations owing up to \$10 million in **taxes** to defer payments for 90 days without interest and penalties. Subsequently, the IRS issued [Notice 2020-17](#) which extends the due date for the payment of Federal income **taxes** otherwise due on April 15, 2020, until July 15, 2020, as a result of the ongoing **Coronavirus (COVID-19)** emergency. You do not need to file any additional forms or contact the IRS to qualify for the extension. Penalties and interest on any remaining unpaid balance will begin to accrue on July 16, 2020. Be aware that the extension is limited to the following maximum applicable amounts:

- Up to \$1 million for individuals, regardless of filing status, and other unincorporated entities such as trust and estates -and-
- Up to \$10 million for each C corporation that does not join in filing a consolidated return or for each consolidated group.

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This extension is only available for Federal income **tax** payments and payments of **tax** on self-employment income that would otherwise be due on April 15, 2020.

The IRS has established a special section focused on steps to help taxpayers, businesses and others affected by the **coronavirus**. See <https://www.irs.gov/coronavirus>. The IRS will continue to update this website as new information is available.

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