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**Claiming COVID-19 Tax Credits and
Deferrals with the IRS: How to Complete
the Redesigned Form 941**

Handy Hevener, Steven Johnson, and Jonathan Zimmerman

July 14, 2020

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Today's Presenters



Mary "Handy" Hevener



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Hypothetical Example: ABC Bank

Form **941 for 2020: Employer's QUARTERLY Federal Tax Return**
(Rev. April 2020) Department of the Treasury — Internal Revenue Service

950120

OMB No. 1545-0029

Employer identification number (EIN) -

Name (not your trade name)

Trade name (if any)

Address

Number Street Suite or room number

City State ZIP code

Foreign country name Foreign province/county Foreign postal code

Report for this Quarter of 2020
(Check one.)

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Go to www.irs.gov/Form941 for instructions and the latest information.

Q2 Payroll

Part 1: Answer these questions for this quarter.

1	Number of employees who received wages, tips, or other compensation for the pay period including: <i>June 12</i> (Quarter 2), <i>Sept. 12</i> (Quarter 3), or <i>Dec. 12</i> (Quarter 4) . . .	1	101
2	Wages, tips, and other compensation	2	1,000,000 ■ 00
3	Federal income tax withheld from wages, tips, and other compensation	3	220,000 ■ 00

Example Creditable Wages & Allocable Health Plan Expenses

	Wage Credit	Allocable Health Plan Expense
"Hospital" Branch Managers (Q2 FFCRA Sick)	\$51,100	\$5,000
"School" Branch Tellers (Q2 FFCRA Sick)	\$40,000	\$20,000
"Hospital" Branch Managers & "School" Branch Tellers (Q2 FFCRA Family)	\$160,000	\$67,000
"Happy World" Branch Tellers (Q1 Retention)	\$9,750	\$3,250
"Ballpark" Branch Managers & Tellers (Q2 Retention)	\$187,500	\$10,000

FFCRA Qualified Sick Leave Wages for ABC's "Hospital" Branches

Between April 1 and June 30 (second quarter), COVID-19 continued to disrupt business operations:

10 managers at ABC's "Hospital" branches were exposed to COVID-19 and were required to self-quarantine for 10 days.

ABC paid affected managers \$600/day for all 10 days (\$6,000 individually, and \$60,000 in the aggregate).

ABC treated a maximum of \$511/day per manager as FFCRA qualified sick leave wages (\$5,110 individually, and \$51,100 in the aggregate).

ABC also treated \$5,000 in qualified health plan expenses as allocable to FFCRA qualified sick leave wages (10 employees x 10 days x \$50/day).

FFCRA Qualified Sick Leave Wages for ABC's "School" Branches

In addition, during the second quarter:

Another 40 bank tellers at ABC's "School" branches were unable to work for 10 days due to COVID school closures affecting their children.

ABC paid affected tellers \$150/day for all 10 days (\$1,500 individually, and \$60,000 in the aggregate).

ABC treated a maximum of \$100/day per teller (2/3 of \$150 daily wages) as FFCRA qualified sick leave wages (\$1,000 individually, and \$40,000 in the aggregate).

ABC also treated \$20,000 in qualified health plan expenses as allocable to FFCRA qualified sick leave wages (40 employees x 10 days x \$50/day).

FFCRA Qualified Family Leave Wages for ABC's "Hospital" & "School" Branches

In addition, during the second quarter:

5 managers and 20 tellers (out of the 50 affected Hospital and School branch employees) continued to be unable to work after the 10 FFCRA qualified sick leave days due to their children's schools remaining closed for the rest of the school year.

ABC paid affected managers \$600/day for each of the remaining 55 business days of the second quarter. ABC paid affected tellers \$150/day for each of the remaining 55 business days of the second quarter.

ABC treated a maximum of \$200/day for the first 50 days for all 5 affected managers as FFCRA qualified family leave wages (\$10,000 individually, and \$50,000 in the aggregate).

ABC treated a maximum of \$100/day for the first 50 days for all 5 affected managers as FFCRA qualified family leave wages (\$5,500 individually, and \$110,000 in the aggregate).

ABC also treated \$67,000 in qualified health plan expenses as allocable to FFCRA qualified family leave wages (5 managers x 50 days x \$50/day + 20 tellers x 55 days x \$50/day).

FFCRA Qualified Sick & Family Leave Wages

	Column 1		Column 2
5a Taxable social security wages . . .	748,900 . 00	× 0.124 =	92,864 . 00
5a (i) Qualified sick leave wages . . .	91,100 . 00	× 0.062 =	5,648 . 00
5a (ii) Qualified family leave wages . . .	160,000 . 00	× 0.062 =	9,920 . 00
5b Taxable social security tips	0 . 00	× 0.124 =	0 . 00
5c Taxable Medicare wages & tips . . .	1,000,000 . 00	× 0.029 =	29,000 . 00
5d Taxable wages & tips subject to Additional Medicare Tax withholding	0 . 00	× 0.009 =	0 . 00
5e Total social security and Medicare taxes. Add Column 2 from lines 5a, 5a(i), 5a(ii), 5b, 5c, and 5d		5e	137,432 . 00

Calculating FFCRA Qualified Sick & Family Leave Tax Credits (Form 941, Worksheet 1)

