

Recapture of Excess Employment Tax Credits Under the Families First Act and the CARES Act

A Proposed Rule by the [Internal Revenue Service](#) on 07/29/2020

This document has a comment period that ends in 59 days. (09/28/2020)

DOCUMENT DETAILS

Printed version:

[PDF](#)

Publication Date:

[07/29/2020](#)

Agencies:

[Internal Revenue Service](#)

Dates:

Written or electronic comments and requests for a public hearing must be received by September 28, 2020. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section.

Comments Close:

09/28/2020

Document Type:

Proposed Rule

Document Citation:

85 FR 45551

Page:

45551-45553 (3 pages)

CFR:

26 CFR 31

Agency/Docket Number:

REG-111879-20

RIN:

1545-BP88

Document Number:

2020-16300

DOCUMENT DETAILS

DOCUMENT STATISTICS

Page views:

1,853

as of 07/31/2020 at 12:15 pm EDT

DOCUMENT STATISTICS

PUBLISHED DOCUMENT

AGENCY:

Internal Revenue Service (IRS), Treasury.

ACTION:

Notice of Proposed Rulemaking by cross-reference to temporary regulations.

SUMMARY:

In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations pursuant to the regulatory authority granted under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act to prescribe such regulations as may be necessary for

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reconciling advance payments of refundable employment tax credits provided under these acts and recapturing the benefit of the credits when necessary. These proposed regulations affect businesses and tax-exempt organizations that claim certain credits under the Families First Coronavirus Response Act for qualifying sick and family leave wages and that claim certain employee retention credits under the Coronavirus Aid, Relief, and Economic Security Act. The text of those temporary regulations serves as the text of these proposed regulations.

DATES:

Written or electronic comments and requests for a public hearing must be received by September 28, 2020. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section.

ADDRESSES:

Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-111879-20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through the mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-111879-20), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, NaLee Park at (202) 317-6879; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317-5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Employment Taxes and Collection of Income at the Source Regulations ([26 CFR part 31](#)) relating to sections 3111 and 3221 of the Internal Revenue Code (Code) pursuant to the regulatory authority granted under the Families First Coronavirus Response Act (Families First Act) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to prescribe such regulations as may be necessary for reconciling advance payments of refundable employment tax credits provided under these acts and recapturing the benefit of the credits

when necessary. Consistent with this authority, these proposed regulations authorize the assessment of erroneous refunds of the credits paid under sections 7001 and 7003 of the Families First Act and section 2301 of the CARES Act. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

The Office of Management and Budget's Office of Information and Regulatory Analysis has determined that these regulations are not significant and not subject to review under section 6(b) of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities because these proposed regulations impose no compliance burden on any business entities, including small entities. Although these proposed regulations will apply to all employers eligible for the credits under the Families First Act and the CARES Act, including small businesses and tax-exempt organizations with fewer than 500 employees, and will therefore be likely to affect a substantial number of small entities, the economic impact will not be significant. These proposed regulations do not affect the employer's employment tax reporting or the necessary information to substantiate entitlement to the credits. Rather, these proposed regulations merely implement the statutory authority granted under sections 7001(f) and 7003(f) of the Families First Act and section 2301(l) of the CARES Act that authorize the Service to assess, reconcile, and recapture any portion of the credits erroneously paid or refunded in excess of the actual amount allowed as if such amounts were tax liabilities under sections 3111(a) and 3221(a) subject to assessment and administrative collection procedures. Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact these regulations would have on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a hearing are strongly encouraged to be submitted electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal author of these regulations is NaLee Park, Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in [26 CFR 31](#)

Employment taxes
 Income taxes
 Penalties
 Pensions
 Railroad retirement
 Reporting and recordkeeping requirements
 Social security
 Unemployment compensation

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Proposed Amendments to the Regulations

Accordingly, [26 CFR part 31](#) is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by adding entries for §§ 31.3111-6T and 31.3221-5T in numerical order to read in part as follows:

Authority: [26 U.S.C. 7805](#).

* * * * *

Section 31.3111-6T also issued under sec. 7001 and sec. 7003 of the Families First Coronavirus Response Act of 2020 and sec. 2301 of the Coronavirus Aid, Relief, and Economic Security Act of 2020

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Section 31.3221-5T also issued under sec. 7001 and sec. 7003 of the Families First Coronavirus Response Act of 2020 and sec. 2301 of the Coronavirus Aid, Relief, and Economic Security Act of 2020

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Par. 2. Section 31.3111-6 is added to read as follows:

[§ 31.3111-6](#) Recapture of credits under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act

[The text of proposed § 31.3111-6 is the same as the text of § 31.3111-6T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 31.3221-5 is added to read as follows:

[§ 31.3221-5](#) Recapture of credits under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act

[The text of proposed § 31.3221-5 is the same as the text of § 31.3221-5T published elsewhere in this issue of the **Federal Register**].

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. [2020-16300](#) Filed 7-24-20; 4:15 pm]

BILLING CODE 4830-01-P

PUBLISHED DOCUMENT