



FEDERAL TAX WEEKLY

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Qualified Sick and Family Leave Wages Reporting Guidance Issued

Notice 2021-53; IR-2021-178

The IRS and the Treasury Department have issued guidance to employers about reporting the amount of qualified sick and family leave wages paid to employees for leave taken in 2021 on Form W-2, Wage and Tax Statement. Further, the notice provides guidance under recent legislation, including: the Families First Coronavirus Response Act (FFCRA) (P.L. 116-127), as amended by the COVID-Related Tax Relief Act of 2020 (Division N of P.L. 116-260) and the American Rescue Plan Act of 2021 (P.L. 117-2). Employers are required to report these amounts to employees either on Form W-2, Box 14, or in a separate statement provided with the Form W-2. The wage amount that the notice requires employers to report on Form W-2 will provide employees who are also self-employed with the information necessary to determine the amount of any sick and family leave equivalent credits they may claim in their self-employed capacities.

Reporting Requirements

The guidance requires eligible employers to report to employees the amount of qualified sick leave wages and qualified family leave wages paid to the employees under (i) sections 7001 or 7003 of the Families First Act for leave provided during the period beginning January 1, 2021, through March 31, 2021, and (ii) Code Secs. 3131 and 3132 for leave provided during the period beginning April 1, 2021, through September 30, 2021. Moreover, eligible employers have separate reporting requirements for (i) leave provided to employees during the period beginning January 1, 2021, through March 31, 2021, under the Families First Act; and (ii) leave provided to employees during the period beginning April 1, 2021, through September 30, 2021, under Code Secs. 3131 and 3132.

Specific Reporting Instructions

Qualified leave wages paid in 2021 under the Families First Act and Code Secs. 3131 and 3132 are to be reported in Box 1 of Form W-2. To the extent that qualified leave wages are social security wages or Medicare wages, they must also be included in Box 3 (up to the social security wage base) and Box 5, respectively.

In addition to the regular reporting requirements, employers must report the following types and amounts of the wages that were paid, with each amount separately reported either in Box 14 of Form W-2 or on a separate statement to the employee:

- the total amount of qualified sick leave wages paid for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act (EPSLA) with respect to leave provided to employees during the period beginning on January 1, 2021, through March 31, 2021 (sick leave wages subject to the \$511 per day limit);

- the total amount of qualified sick leave wages paid for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of EPSLA with respect to leave provided to employees during the period beginning on January 1, 2021, through March 31, 2021 (sick leave wages subject to the \$200 per day limit);
- the total amount of qualified family leave wages paid to the employee under the Emergency Family and Medical Leave Expansion Act (EFMLEA) with respect to leave provided to employees during the period beginning on January 1, 2021, through March 31, 2021;
- the total amount of qualified sick leave wages paid for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of section 5102(a) of EPSLA with respect to leave provided to employees during the period beginning on April 1, 2021, through September 30, 2021;
- the total amount of qualified sick leave wages paid for reasons described in

paragraphs (4), (5), or (6) of section 5102(a) of EPSLA with respect to leave provided to employees during the period beginning on April 1, 2021, through September 30, 2021;

- the total amount of qualified family leave wages paid to the employee under EFMLEA with respect to leave provided to employees during the period beginning on April 1, 2021, through September 30, 2021.

Model Language for Employee Instructions

As part of the Instructions for Employee, under the instructions for Box 14, for the Forms W-2, or in a separate statement sent to the employee, the employer may provide additional information about qualified sick leave wages and qualified family leave wages, and explain that these wages may limit the amount of the qualified sick leave

equivalent or qualified family leave equivalent credits to which the employee may be entitled with respect to any self-employment income. The guidance provides model language for employee instructions.

Self-Employment Tax Reporting

If taxpayers have self-employment income in addition to wages paid by an employer, and they intend to claim any qualified sick leave or qualified family leave equivalent credits, they must report the qualified sick leave or qualified family leave wages on Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals, included with their income tax return. The self-employed taxpayer may have to reduce (but not below zero) any qualified sick leave or qualified family leave equivalent amounts by these qualified leave wages.