Step 1.	Determine the employer share of social security tax this quarter after it is reduced by any credit claimed on Form 8974 and any credit to be claimed on Form 5884-C			
1a	Enter the amount of social security tax from Form 941, Part 1, line 5a , column 2	1a	<u>92,864.00</u>	
1b	Enter the amount of social security tax from Form 941, Part 1, line 5b , column 2	1b	<u>0.00</u>	
1c	Add lines 1a and 1b	1c	<u>92,864.00</u>	
1d	Multiply line 1c by 50% (0.50)	1d	<u>46,432.00</u>	
1e	If you're a third-party payer of sick pay that isn't an agent and you're claiming credits for amounts paid to your employees, enter the employer share of social security tax included on Form 941, Part 1, line 8 (enter as a positive number)	1e	<u>0.00</u>	
1f	Subtract line 1e from line 1d	1f	<u>46,432.00</u>	
1g	If you received a Section 3121(q) Notice and Demand during the quarter, enter the amount of the employer share of social security tax from the notice	1g	<u>0.00</u>	
1h	Employer share of social security tax. Add lines 1f and 1g	1h		<u>46,432.00</u>
1i	Enter the amount from Form 941, Part 1, line 11a (credit from Form 8974)	1i	<u>0.00</u>	
1j	Enter the amount to be claimed on Form 5884-C, line 11, for this quarter	1j	<u>0.00</u>	
1k	Total nonrefundable credits already used against the employer share of social security tax. Add lines 1i and 1j	1k		<u>0.00</u>
1l	Employer share of social security tax remaining. Subtract line 1k from line 1h	1l		<u>46,432.00</u>


Calculating FFCRA Qualified Sick & Family Leave Tax Credits (Form 941, Worksheet 1)

Step 2. Figure the sick and family leave credit			
2a	Qualified sick leave wages reported on Form 941, Part 1, line 5a(i) , column 1	2a	<u>91,100.00</u>
2a(i)	Qualified sick leave wages included on Form 941, Part 1, line 5c, but not included on Form 941, Part 1, line 5a(i), column 1, because the wages reported on that line were limited by the social security wage base	2a(i)	<u>0.00</u>
2a(ii)	Total qualified sick leave wages. Add lines 2a and 2a(i)	2a(ii)	<u>91,100.00</u>
2b	Qualified health plan expenses allocable to qualified sick leave wages (Form 941, Part 3, line 19)	2b	<u>25,000.00</u>
2c	Employer share of Medicare tax on qualified sick leave wages. Multiply line 2a(ii) by 1.45% (0.0145)	2c	<u>1,321.00</u>
2d	Credit for qualified sick leave wages. Add lines 2a(ii), 2b, and 2c	2d	<u>117,421.00</u>
2e	Qualified family leave wages reported on Form 941, Part 1, line 5a(ii) , column 1	2e	<u>160,000.00</u>
2e(i)	Qualified family leave wages included on Form 941, Part 1, line 5c, but not included on Form 941, Part 1, line 5a(ii), column 1, because the wages reported on that line were limited by the social security wage base	2e(i)	<u>0.00</u>
2e(ii)	Total qualified family leave wages. Add lines 2e and 2e(i)	2e(ii)	<u>160,000.00</u>
2f	Qualified health plan expenses allocable to qualified family leave wages (Form 941, Part 3, line 20)	2f	<u>67,000.00</u>
2g	Employer share of Medicare tax on qualified family leave wages. Multiply line 2e(ii) by 1.45% (0.0145)	2g	<u>2,320.00</u>
2h	Credit for qualified family leave wages. Add lines 2e(ii), 2f, and 2g	2h	<u>229,320.00</u>
2i	Credit for qualified sick and family leave wages. Add lines 2d and 2h	2i	<u>346,741.00</u>
2j	Nonrefundable portion of credit for qualified sick and family leave wages. Enter the smaller of line 1l or line 2i. Enter this amount on Form 941, Part 1, line 11b	2j	<u>46,432.00</u>
2k	Refundable portion of credit for qualified sick and family leave wages. Subtract line 2j from line 2i and enter this amount on Form 941, Part 1, line 13c	2k	<u>300,309.00</u>

Reporting FFCRA Qualified Sick & Family Leave Tax Credits (Form 941)

11b	Nonrefundable portion of credit for qualified sick and family leave wages from Worksheet 1	11b	46,432	00
13c	Refundable portion of credit for qualified sick and family leave wages from Worksheet 1	13c	300,309	00
19	Qualified health plan expenses allocable to qualified sick leave wages	19	25,000	00
20	Qualified health plan expenses allocable to qualified family leave wages	20	67,000	00

Q1 CARES Employee Retention Credit Wages for ABC's "Happy World" Branch



Between March 13 and March 30 (first quarter), 5 bank tellers were unable to work due to a local government order that closed all businesses operating inside theme parks. (The "Happy World" branch was ABC's only branch impacted by such a government order.)

Over the course of these business 13 days, ABC paid affected tellers \$150/day (\$1,950 individually, and \$9,750 in the aggregate).

ABC treated all \$9,750 as CARES Act employee retention credit wages for Q1.

ABC also treated \$3,250 in qualified health plan expenses as allocable to CARES Act employee retention credit wages for Q1 (5 employees x 13 days x \$50/day).

