

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a),

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid sick time required to be provided under the Emergency Paid Sick Leave Act,

(6) regulations or other guidance to permit the advancement of the credit determined under subsection (a), and

(7) regulations or other guidance with respect to the allocation, reporting, and substantiation of collectively bargained defined benefit pension plan contributions and collectively bargained apprenticeship program contributions.

(h) Application of section

This section shall apply only to wages paid with respect to the period beginning on April 1, 2021, and ending on September 30, 2021.

(i) Treatment of deposits

The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of applicable employment taxes if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.

(j) Non-discrimination requirement

No credit shall be allowed under this section to any employer for any calendar quarter if such employer, with respect to the availability of the provision of qualified sick leave wages to which this section otherwise applies for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q)), full-time employees, or employees on the basis of employment tenure with such employer.

(Added Pub. L. 117-2, title IX, §9641(a), Mar. 11, 2021, 135 Stat. 161.)

Editorial Notes

REFERENCES IN TEXT

The Emergency Paid Sick Leave Act and such Act, referred to in subsecs. (b)(1), (c)(1), (2), and (g)(5), is division E (§5101 et seq.) of Pub. L. 116-127, Mar. 18, 2020, 134 Stat. 195, which is set out as a note under section 2601 of Title 29, Labor.

The National Apprenticeship Act, referred to in subsec. (e)(3)(B), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, which is classified generally to chapter 4C (§50 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 50 of Title 29 and Tables.

Section 2301 of the CARES Act, referred to in subsec. (f)(3), is section 2301 of title II of div. A of Pub. L.

116-136, which is set out as a note under section 3111 of this title.

Section 7 of the Small Business Act, referred to in subsec. (f)(7)(A)(i), (B), is classified to section 636 of Title 15, Commerce and Trade.

Section 7A of the Small Business Act, referred to in subsec. (f)(7)(A)(i), (B), is classified to section 636m of Title 15, Commerce and Trade.

Section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, referred to in subsec. (f)(7)(A)(ii), is classified to section 9009a of Title 15, Commerce and Trade.

Section 5003 of the American Rescue Plan Act of 2021, referred to in subsec. (f)(7)(A)(iii), is classified to section 9009c of Title 15, Commerce and Trade.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 117-2, title IX, §9641(d), Mar. 11, 2021, 135 Stat. 171, provided that: "The amendments made by this section [enacting sections 3131 to 3133 of this title and amending section 1324 of Title 31, Money and Finance] shall apply to amounts paid with respect to calendar quarters beginning after March 31, 2021."

§ 3132. Payroll credit for paid family leave

(a) In general

In the case of an employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 100 percent of the qualified family leave wages paid by such employer with respect to such calendar quarter.

(b) Limitations and refundability

(1) Wages taken into account

The amount of qualified family leave wages taken into account under subsection (a), plus any increases under subsection (e), with respect to any individual shall not exceed—

(A) for any day (or portion thereof) for which the individual is paid qualified family leave wages, \$200, and

(B) in the aggregate with respect to all calendar quarters, \$12,000.

(2) Credit limited to certain employment taxes

The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes for such calendar quarter (reduced by any credits allowed under section 3131) on the wages paid with respect to the employment of all employees of the employer.

(3) Refundability of excess credit

(A) Credit is refundable

If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

(B) Advancing credit

In anticipation of the credit, including the refundable portion under subparagraph (A), the credit shall be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a), subject to the limits under paragraph (1) and (2), all calculated through

the end of the most recent payroll period in the quarter.

(c) Qualified family leave wages

(1) In general

For purposes of this section, the term “qualified family leave wages” means wages paid by an employer which would be required to be paid by reason of the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act) as if such Act (and amendments made by such Act) applied after March 31, 2021.

(2) Rules of application

(A) In general

For purposes of determining whether wages are qualified family leave wages under paragraph (1)—

(i) section 110(a)(2)(A) of the Family and Medical Leave Act of 1993 shall be applied by inserting “or any reason for leave described in section 5102(a) of the Families First Coronavirus Response Act, or the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19 and such employee has been exposed to COVID–19 or the employee’s employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization” after “public health emergency”, and

(ii) section 110(b) of such Act shall be applied—

(I) without regard to paragraph (1) thereof,

(II) by striking “after taking leave after such section for 10 days” in paragraph (2)(A) thereof, and

(III) by substituting “\$12,000” for “\$10,000” in paragraph (2)(B)(ii) thereof.

(B) Leave must meet requirements

For purposes of determining whether wages would be required to be paid under paragraph (1), if an employer fails to comply with any requirement of the Family and Medical Leave Act of 1993 or the Emergency Family and Medical Leave Expansion Act (determined without regard to any time limitation under section 102(a)(1)(F) of the Family and Medical Leave Act of 1994)¹ with respect to any leave provided for a qualifying need related to a public health emergency (as defined in section 110 of such Act, applied as described in subparagraph (A)(i)), amounts paid by such employer with respect to such leave shall not be taken into account as qualified family leave wages. For purposes of the preceding sentence, an employer which takes an action described in section 105 of the Family and Medical Leave Act of 1993 shall be treated as failing to meet a requirement of such Act.