Temporary, Proposed Regs Authorize Assessment of Erroneous Refund of COVID-19 Employment Tax Credits

T.D. 9953; Proposed Regulations, NPRM REG-109077-21

The IRS has issued temporary and proposed regulations that authorize the assessment of any erroneous refund of the COVID-19 employment tax credits which were added by the American Rescue Plan Act of 2021 (P.L. 117-2). These credits for certain wages paid by employers are:

- the Credit for Paid Sick Leave under Code Sec. 3131,
- the Credit for Paid Family Leave under Code Sec. 3132, and
- the Employee Retention Credit under Code Sec. 3134.

The text of the temporary regulations also serves as the text of the proposed regulations.

The temporary regulations apply to all credits under Code Secs. 3131 and 3132, including any increases to the credits under Code Sec. 3133, credited or refunded on or after April 1, 2021, including advanced refunds, as well as all credits under Code Sec. 3134 that are credited or refunded on or after July 1, 2021, including advanced refunds.

Erroneous Refunds

These credits are taken against the employer's share of Medicare tax imposed under

Code Sec. 3111(b) and the attributable Railroad Retirement Tax Act tax imposed under Code Sec. 3221(a). If the amount of the credits exceeds these taxes for any calendar quarter, then the excess must be treated as an overpayment to be refunded or credited under Code Secs. 6402(a) and 6413(b). Any credits claimed that exceed the amount to which the employer is entitled, and that are actually credited or refunded by the IRS, are considered to be erroneous refunds of these credits.

If a small eligible employer specified in Code Sec. 3134(j)(2) receives excess advance payments of the credit, then the tax imposed under Code Sec. 3111(b) (or the attributable Code Sec. 3221(a) tax) for

REFERENCE KEY

USTC references are to **U.S. Tax Cases**
Dec references are to **Tax Court Reports**

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the calendar quarter are increased by the excess amount.

The temporary regulations provide that erroneous refunds of these credits are treated as underpayments of the taxes imposed under Code Sec. 3111(b) (and the attributable Code Sec. 3221(a) tax). The temporary regulations authorize the IRS to assess any credits erroneously credited, paid, or refunded in excess of the amount allowed as if those amounts were the applicable taxes, subject to assessment and administrative collection procedures. This allows the IRS to prevent the avoidance of the purposes of the limitations under the credit provisions, and to recover the erroneous refund amounts efficiently, while also preserving administrative protections afforded to taxpayers with respect to contesting their tax liabilities under the Code and avoiding unnecessary costs and burdens associated with litigation.

These assessment and administrative collection procedures do not replace the existing recapture methods, but instead represent an alternative method available to the IRS.

Any amount of the credits for qualified leave wages and certain collectively bargained contributions under Code Secs. 3131 and 3132, plus any amount of credits for qualified health plan expenses under Code Secs. 3131(d) and 3132(d), and including any increases in these credits under Code Sec. 3133, and any amount of the employee retention credit for qualified wages under Code Sec. 3134 that are erroneously refunded or credited to an employer must be treated as underpayments of the employer's share of the applicable Medicare tax by the employer, and may be administratively assessed and collected in the same manner as the taxes. The temporary regulations 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 certain situations, third-party payors claim tax credits on behalf of their common law employer clients. The temporary regulations address this by providing that employers against which an erroneous refund of credits may be assessed as an underpayment include persons treated as the employer under Code Secs. 3401(d), 3504, and 3511, consistent with their

2021-2022 Special Per Diem Rates Released

The IRS has released the 2021-2022 special per diem rates. Taxpayers use the per diem rates to substantiate certain expenses incurred while traveling away from home. These special per diem rates include:

- 1. the special transportation industry meal and incidental expenses (M&IE) rates;
- 2. the rate for the incidental expenses only deduction; and
- 3. the rates and list of high-cost localities for purposes of the high-low substantiation method.

Transportation Industry Special Per Diem Rates

The special M&IE rates for taxpayers in the transportation industry are:

- \$69 for any locality of travel in the continental United States (CONUS); and
- \$74 for any locality of travel outside the continental United States (OCONUS).

Incidental Expenses Only Rate

The rate is \$5 per day for any CONUS or OCONUS travel for the incidental expenses only deduction.