Q2 CARES Employee Retention Credit Wages for ABC's "Ballpark" Branches

- 10 managers and 10 bank tellers at ABC's "Ballpark" branches were unable to work due to government orders that closed businesses operating inside sports venues.
- The 10 managers were unable to work for 15 business days throughout the second quarter, while the 10 bank tellers were unable to work for all 65 business days of the second quarter.
- ABC paid affected managers \$600/day for 15 business days (\$9,000 individually), and affected tellers \$150/day for 65 business days (\$9,750 individually).
- ABC treated all \$9,000 of each manager's pay as CARES employee retention credit wages (\$90,000 in the aggregate), and all \$9,750 of each teller's pay as CARES employee retention credit wages (\$97,500 in the aggregate).
- ABC also treated \$10,000 in qualified health plan expenses as allocable to CARES employee retention credit wages (10 managers x 15 days x \$50/day + 10 tellers x 5 days x \$50/day). (Tellers reach the \$10,000 employee retention credit wage cap after 5 days of health plan expenses are included.)

Calculating CARES Employee Retention Credits (Form 941, Worksheet 1)

Step 3. Figure the employee retention credit			
3a	Qualified wages (excluding qualified health plan expenses) for the employee retention credit (Form 941, Part 3, line 21)	3a	<u>187,500.00</u>
3b	Qualified health plan expenses allocable to qualified wages for the employee retention credit (Form 941, Part 3, line 22)	3b	<u>10,000.00</u>
3c	Qualified wages (excluding qualified health plan expenses) paid March 13, 2020, through March 31, 2020, for the employee retention credit (Form 941, Part 3, line 24). Enter an amount here only for the second quarter Form 941	3c	<u>9,750.00</u>
3d	Qualified health plan expenses allocable to qualified wages paid March 13, 2020, through March 31, 2020, for the employee retention credit (Form 941, Part 3, line 25). Enter an amount here only for the second quarter Form 941	3d	<u>3,250.00</u>
3e	Add lines 3a, 3b, 3c, and 3d	3e	<u>210,500.00</u>
3f	Retention credit. Multiply line 3e by 50% (0.50)	3f	<u>105,250.00</u>
3g	Enter the amount of the employer share of social security tax from Step 1, line 1l	3g	<u>46,432.00</u>
3h	Enter the amount of the nonrefundable portion of the credit for qualified sick and family leave wages from Step 2, line 2j	3h	<u>46,432.00</u>
3i	Subtract line 3h from line 3g	3i	<u>0.00</u>
3j	Nonrefundable portion of employee retention credit. Enter the smaller of line 3f or line 3i. Enter this amount on Form 941, Part 1, line 11c	3j	<u>0.00</u>
3k	Refundable portion of employee retention credit. Subtract line 3j from line 3f and enter this amount on Form 941, Part 1, line 13d	3k	<u>105,250.00</u>

Caution:
Only complete lines 3c and 3d for your second quarter 2020 Form 941.

Reporting CARES Q2 Employee Retention Credits (Form 941)

11c Nonrefundable portion of employee retention credit from Worksheet 1 11c . 00

13d Refundable portion of employee retention credit from Worksheet 1 13d . 00

21 Qualified wages for the employee retention credit 21 . 00

22 Qualified health plan expenses allocable to wages reported on line 21 22 . 00

Reporting CARES Q1 Employee Retention Credits (Form 941)

24	Qualified wages paid March 13 through March 31, 2020, for the employee retention credit (use this line only for the second quarter filing of Form 941)	24	9,750	00
25	Qualified health plan expenses allocable to wages reported on line 24 (use this line only for the second quarter filing of Form 941)	25	3,250	00

Deposits & Deferrals

13a	Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, or 944-X (SP) filed in the current quarter	13a	313,000	00
13b	Deferred amount of the employer share of social security tax	13b	60,000	00