¹ So in original. Probably should be “1993”.

(d) Allowance of credit for certain health plan expenses

(1) In general

The amount of the credit allowed under subsection (a) shall be increased by so much of the employer’s qualified health plan expenses as are properly allocable to the qualified family leave wages for which such credit is so allowed.

(2) Qualified health plan expenses

For purposes of this subsection, the term “qualified health plan expenses” means amounts paid or incurred by the employer to provide and maintain a group health plan (as defined in section 5000(b)(1)), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a).

(3) Allocation rules

For purposes of this section, qualified health plan expenses shall be allocated to qualified family leave wages in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among covered employees and pro rata on the basis of periods of coverage (relative to the time periods of leave to which such wages relate).

(e) Allowance of credit for amounts paid under certain collectively bargained agreements

(1) In general

The amount of the credit allowed under subsection (a) shall be increased by so much of the sum of—

(A) so much of the employer’s collectively bargained defined benefit pension plan contributions as are properly allocable to the qualified family leave wages for which such credit is so allowed, plus

(B) so much of the employer’s collectively bargained apprenticeship program contributions as are properly allocable to the qualified family leave wages for which such credit is so allowed.

(2) Collectively bargained defined benefit pension plan contributions

For purposes of this subsection—

(A) In general

The term “collectively bargained defined benefit pension plan contributions” has the meaning given such term under section 3131(e)(2).

(B) Allocation rules

The amount of collectively bargained defined benefit pension plan contributions allocated to qualified family leave wages for any calendar quarter shall be the product of—

(i) the pension contribution rate (as defined in section 3131(e)(2)), expressed as an hourly rate, and

(ii) the number of hours for which qualified family leave wages were provided to employees covered under the collective bargaining agreement described in section

3131(e)(2)(A)(iii) during the calendar quarter.

(3) Collectively bargained apprenticeship program contributions

For purposes of this section—

(A) In general

The term “collectively bargained apprenticeship program contributions” has the meaning given such term under section 3131(e)(3).

(B) Allocation rules

For purposes of this section, the amount of collectively bargained apprenticeship program contributions allocated to qualified family leave wages for any calendar quarter shall be the product of—

(i) the apprenticeship contribution rate (as defined in section 3131(e)(3)), expressed as an hourly rate, and

(ii) the number of hours for which qualified family leave wages were provided to employees covered under the collective bargaining agreement described in section 3131(e)(3)(A)(iii) during the calendar quarter.

(f) Definitions and special rules

(1) Applicable employment taxes

For purposes of this section, the term “applicable employment taxes” means the following:

(A) The taxes imposed under section 3111(b).

(B) So much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b).

(2) Wages

For purposes of this section, the term “wages” means wages (as defined in section 3121(a), determined without regard to paragraphs (1) through (22) of section 3121(b)) and compensation (as defined in section 3231(e), determined without regard to the sentence in paragraph (1) thereof which begins “Such term does not include remuneration”).

(3) Denial of double benefit

For purposes of chapter 1, the gross income of the employer, for the taxable year which includes the last day of any calendar quarter with respect to which a credit is allowed under this section, shall be increased by the amount of such credit. Any wages taken into account in determining the credit allowed under this section shall not be taken into account for purposes of determining the credit allowed under sections 45A, 45P, 45S, 51, 3131, and 3134. In the case of any credit allowed under section 2301 of the CARES Act or section 41 with respect to wages taken into account under this section, the credit allowed under this section shall be reduced by the portion of the credit allowed under such section 2301 or section 41 which is attributable to such wages.

(4) Election to not take certain wages into account

This section shall not apply to so much of the qualified family leave wages paid by an el-

igible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

(5) Certain governmental employers

No credit shall be allowed under this section to the Government of the United States or to any agency or instrumentality thereof. The preceding sentence shall not apply to any organization described in section 501(c)(1) and exempt from tax under section 501(a).

(6) Extension of limitation on assessment

Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of—

(A) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

(B) the date on which such return is treated as filed under section 6501(b)(2).

(7) Coordination with certain programs

(A) In general

This section shall not apply to so much of the qualified family leave wages paid by an eligible employer as are taken into account as payroll costs in connection with—

(i) a covered loan under section 7(a)(37) or 7A of the Small Business Act,

(ii) a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, or

(iii) a restaurant revitalization grant under section 5003 of the American Rescue Plan Act of 2021.

(B) Application where PPP loans not forgiven

The Secretary shall issue guidance providing that payroll costs paid during the covered period shall not fail to be treated as qualified family leave wages under this section by reason of subparagraph (A)(i) to the extent that—

(i) a covered loan of the taxpayer under section 7(a)(37) of the Small Business Act is not forgiven by reason of a decision under section 7(a)(37)(J) of such Act, or

(ii) a covered loan of the taxpayer under section 7A of the Small Business Act is not forgiven by reason of a decision under section 7A(g) of such Act.

