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New FAQs Address Tax Credit for Paid Family and Medical Leave

On April 9, 2018, the IRS released its first round of guidance in the form of FAQs concerning the new employer credit for paid family and medical leave (FML) under Code Section 45S.

BACKGROUND

Added by the Tax Cuts and Jobs Act, Code Section 45S provides that for tax years 2018 and 2019, eligible employers can claim a general business tax credit for wages paid to qualifying employees who are on FML if certain requirements are satisfied. While the FAQs released by the IRS offer little in the way of new guidance, they do provide a helpful summary of the credit, particularly on the eligibility rules.

OVERVIEW OF FAQS

To claim the credit, employers must have a written policy in place that provides at least two weeks of paid FML annually to all qualifying employees who work full time (prorated for employees that work part time) and the paid FML must provide at least 50 percent of the wages normally paid to the employee. For purposes of the credit, a qualifying employee is any employee under the Fair Labor Standards Act who has been employed for one year or more and who, for the preceding year, did not receive compensation beyond a certain threshold (to claim the 2018 credit, the employee’s income may not exceed $72,000 in 2017).

As provided in the FAQs, FML is leave for one or more of the following reasons:

1) Birth of an employee’s child and to care for the child.
2) Placement of a child with the employee for adoption or foster care.
3) To care for the employee’s spouse, child, or parent who has a serious health condition.

4) A serious health condition that make the employee unable to perform the functions of his or her position.

5) Any qualifying exigency due to an employee's spouse, child, or parent being on covered active duty (or having been notified of an impending call or order to covered active duty) in the Armed Forces.

6) To care for a service member who is the employee's spouse, child, parent, or next of kin.

To the extent an employer complies with the requirements under Code Section 45S, a minimum credit of 12.5% will be applied to qualified wages paid to an employee while on FML. The amount of the credit will increase 0.25% for each percentage point paid to a qualifying employee that exceeds 50% of the employee's wages, to a maximum of 25%. However, as emphasized by the FAQs, any leave paid by a state or local government or required by state or local law will not be considered in determining the amount of employer-provided paid FML. Furthermore, any wages taken into account in determining any other general business credit may not be used in determining this Section 45S credit.

CONCLUSION

Although this IRS FAQ provided a helpful summary of the credit eligibility rules, many questions regarding the Section 45S employer credit for paid FML remain. Specifically, the IRS recognizes that these FAQs fail to address all questions related to the written policy requirements, the impact of state and local requirements, and how to treat wages paid by the employer's insurance provider in the event of employee disability, among others.

The IRS expects to issue additional guidance in the coming months. In the meantime, employers wishing to take advantage of this credit should review the conditions set forth in Code Section 45S and these FAQs to satisfy the requirements necessary to claim the credit.

For IRS FAQs, visit https://www.irs.gov/newsroom/section-45s-employer-credit-for-paid-family-and-medical-leave-faqs.