Redesigned Form 941: Form 7200 Advanced Credits

13f 50,000 . 00

13f Total advances received from filer

Form 7200 <small>(March 2020)</small> Department of the Treasury Internal Revenue Service	Advance Payment of Employer Credits Due to COVID-19 ▶ Go to www.irs.gov/Form7200 for instructions and the latest information.	OMB No. 1545-0029
Name (not your trade name) _____		Employer identification number (EIN) _____
Trade name (if any) _____		Applicable calendar quarter (check one) (1) <input type="checkbox"/> April, May, June (2) <input type="checkbox"/> July, August, September (3) <input type="checkbox"/> October, November, December
Number, street, and apt. or suite no. If a P.O. box, see instructions. _____		
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.) _____		
Foreign country name _____	Foreign province/country _____	Foreign postal code _____
Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name. _____		Third-party payer's EIN (if applicable) _____
Tip: File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don't reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can't request an advance payment of the credit for sick and family leave for self-employed individuals.		
Part I Tell Us About Your Employment Tax Return		
A Check the box to indicate which employment tax return form you file (or will file for 2020): (1) <input type="checkbox"/> 941, 941-PR, or 941-SS (2) <input type="checkbox"/> 943 or 943-PR (3) <input type="checkbox"/> 944 or 944(SP) (4) <input type="checkbox"/> CT-1		
B Is this a new business started on or after January 1, 2020? _____ ▶ <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," skip line C unless you've already filed Form 941, Form 941-PR, or Form 941-SS for at least one quarter of 2020.		
C Amount reported on line 2 of your most recently filed Form 941 (or wages reported on Schedule R (Form 941), column (c), by your third-party payer (see instructions)). If you file a different employment tax return, see instructions. _____ ▶		
D Enter the total number of employees you have. See instructions. _____ ▶		
Part II Enter Your Credits and Advance Requested		
1	Total employee retention credit for the quarter. See instructions. _____	1
2	Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions. _____	2
3	Total qualified family leave wages eligible for the credit and paid this quarter. See instructions. _____	3
4	Add lines 1, 2, and 3. _____	4
5	Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter. _____	5
6	Total advanced credits requested on previous filings of this form for this quarter. _____	6
7	Add lines 5 and 6. _____	7
8	Advance requested. Subtract line 7 from line 4. If zero or less, don't file this form. _____	8
Third-Party Designee Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details. <input type="checkbox"/> Yes. Complete below. <input type="checkbox"/> No Designee's name ▶ _____ and phone number ▶ _____ Select a 5-digit personal identification number (PIN) to use when talking to the IRS ▶ _____		
Sign Here Under penalties of perjury, I declare that I have examined this form, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge. Your signature _____ Date _____ Printed title _____ Printed name _____ Best daytime phone _____		
Paid Preparer Use Only Print/type preparer's name _____ Preparer's signature _____ Date _____ PTIN _____ Check <input type="checkbox"/> if self-employed. Firm's name ▶ _____ Firm's EIN ▶ _____ Firm's address ▶ _____ Phone no. _____		
How To File Fax your completed form to 855-248-0552.		
For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 563902 Form 7200 (3-2020)		

Overpayment Credit or Refund

13e	Total deposits, deferrals, and refundable credits. Add lines 13a, 13b, 13c, and 13d	13e	778,559	00
13f	Total advances received from filing Form(s) 7200 for the quarter	13f	50,000	00
13g	Total deposits, deferrals, and refundable credits less advances. Subtract line 13f from line 13e	13g	728,559	00
14	Balance due. If line 12 is more than line 13g, enter the difference and see instructions	14		
15	Overpayment. If line 13g is more than line 12, enter the difference		387,675	00

Check one: Apply to next return. Send a refund.

Form 941-X: Post-941-Filing Claims for Credit

Part 3: Enter the corrections for this quarter. If any line doesn't apply, leave it blank.

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (if this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips and other compensation (Form 941, line 2)				Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Federal income tax withheld from wages, tips, and other compensation (Form 941, line 3)				Copy Column 3 here ▶
8. Taxable social security wages (Form 941 or 941-SS, line 5a, Column 1)			$\times 0.124^*$	
9. Taxable social security tips (Form 941 or 941-SS, line 5b, Column 1)			$\times 0.124^*$	
10. Taxable Medicare wages and tips (Form 941 or 941-SS, line 5c, Column 1)			$\times 0.029^*$	
11. Taxable wages & tips subject to Additional Medicare Tax withholding (Form 941 or 941-SS, line 5d)			$\times 0.009^*$	
12. Section 3121(g) Notice and Demand—Tax due on unreported tips (Form 941 or 941-SS, line 5f)				Copy Column 3 here ▶
13. Tax adjustments (Form 941 or 941-SS, lines 7–9)				Copy Column 3 here ▶
14. Qualified small business payroll tax credit for increasing research activities (Form 941 or 941-SS, line 11; you must attach Form 8974)				See instructions
15. Special addition to wages for federal income tax				See instructions
16. Special addition to wages for social security taxes				See instructions
17. Special addition to wages for Medicare taxes				See instructions
18. Special addition to wages for Additional Medicare Tax				See instructions
19. Combine the amounts on lines 7–18 of Column 4				

*If you're correcting your employer share only, use 0.002. See instructions.
*If you're correcting your employer share only, use 0.002. See instructions.
*If you're correcting your employer share only, use 0.045. See instructions.
*Certain wages and tips reported in Column 3 shouldn't be multiplied by 0.009. See instructions.

Form 941: Schedule R for Aggregated Filers

	(r) Form 941, line 13f	(s) Form 941, line 19	(t) Form 941, line 20	(u) Form 941, line 21	(v) Form 941, line 22	(w) Form 941, lines 5a and 5b, column 2, total	(x) Form 941, line 24	(y) Form 941, line 25
1
2
3
4

Substantiation of Credits

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

1. The employee's name;
2. The date or dates for which leave is requested;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement that the employee is unable to work, including by means of telework, for such reason.
 1. Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
 2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 ([Determining the Amount of Allocable Qualified Health Plan Expenses](#)) for methods to compute this allocation.
 3. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
 4. Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941).

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QUESTIONS?

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Resources >>

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CORONAVIRUS COVID-19:
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HOW TO REOPEN, REBUILD,
RESTRUCTURE, RECOVER

As the world begins to reemerge into a new post-pandemic reality, businesses and organizations everywhere are confronting a myriad of challenges and options. Employers are seeking best practices on reopening while keeping their workers safe. Some companies need help in restructuring or finding funds to recover and grow; others face new waves of litigation. Morgan Lewis has the resources to help navigate these and other important legal considerations in the wake of the coronavirus (COVID-19).