Terms used in the preceding sentence which are also used in section 7A(g) or 7(a)(37)(J) of the Small Business Act shall, when applied in connection with either such section, have the same meaning as when used in such section, respectively.

(g) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this section, including—

(1) regulations or other guidance to prevent the avoidance of the purposes of the limitations under this section,

(2) regulations or other guidance to minimize compliance and record-keeping burdens under this section,

(3) regulations or other guidance providing for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit allowed under this section,

(4) regulations or other guidance for recapturing the benefit of credits determined under this section in cases where there is a subsequent adjustment to the credit determined under subsection (a),

(5) regulations or other guidance to ensure that the wages taken into account under this section conform with the paid leave required to be provided under the Emergency Family and Medical Leave Expansion Act (including the amendments made by such Act),

(6) regulations or other guidance to permit the advancement of the credit determined under subsection (a), and

(7) regulations or other guidance with respect to the allocation, reporting, and substantiation of collectively bargained defined benefit pension plan contributions and collectively bargained apprenticeship program contributions.

(h) Application of section

This section shall apply only to wages paid with respect to the period beginning on April 1, 2021, and ending on September 30, 2021.

(i) Treatment of deposits

The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of applicable employment taxes if the Secretary determines that such failure was due to the anticipation of the credit allowed under this section.

(j) Non-discrimination requirement

No credit shall be allowed under this section to any employer for any calendar quarter if such employer, with respect to the availability of the provision of qualified family leave wages to which this section otherwise applies for such calendar quarter, discriminates in favor of highly compensated employees (within the meaning of section 414(q)), full-time employees, or employees on the basis of employment tenure with such employer.

(Added Pub. L. 117-2, title IX, §9641(a), Mar. 11, 2021, 135 Stat. 166.)

Editorial Notes

REFERENCES IN TEXT

The Emergency Family and Medical Leave Expansion Act and such Act, referred to in subsecs. (c)(1), (2)(B) and (g)(5), is div. C of Pub. L. 116-127, Mar. 18, 2020, 134 Stat. 189. For complete classification of this Act to the Code, see Short Title of 2020 Amendment note set out under section 2601 of Title 29, Labor, and Tables.

The Family and Medical Leave Act of 1993 and such Act, referred to in subsec. (c)(2), is Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, which enacted chapter 28 (§2601 et seq.) of Title 29, Labor, sections 60m and 60n of Title 2, The Congress, and sections 6381 to 6387 of Title 5, Government Organization and Employees, amended section 2105 of Title 5, and enacted provisions set out as notes under section 2601 of Title 29. Sections 102, 105, and 110 of the Act are classified to sections 2612, 2615, and 2620, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

Section 5102(a) of the Families First Coronavirus Response Act, referred to in subsec. (c)(2)(A)(i), is section

5102(a) of Pub. L. 116-127, which is set out in a note under section 2601 of Title 29, Labor.

Section 2301 of the CARES Act, referred to in subsec. (f)(3), is section 2301 of title II of div. A of Pub. L. 116-136, which is set out as a note under section 3111 of this title.

Section 7 of the Small Business Act, referred to in subsec. (f)(7)(A)(i), (B), is classified to section 636 of Title 15, Commerce and Trade.

Section 7A of the Small Business Act, referred to in subsec. (f)(7)(A)(i), (B), is classified to section 636m of Title 15, Commerce and Trade.

Section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, referred to in subsec. (f)(7)(A)(ii), is classified to section 9009a of Title 15, Commerce and Trade.

Section 5003 of the American Rescue Plan Act of 2021, referred to in subsec. (f)(7)(A)(iii), is classified to section 9009c of Title 15, Commerce and Trade.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to amounts paid with respect to calendar quarters beginning after Mar. 31, 2021, see section 9641(d) of Pub. L. 117-2, set out as a note under section 3131 of this title.

§ 3133. Special rule related to tax on employers

(a) In general

The credit allowed by section 3131 and the credit allowed by section 3132 shall each be increased by the amount of the taxes imposed by subsections (a) and (b) of section 3111 and section 3221(a) on qualified sick leave wages, or qualified family leave wages, for which credit is allowed under such section 3131 or 3132 (respectively).

(b) Denial of double benefit

For denial of double benefit with respect to the credit increase under subsection (a), see sections 3131(f)(3) and 3132(f)(3).

(Added Pub. L. 117-2, title IX, §9641(a), Mar. 11, 2021, 135 Stat. 171.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to amounts paid with respect to calendar quarters beginning after Mar. 31, 2021, see section 9641(d) of Pub. L. 117-2, set out as a note under section 3131 of this title.

§ 3134. Employee retention credit for employers subject to closure due to COVID-19

(a) In general

In the case of an eligible employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 70 percent of the qualified wages with respect to each employee of such employer for such calendar quarter.

(b) Limitations and refundability

(1) In general

(A) Wages taken into account

The amount of qualified wages with respect to any employee which may be taken into account under subsection (a) by the eligible employer for any calendar quarter shall not exceed \$10,000.