High-Low Substantiation Method

For purposes of the high-low substantiation method, the 2021-2022 special per diem rates are:

- \$296 for travel to any high-cost locality; and
- \$202 for travel to any other locality within CONUS.

The amount treated as paid for meals is:

- \$74 for travel to any high-cost locality; and
- \$64 for travel to any other locality within CONUS.

Instead of the meal and incidental expenses only substantiation method, taxpayers may use:

- \$74 for travel to any high-cost locality; and
- \$64 for travel to any other locality within CONUS.

Taxpayers using the high-low method must comply with Rev. Proc. 2019-48, I.R.B. 2019-51, 1390. That procedure provides the rules for using a per diem rate to substantiate the amount of ordinary and necessary business expenses paid or incurred while traveling away from home.

Notice 2020-71, I.R.B. 2020-40, 786 is superseded.

[Notice 2021-52](#)

liability for the employment taxes against which the credits applied.

Effective Date; Request for Comments

The temporary regulations are effective on the date they are published in the Federal Register.

A public hearing on the proposed regulations will be scheduled if requested in writing by any person who timely submits electronic or written comments. Written or electronic comments and requests for a public hearing must be received by the date that is 60 days after the proposed regulations are published in the Federal Register.

Mississippi Victims of Hurricane Ida Granted Tax Relief

IR-2021-180

The IRS has granted tax relief to the victims of Hurricane Ida in Mississippi. Accordingly, all 82 counties and the Mississippi Choctaw Indian Reservation qualify for tax relief.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on August 28, 2021. As a result, the affected taxpayers will now have until November 1, 2021, to file returns and pay any taxes that were originally due during this period. This also includes individuals who had a valid extension to file their 2020 return due to run out on October 15, 2021. The IRS noted, however, that because tax payments related to

these 2020 returns were due on May 17, 2021, those payments are not eligible for this relief. Additionally, the November 1, deadline also applies to quarterly estimated income tax payments due on September 15, and the quarterly payroll and excise tax returns normally due on November 1, 2021. It also applies to businesses operating on a calendar-year basis, that had a valid extension due to run out on September 15, 2021. In addition, penalties on payroll and excise tax deposits due on or after August 28 and before September 13 will be abated as long as the deposits were made by September 13, 2021.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayer who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the affected area. Taxpayers qualifying for relief

who live outside the disaster area need to contact the IRS at 866-562-5227.

Casualty Losses

Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred, or the return for the prior year. Therefore, taxpayers can claim these losses on the 2020 return they are filling out this tax season or the 2021 return to be filed next year.

Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number, i.e. "EM-356", on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit [disaster-assistance.gov](https://www.irs.gov/disaster-assistance) for information on disaster recovery.

New York and New Jersey Victims of Hurricane Ida Granted Tax Relief

IR-2021-179

The IRS has granted tax relief to the victims of Hurricane Ida in New York and New Jersey. Accordingly, the IRS has offered relief to Bronx, Kings, New York, Queens, Richmond, and Westchester counties in New York, and Bergen, Gloucester, Hunterdon, Middlesex, Passaic, and Somerset counties in New Jersey.

Filing and Payment Deadlines Extended

The IRS has postponed various tax filing and payment deadlines that occurred starting on September 1, 2021. As a result, the affected taxpayers will now have until January 3, 2022, to file returns and pay any taxes that were originally due during this period. This also includes individuals who had a valid extension to file their 2020 return due to run out on October

15, 2021. The IRS noted, however, that because tax payments related to these 2020 returns were due on May 17, 2021, those payments are not eligible for this relief. Additionally, the January 3, 2022, deadline also applies to quarterly estimated income tax payments due on September 15, and the quarterly payroll and excise tax returns normally due on November 1, 2021. It also applies to tax-exempt organizations, operating on a calendar-year basis, that had a valid extension due to run out on November 15, 2021. In addition, penalties on payroll and excise tax deposits due on or after September 1 and before September 16 will be abated as long as the deposits were made by September 16, 2021.

The affected taxpayers do not need to contact the IRS to get this relief. The IRS will work with taxpayer who lives outside the disaster area but whose records necessary to meet a deadline occurring during the postponement period are located in the

affected area. Taxpayers qualifying for relief who live outside the disaster area need to contact the IRS at 866-562-5227.