Check out our thought leadership:

- **LawFlash:** [CARES Act Brings Compensation, Benefits, and Payroll Tax Changes](#)
- **Guide:** CARES Act Employee Retention Credit Checklist
- **LawFlash:** [Payroll Tax Protection and Loan Forgiveness Under the CARES Act](#)
- **Insight:** [100 Payroll Tax and Fringe Benefit Questions for the IRS on COVID-19 Measures](#)

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COMPENDIUM**

2020

Biography



Mary Hevener

New York

Washington, DC

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Mary B. "Handy" Hevener helps US and multinational enterprises minimize corporate payroll taxes and maximize benefits-related tax deductions. She focuses her practice on the tax and information reporting treatment of employee and independent contractor benefits outside qualified retirement plans, including stock options and other stock-based compensation; executive income deferrals; golden parachutes; and fringe benefits that range from health and life insurance, to employee loans, cars, planes, and prizes.

Biography



Steve Johnson

Washington, DC

steven.johnson@morganlewis.com

With experience gained as a trial lawyer in the Tax Division of the US Department of Justice (DOJ), **Steven P. Johnson** advises clients on tax controversies and litigation matters involving complex tax issues. Before joining Morgan Lewis and working for the DOJ, Steven served as a law clerk to Judge Tucker L. Melancon of the US District Court for the Western District of Louisiana. He holds a Masters in Tax Law (LL.M.) from Georgetown Law School.

Biography



Jonathan Zimmerman

Washington, DC

jonathan.zimmerman@morganlewis.com

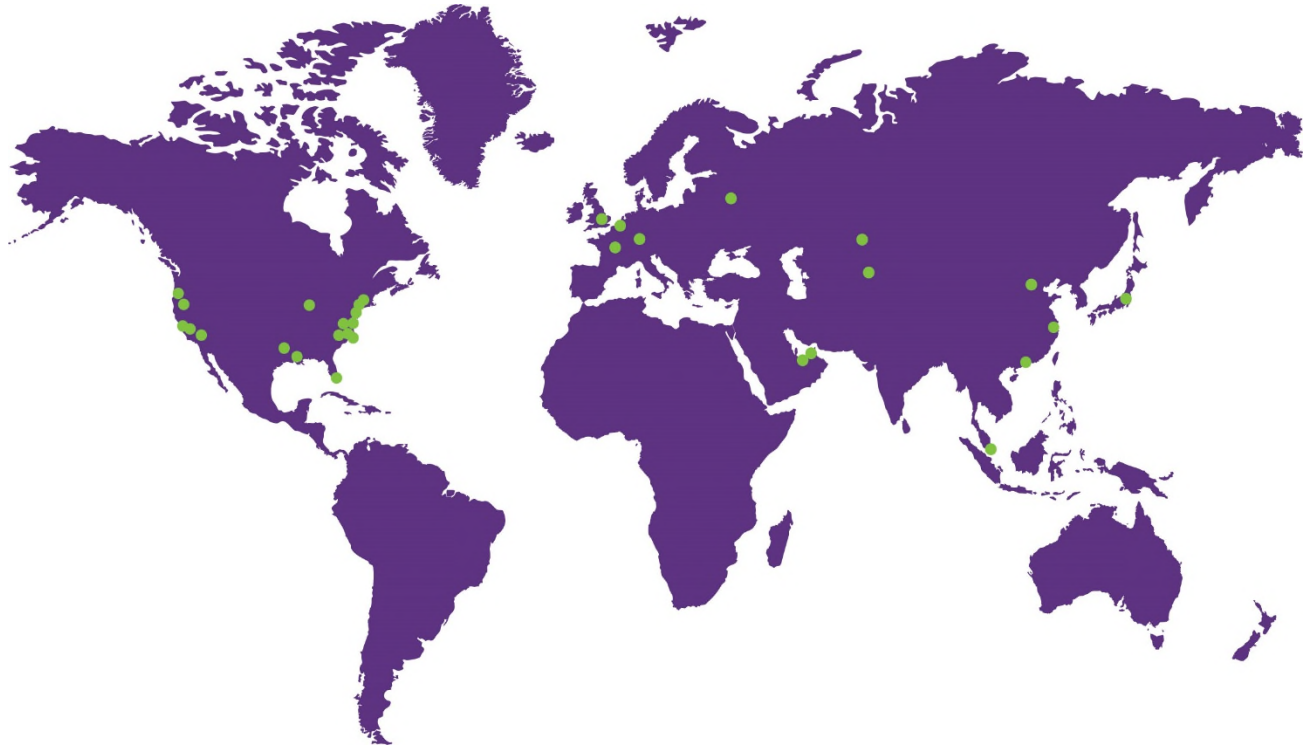
Jonathan Zimmerman helps clients design and maintain all types of employee benefit plans and programs. His practice focuses on Internal Revenue Code and Employee Retirement Income Security Act (ERISA) compliance for retirement, health and welfare, and executive compensation plans. He has particular experience with Code Sections 409A, 162(m), and 280G, and with taxes and fees arising under the Affordable Care Act (ACA). Jonathan also devotes a large part of his practice to payroll, withholding, and fringe benefits matters. He works with clients of all sizes and routinely handles matters ranging from large transactions to day-to-day administrative questions.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

