

DC Tax Flash: IRS Issues Rules on Recapturing Excess Employment Tax Credits

Tax Alert
07.24.2020

The Internal Revenue Service (IRS) today issued [temporary](#) and [proposed regulations](#) on the recapture of excess employment tax credits under the Families First Coronavirus Relief Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The rules provide that any amount of credits for qualified leave under the FFCRA and the CARES Act "erroneously refunded or credited to an employer shall be treated as underpayments of the taxes imposed by [section 3111\(a\)](#) or [section 3221\(a\)](#), as applicable, by the employer and may be administratively assessed and collected in the same manner as the taxes," the IRS notes.

The IRS further explains that the rules:

- provide that the determination of any amount of credits erroneously refunded must take into account any credit amounts advanced to an employer under the process established by the IRS in accordance with sections 7001(b)(4)(A)(ii) and 7003(b)(3)(B) of the Families First Act and section 2301(l)(1) of the CARES Act;
- provide that employers against whom an erroneous refund of credits can be assessed as an underpayment include persons treated as the employer under sections 3401(d), 3504, and 3511 of the Code, consistent with their liability for the section 3111(a) and section 3221(a) taxes against which the credit applied; and
- apply to all credit refunds under section 7001 and 7003 of the Families First Act advanced or paid on or after April 1, 2020 and all credit refunds under section 2301 of the CARES Act advanced or paid on or after March 13, 2020. These applicability dates correspond to the effective dates of the statutory sections that provide for these credits and that authorize guidance to allow for the administrative reconciliation and recapture of erroneous refunds of these credits.

The 22-page text of the temporary rules is [posted here](#).

The seven-page text of the proposed rules, which cross reference the temporary regulations, is [posted here](#).

[Miller & Chevalier Coronavirus Task Force](#)

The outbreak of COVID-19 is creating significant business and legal challenges for companies throughout the world. In response to client demand, the firm has formed an interdisciplinary task force to help businesses navigate these issues.

[COVID-19 Resource Library](#)

We also maintain a resource library of [legislative responses](#) and [regulatory guidance](#) related to COVID-19.

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