Casualty Losses

Individuals and businesses in a federally declared disaster area who suffered uninsured or unreimbursed disaster-related losses can choose to claim them on either the return for the year the loss occurred, or the return for the prior year. Therefore, taxpayers can claim these losses on the 2020 return they are filling out this tax season or the 2021 return to be filed next year.

Taxpayers claiming a disaster loss on their tax return should write the appropriate FEMA declaration number, i.e. 4614 for New Jersey or 4615 for New York, on any return claiming a loss. Finally, the IRS has requested taxpayers to see Publication 547 and visit [disasterassistance.gov](https://www.irs.gov/disaster-assistance) for information on disaster recovery.

SBA Enhances COVID Economic Injury Disaster Loan Program

The Small Business Administration (SBA) announced enhancements to the COVID Economic Injury Disaster Loan (EIDL) Program. These enhancements include:

- increasing the EIDL cap from \$500,000 to \$2 million;
- implementing a deferred payment period, so that business owners will not have to begin repayment until two years after loan origination;
- establishing a 30-day exclusivity window for loans of \$500,000 or less;

- expanding the eligible use of funds to include prepaying commercial debt and making payments on federal business debt; and
- simplifying affiliation requirements.

EIDL Program

The purpose of EIDL is for small businesses to meet financial obligations and operating expenses that could have been

met had the disaster not occurred. Small business owners, including agricultural businesses, and nonprofit organizations in all U.S. states, Washington, D.C., and territories can apply for the program. Business owners that have received previous loans through the SBA's Paycheck Protection Program (PPP), Restaurant Revitalization Fund (RRF), or Shuttered Venue Operators Grant (SVOG) can still benefit from COVID EIDL.

Use of E-Signatures Approved for Certain Forms

FS-2021-12

The IRS has allowed taxpayers to use electronic or digital signatures on certain paper forms they cannot file electronically. The Service has balanced the e-signature option with critical security and protection needed against identity theft and fraud. The IRS will accept a wide range of electronic signatures. Acceptable electronic signature methods include:

- (1) a typed name typed on a signature block;
- (2) a scanned or digitized image of a handwritten signature that's attached to an electronic record;
- (3) a handwritten signature input onto an electronic signature pad;

- (4) a handwritten signature, mark or command input on a display screen with a stylus device; and
- (5) a signature created by a third-party software.

Moreover, the IRS will accept images of signatures (scanned or photographed) including common file types supported by Microsoft 365 such as tiff, jpg, jpeg, pdf, Microsoft Office Suite, or Zip.

The IRS has allowed taxpayers and representatives to use electronic or digital signatures on paper forms, which they cannot file using IRS e-file, including for example:

- Form 11-C, Occupational Tax and Registration Return for Wagering;
- Form 637, Application for Registration (For Certain Excise Tax Activities);

- Form 706, U.S. Estate (and Generation-Skipping Transfer) Tax Return and other forms in the 706 series;
- Form 709, U.S. Gift (and Generation-Skipping Transfer) Tax Return;
- Form 730, Monthly Tax Return for Wagers;
- Form 1066, U.S. Income Tax Return for Real Estate Mortgage Investment Conduit;
- Form 1120-C, U.S. Income Tax Return for Cooperative Associations and other forms in the 1120 series;
- Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts; and
- Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner.

IRS Will Not Issue Letter Rulings on Certain Self-Dealing Transactions

Rev. Proc. 2021-40

The IRS announced that it would not issue letter rulings on whether certain transactions are self-dealing within the meaning of Code Sec. 4941(d). This revenue procedure applies to all ruling requests pending or received by the IRS on or after September 3, 2021. Accordingly, any ruling request pending with the Service on

September 3, 2021, requesting a ruling on the issue described in section 3 of this revenue procedure will be closed and the user fee will be returned in full.