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Almaty
Beijing*
Boston
Brussels
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Dubai
Frankfurt
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Houston
London
Los Angeles
Miami
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New York
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CLAIMING COVID-19 TAX CREDITS AND DEFERRALS WITH THE IRS: HOW TO COMPLETE THE REDESIGNED FORM 941

SUPPLEMENTAL NOTES

- **Slide 3: Hypothetical Example: ABC Bank**
 - About Form 941
 - Most employers report employee wages and Federal employment tax (FITW, Social Security, Medicare) to the IRS on a quarterly basis.
 - Q2 Form 941 is due by **July 31**.
 - Background Facts
 - ABC Bank operates a regional bank in the Missouri.
 - At all times the Bank has 101 employees.
 - Workforce size implications
 - FFCRA applies to employers with fewer than 500 full- and part-time employees, counted on the date qualified sick or family leave begins.
 - CARES employee retention credits available on qualifying wages if more than 100 employees, and on all wages paid if less than 100 employees.
 - CARES tax deferral is available to all employers regardless of workforce size
 - Related entities
 - FFCRA the general rule is that each corporate entity is a separate employer, with 2 exceptions:
 - "joint employers" under the FLSA
 - "integrated employers" under the FMLA
 - For CARES employee retention credit, affiliated entities sharing +50% common ownership must be aggregated
 - CARES employee retention credit is not available to employers that received a loan under the Paycheck Protection Program (unless the loan was repaid by May 18, 2020).
- **Slide 4: Q2 Payroll**
 - Background Facts
 - Over the course of the second quarter of 2020 (April 1 through June 30), ABC paid \$1,000,000 in total payroll to its workforce.
 - ABC Bank pays bank tellers \$150/day and bank managers \$600/day.
 - In addition, per-employee health insurance premiums cost ABC Bank \$50/day (\$13,000 spread over a 260-day work year).
 - Typically, ABC would deposit \$373,000 with the IRS on \$1,000,000 quarterly payroll: \$220,000 in Federal Income tax (\$1,000,000 x 22% FITW tax rate) (same); \$14,500 employee share of Medicare tax (\$1,000,000 x 1.45% rate) (same); \$14,500 employer share of Medicare

tax (\$1,000,000 x 1.45% rate) (same); \$62,000 employee share of Social Security tax (\$1,000,000 x 6.2% rate) (same); \$62,000 employer share of Social Security tax (\$1,000,000 x 6.2% rate) (different, because ABC opted to defer \$60,000 in employer Social Security in accordance with the CARES deferral relief provision). Thus, total deposits for Q2 equaled \$313,000.

- Effective Dates
 - FFCRA applies to qualified wages paid between April 1, 2020 and December 31, 2020.
 - CARES employee retention credits available for qualified wages paid between March 13, 2020 and December 31, 2020.
 - CARES tax deferral is available for employer portion Social Security tax (6.2% tax on wages up to \$137,700) due between March 27, 2020 and December 31, 2020.
- The redesigned Form 941 for Q2 is to be used to claim CARES employee retention credits for qualified wages paid in Q1 (March 13 to March 30).

- **Slide 9: FFCRA Qualified Sick & Family Leave Wages**

- FFCRA Qualified Sick Leave Wages. Wages required to be paid under the Emergency Paid Sick Leave Act (EPSLA) as enacted under the FFCRA, when an employee is unable to work due to:
 1. Is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 3. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 4. Is caring for an individual subject to an order described in (1) or who has been advised as described in (2);
 5. Is caring for a child if the school or place of care has been closed, or the childcare provider is unavailable, due to COVID-19 precautions; or
 6. Is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services
- FFCRA Qualified Sick Leave Limits.
 - Sick leave qualifying under (1), (2), or (3), the amount of qualified sick leave wages is determined at the employee's regular rate of pay, but the wages may not exceed \$511 for any day (or portion of a day) for which the individual is paid sick leave.
 - Sick leave qualifying under (4), (5), or (6), the amount of qualified sick leave wages is determined at two-thirds the employee's regular rate of pay, but the wages may not exceed \$200 for any day (or portion of a day) for which the individual is paid sick leave.
 - The EPSLA also limits each individual to a maximum of up to 80 hours of paid sick leave for the year. Therefore, the maximum amount of paid sick leave wages for the year can't exceed \$5,110 for an employee for leave

- under (1), (2), or (3), and it can't exceed \$2,000 for an employee for leave under (4), (5), or (6).
 - FFCRA Qualified Family Leave Wages.
 - Wages required to be paid under the Emergency Family & Medical Leave Act (EFMLA) as enacted under the FFCRA, when an employee is unable to work due to the need to care for a child because the school or place of care has closed, or the childcare provider is unavailable due to COVID-19 related reasons.
 - Coverage lasts for up to 10 weeks (50 days), and the employee's rate of pay must be at least two-thirds of the employee's regular rate of pay, multiplied by the number of hours the employee otherwise
 - Would have been scheduled to work. The qualified family leave wages can't exceed \$200 per day or \$10,000 in the aggregate per employee for the year.
 - FFCRA qualified sick and family leave wages are not subject to the 6.2% employer portion of Social Security tax, and so they are reported separately on lines 5a(i) and 5a(ii).
- **Slide 11: Calculating FFCRA Qualified Sick & Family Leave Tax Credits (Form 941, Worksheet 1)**
 - Monthly schedule depositors and semiweekly schedule depositors must account for nonrefundable credits claimed on lines 11a, 11b, and 11c when reporting their tax liabilities on line 16 or Schedule B (Form 941).
 - The total tax liability for the quarter must equal the amount reported on line 12.
 - Failure to account for the nonrefundable credits on line 16 or Schedule B (Form 941) may cause line 16 or Schedule B (Form 941) to report more than the total tax liability reported on line 12.
- **Slide 12: Reporting FFCRA Qualified Sick & Family Leave Tax Credits (Form 941)**
 - The credit for qualified sick and family leave wages consists of the qualified sick leave wages, the qualified family leave wages, the allocable qualified health plan expenses, and the employer share of Medicare tax allocable to those wages.
 - The refundable portion of the credit is allowed after the employer share of social security tax is reduced to zero by nonrefundable credits.
 - The nonrefundable portion of the credit is limited to the employer share of social security tax reported on Form 941, lines 5a and 5b, after that share is first reduced by any credit claimed on Form 8974 for the qualified small business payroll tax credit for increasing research activities, or any credit to be claimed on Form 5884-C for the work opportunity credit for qualified tax-exempt organizations hiring qualified veterans, and/or any credit claimed for the nonrefundable portion of the credit for qualified sick and family leave wages.
 - Nonrefundable portion of credit. The nonrefundable portion of the credit is limited to the employer share of social security tax reported on Form 941, lines

5a and 5b, after that share is first reduced by any credit claimed on Form 8974 for the qualified small business payroll tax credit for increasing research activities, or any credit to be claimed on Form 5884-C for the work opportunity credit for qualified tax-exempt organizations hiring qualified veterans.

- Allocable qualified health plan expenses. (IRS FAQs 31-36)
 - The credit for qualified sick leave wages and qualified family leave wages is increased to cover the qualified health plan expenses that are properly allocable to the qualified leave wages for which the credit is allowed.
 - These 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 such amounts are excluded from the employees' income as coverage under an accident or health plan.
 - The amount of qualified health plan expenses generally includes both the portion of the cost paid by the employer and the portion of the cost paid by the employee with pre-tax salary reduction contributions.
 - However, qualified health plan expenses don't include amounts that the employee paid for with after-tax contributions.
 - For FFCRA credits, allocable qualified health plan expenses are creditable in addition to the underlying sick or family leave wages, meaning the \$5,110 / \$2,000 / \$10,000 caps can be exceeded due to qualified health plan expenses.
 - Notice 2020-54, Form W-2 information reporting requirement for qualified sick and qualified family leave wages, box 14 or on separate statement. This required reporting provides employees who are also self-employed with information necessary for properly claiming qualified sick leave equivalent or qualified family leave equivalent credits under the FFCRA.
 - Notice 2020-22; Notice 2020-57, penalty relief
 - Employees coming back to work after furlough, claiming sick and family leave during 3rd and 4th quarters, after end of unemployment
 - An Eligible Employer must include the full amount of the credits for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of the Medicare tax on the qualified leave wages) in gross income. FFCRA FAQ 49.
 - An Eligible Employer may deduct as a business expense the amounts paid to an employee for qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages). FFCRA FAQ 50.
 - FFCRA qualified sick and family leave wages are fully taxable to employees, and thus are includable in employee wages and income. FFCRA FAQ 55.
- **Slide 15: Calculating CARES Employee Retention Credits (Form 941, Worksheet 1)**
 - Employee Retention Credits

- Provides up to \$5,000 in refundable tax credits for qualified wages paid to employees by an eligible employer (1) whose trade or business operations fully or partially suspend due to COVID-19–related government orders, or (2) who experience a +50% decline in gross receipts (or operations, for tax-exempt employers) as compared to the corresponding calendar quarter in 2019.
- The credit applies to 50% of “qualified wages” (capped at \$10,000) paid between March 13, 2020 and Dec. 31, 2020.
 - For employers with more than 100 full-time employees (determined using the ACA's 30-hour/week measure), "qualified wages" available for tax credit include wages paid (including health benefits) to employees who are not providing services due to a shutdown or slowdown.
 - For employers with 100 or fewer full-time employees, "qualified wages" available for a tax credit include wages paid (including health benefits) to employees, whether or not wages are paid due to a shutdown or slowdown.
- The retention credit is a fully refundable credit against the employer share of Social Security tax (6.2%), though it may be claimed through offset of other employment taxes (employer Medicare, employee Medicare, employee Social Security, employee federal income tax withholding) or advanced from the IRS via Form 7200.
- Employers will report retention wages/credit paid during Q1 (March 13–March 31) on the Q2 Form 941. The employee retention credit for qualified wages paid between March 13, 2020, and March 31, 2020, is claimed on Form 941 for the second quarter of 2020. Don't file Form 941-X for the first quarter of 2020 to claim the employee retention credit for this period.
- Employers taking a CARES Act section 1102 SBA loan are not eligible to claim the CARES retention credit.
- For limited guidance on CARES retention credits, see: <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>.
- The refundable tax credit equals 50% of “qualified wages” up to \$10,000 paid by an “eligible employer” financially impacted by COVID-19 to each employee (the maximum amount of the credit is \$5,000 per employee).
- “Qualified Wages” must be paid after March 12, 2020 and before January 1, 2021.
 - For employers who had an average number of full-time employees in 2019 of 100 or less, all employee wages are qualified wages.
 - For employers who had an average number of full-time employees in 2019 of more than 100, “qualified wages” only include wages paid to an employee for the time the employee is not providing services due to full or partial suspension of operation by governmental order or a significant decline in gross receipts.