Background

In the past, in the interest of sound tax administration, the Service answered

inquiries from individuals and organizations regarding their status for tax purposes and the tax effects of their acts or transactions. The IRS incorporates these no-rule areas annually. The Service is currently reviewing its prior ruling position on transactions described in section 3 of this revenue procedure. Section 3 related to rulings on whether an act of self-dealing occurs when a private foundation (or other

entity subject to Code Sec. 4941) owns or receives an interest in a limited liability company or other entity that owns a promissory note issued by a disqualified person.

The Service has determined that it is in the interest of sound tax administration not to issue rulings on such transactions while it reviews their proper tax treatment.

Effect on Other Documents

Rev. Proc. 2021-3, I.R.B. 2020-1, 131, is amplified.

TAX BRIEFS

Appeals Procedure

The IRS Independent Office of Appeals (Appeals) has released a summary of findings on the Appeals Team Case Leader (ATCL) Conferencing Initiative. The pilot program tested whether inviting IRS Large Business & International examination teams (Compliance) and their IRS Chief Counsel attorneys to engage with taxpayers would improve IRS's ability to work complex cases.

Exempt Organizations

In each of two cases, an organization's request for tax-exempt status was denied under Code Sec. 501(c)(3) and (4) respectively. In the first case, the organization arranged luncheons where industry experts presented education and hosted fundraising golf tournaments to provide scholarships to students. The second organization collected voluntary donations to provide security services to private homeowners. However, both organizations were neither organized nor operated exclusively for tax-exempt purposes and they worked for substantial nonexempt purposes. Therefore, the requirements of the organizational and operational tests were not met.

IRS Letter Ruling 202135008; IRS Letter Ruling 202135009

The IRS approved a tax-exempt organization's set-aside and granted a 60-month extension to pay out the set-aside amount. The organization was exempt from federal income tax under Code Sec. 501(c)(3) and was classified as a private foundation under Code Sec. 509(a). The organization wished to set aside funds for a public

charity that owned and maintained a public structure.

IRS Letter Ruling 202136005

Liens and Levies

The IRS Office of Appeals did not abuse its discretion in upholding a notice of intent to levy with respect to an individual's unpaid tax liabilities for a tax year at issue. Further, the IRS's motion for summary judgment was granted and the taxpayer's motion to remand the case was denied. The taxpayer failed to timely file her tax return for the tax year at issue. The IRS sent a notice of deficiency based on a substitute for return that it prepared. The taxpayer timely requested a collection due process (CDP) hearing and filed a letter challenging her underlying tax liability. Additionally, the taxpayer indicated that she would pursue audit reconsideration. Following various communication attempts with the taxpayer, the IRS sent a notice of determination upholding the proposed levy. At trial, the record showed that the IRS settlement officers conducted a thorough review of the account transcripts and all applicable requirements were met.

Pazden, TC, Dec. 61,926(M)

The IRS did not err in certifying that an individual had a seriously delinquent tax debt under Code Sec. 7345(a). Accordingly, the IRS's certification was sustained.

Kaebel, TC, Dec. 61,927(M)

Marijuana Business

The government's motion to dismiss an amended petition and enforce

summonses was granted. The taxpayers were a marijuana corporation and its owners. The IRS was conducting a civil audit and the taxpayers failed to provide information submitted previously through the Marijuana Enforcement Tracking Reporting and Compliance (METRC) system.

Standing Akimbo, Inc., DC Colo., 2021-2 ustc ¶150,213

Medical Expense Deduction

The IRS has reminded taxpayers that the cost of COVID-19 home testing is an eligible medical expense for tax purposes. The cost of home testing for COVID-19 can be paid or reimbursed under health flexible spending arrangements (health FSAs), health savings accounts (HSAs), health reimbursement arrangements (HRAs), or Archer medical savings accounts (Archer MSAs). Further, the costs of personal protective equipment used to prevent the spread of COVID-19, such as masks, hand sanitizer, and sanitizing wipes are considered as eligible medical expenses. Such expenses can also be paid or reimbursed under health FSAs, HSAs, HRAs, or Archer MSAs.

IR-2021-181

Penalties

A district court did not find whether an individual acted with specific intent to understate reported tax liabilities. The court based its willfulness conclusion solely on a finding that the taxpayer was "willfully blind" to the fact that he was preparing understated tax returns.

Rodgers, CA-9, 2021-2ustc ¶150,211