- Qualified wages includes the employer's health plan expenses allocable to the wages.
 - If an employer only pays health plan expenses to furloughed workers and does not pay any wages, the health plan expenses alone are qualified wages.
 - Qualified wages do not include amounts taken into account for the tax credit under the Families First Coronavirus Response Act ("FFCRA") for qualified sick and family leave.
- **Slide 16: Reporting CARES Q2 Employee Retention Credits (Form 941)**
 - The employee retention credit is 50% of the qualified wages you paid to your employees in the quarter. For the second quarter only, the credit will include 50% of the qualified wages paid between March 13, 2020, and March 31, 2020.
 - The refundable portion of the credit is allowed after the employer share of social security tax is reduced to zero by nonrefundable credits.
 - Allocable qualified health plan expenses.
 - For CARES retention credits, allocable qualified health plan expenses are not creditable in addition to the underlying sick or family leave wages, meaning the \$10,000 cap is the total cap, inclusive of qualified health plan expenses.
 - In some circumstances, qualified health plan expenses for purposes of the employee retention credit are treated as allocable to the qualified wages for the employee retention credit even if no wages are paid to the employees during the applicable period (for example, when you furlough an employee because your operations are fully or partially suspended due to a government order but you continue to pay qualified health plan expenses).
- **Slide 17: Reporting CARES Q1 Employee Retention Credits (Form 941)**
 - For the second quarter Form 941 only, qualified wages (excluding qualified health plan expenses) for the employee retention credit and qualified health plan expenses allocable to the qualified wages for the period from March 13, 2020, to March 31, 2020, are reported on lines 24 and 25, respectively.
 - Qualified wages that employees receive are includable in employee wages and income.
 - Eligible employers receiving employee retention credits for qualified wages need not include the credits in gross income, nor may eligible employees deduct qualified wages. See ERTC FAQs 85-86.
- **Slide 18: Deposits & Deferrals**
 - The CARES Act allows employers, including government employers, to defer the deposit and payment of the employer share of social security tax for deposits and payments due on or after March 27, 2020, and before January 1, 2021, as

well as deposits and payments due after January 1, 2021, that are required for wages paid during the quarter ending on December 31, 2020.

- The CARES Act provides that employers may delay payment of 100% of the employer share of Social Security tax (6.2%) on wages where such taxes are due between March 27, 2020 and January 1, 2021.
 - The deadline for paying 50% of deferred taxes is December 31, 2021 (17 months), and the deadline for paying the remaining 50% of taxes is delayed until December 31, 2022 (29 months).
 - These delay relief provisions are available regardless of workforce size.
 - The CARES Act, when enacted, had provided that any employer that received any PPP/SBA loan and had it forgiven could not use this 6.2% OASDI tax deferral. The IRS eased this restriction, by providing (in Q&A 4 of the IRS's original FAQ on the deferral), that employers could continue to use the 6.2% deferral up until the time when this employer-share tax was owed in periods after the loan forgiveness. Further, deferrals prior to loan forgiveness were not required to be repaid until the stated deadlines.
 - This restriction on use of the 6.2% deferral was eliminated by the "PPP Flexibility Act," enacted on June 5, 2020, which amended section 2302 of the CARES Act by striking the rule that would have prevented an employer from deferring the deposit and payment of the employer's share of Social Security tax after the employer receives a decision that its PPP loan was forgiven by the lender. Therefore, an employer that receives a PPP loan is entitled to defer the payment and deposit of the employer's share of Social Security tax, even if the loan is forgiven.
 - Issue with deferrable but deposited taxes – any way to get those taxes back?
 - The deferred amount of the employer share of social security tax is a deferral of deposits and payments, not a deferral of liability. You won't receive a refund or credit of any amount of the employer share of social security tax already deposited or paid for the quarter.
 - However, in determining whether any amount of the employer share of social security tax was already deposited for this purpose, you can consider prior deposits during the quarter as first being deposited for employment taxes other than the employer share of social security tax. Although employers depositing taxes using EFTPS identify the subcategory of separate deposits for the different employment taxes (for example, social security tax and Medicare tax), those entries are for informational purposes only. The IRS doesn't use that information in comparing liabilities reported on the employment tax return and the total deposits made.
- **Slide 19: Redesigned Form 941: Form 7200 Advanced Credits**
 - Form 7200 may be filed for a quarter up to the earlier of the end of the month after the end of each quarter or filing of Form 941 for the quarter.
 - However, if you file Form 7200 after the end of the quarter, it's possible that it may not be processed prior to the processing of the filed Form 941.

- Advance payment requests on Form 7200 for a quarter won't be paid after your Form 941 is processed for that quarter.
- When the IRS processes Form 941, we will correct the amount reported on line 13f to match the amount of advance payments issued or contact you to reconcile the difference before we finish processing Form 941.