COVID-19 Assistance for Labor Unions
Federal Payroll Tax Credits and Deferrals

The CARES Act allows some employers—including labor unions—to receive federal payroll tax credits in order to help retain employees. Eligibility for the credits depends on meeting certain criteria set in the new law, as does the amount of relief that is available. In addition to the tax credits that may be available to some labor unions, *all* unions with employees are eligible to delay paying 2020 payroll taxes in order to help manage cash flow. This memo provides an overview of the **federal payroll tax deferral** and the **employee retention federal payroll tax credit** programs for labor unions. *The CARES Act made some programs available to 501(c)(3) nonprofit organizations that are NOT available to labor unions, including a loan program that cannot be used in combination with the relief described in this memo. Organizations that are not labor unions should NOT refer to this memo for information about CARES Act relief.*

Federal Payroll Tax Deferral: Available To *ALL* Unions

What help is available to labor unions under this tax deferral program?

All unions may delay paying the employer portion of the Social Security or RRTA payroll tax that they would normally owe for wages paid to employees between March 27, 2020 and December 31, 2020. A union must pay at least 50% of the total amount of the employer portion of the Social Security or RRTA payroll tax it defers by December 31, 2021, and it must pay the remaining 50% of the deferred tax by December 31, 2022.

How can a union take advantage of the option to defer paying these taxes?

The CARES Act simply permits employers to defer paying the taxes to the IRS. A union wishing to take advantage of this program will still need to file the IRS Form 941 on a quarterly basis, to report the amount of payroll taxes it owes and is choosing to defer. Unions should check the IRS website for more information before filing their payroll taxes: https://www.irs.gov/coronavirus.

Employee Retention Federal Payroll Tax Credits: Available To *Some* Unions

What help is available to labor unions under this tax credit program?

Eligible labor unions can receive a federal payroll tax credit for retaining employees. The amount of the tax credit is 50% of the what the union pays each eligible employee plus the employer-paid health care costs, up to a maximum credit of $5,000 per employee—but the exact amount available to a union will depend on a number of factors. If a union is eligible for a tax credit that is more than the amount it would otherwise owe its Social Security payroll taxes (or RRTA payroll taxes for unions with employees that fall under the RRTA), the IRS will give the union the excess amount. This Q&A is written to guide you through an initial look at the employee retention tax credit program. You should consult with your counsel or your accountant if you have questions about how the CARES Act applies to your union.

When will the tax credit be available?

Eligibility for the employee retention tax credit is determined on a quarterly basis—meaning, a union can be ineligible in the second quarter of 2020 but may become eligible in the third or fourth quarter of 2020. You should check for eligibility now ***and*** each time you pay your payroll taxes until January

2021. The credit is available based on wages paid to employees after March 12, 2020 and before January 1, 2021, *however* the IRS has instructed employers *not* to include the credit on the first quarter payroll tax filing due April 30, 2020 (for most unions, this filing is done on [IRS Form 941](#)). See below for more information about how to receive the credit.

How do I determine if this tax credit is available to my union?
A labor union is eligible to claim the CARES Act employee retention credit for a particular quarter if the union has at least one employee *and* the union experiences a hardship described in the Act.

- **Who counts as an employee?** In this case, an employee is any full- or part-time worker for whom the union owes Social Security (or RRTA) and Medicare taxes to the federal government. Consultants or other workers who receive a Form 1099 do not count as employees for this program.
- **What kind of hardship makes this tax credit available?** The union can claim the tax credit in any quarter in which it experiences *either or both* of the following: (1) its operations are fully *or partially* suspended because of a government order limiting commerce, travel, or group meetings due to COVID-19, *or* (2) its gross receipts are 50% less than its gross receipts in the same quarter in 2019.

What does it mean for operations to be fully or partially suspended due to a government order?
The information that the IRS has provided so far mostly clarifies this question for businesses—for example, the IRS has said that a restaurant's operations are partially suspended (and thus it qualifies for the tax credit) if in-service dining has been ordered closed, even if the restaurant may still provide take-out and delivery options. The IRS has also said that operations are partially suspended when a business or an organization cannot operate "at its normal capacity."

- If you think your union may be eligible for the employee retention tax credit because of full or partial suspension of its operations due to a government order, you should contact your counsel or accountant.
- You should assemble information about programs and events that the union has cancelled, postponed, or modified after an order in your state banning large gatherings or requiring residents to stay at home. You may also want to note activities like bargaining or other representational duties that have been affected by the closure of your members' employers.

How does this employee retention credit relate to the tax credits for COVID-19-related paid leave?
Earlier federal legislation made a different payroll tax credit available to help employers with fewer than 500 employees pay for medical and family leave taken because of COVID-19. Unions may be eligible for those tax credits as well, and the calculations for the employee retention tax credit described here will be different for any individual employee on whom you base a claim for the medical and family leave credit. You should consult with your union's counsel or accountant if you are eligible for both types of payroll tax credits.

What taxes can a union claim the credit against? Are there limits that apply to the amount of money the union can claim?
The tax credit is applied to reduce the amount of money that the union owes in Social Security payroll taxes to the federal government or, in the case of unions that pay RRTA taxes instead of Social Security taxes, the credit is applied to the RRTA taxes. There is no overall cap on the total amount of the tax credit a union can claim for all its employees in combination, but the union can only claim a credit of up

to $5,000 per eligible employee. (See the next question for determining who is an eligible employee.) The exact amount of tax credit that a union can claim will depend on how many eligible employees the union has, how much the union pays each eligible employee, and whether the union is already taking other federal payroll tax credits (like the Work Opportunity Tax Credit) for any employees.

Who is an "eligible employee" of the union for purposes of calculating this tax credit?
For unions that had an average of 100 or fewer full-time employees in 2019, *all* wages paid to employees, regardless of whether the employees are providing services, qualify for the credit. A "full-time employee" is an employee who is employed on average at least 30 hours of service per week. For unions with an average of more than 100 full-time employees in 2019, only wages paid to employees who are *not providing services* to the union, due to one of the two kinds of COVID-19 hardships this program addresses, qualify for the credit. If your union had more than 100 full-time employees in 2019, or if you have questions about how to calculate the number of "average full-time employees" the union had in 2019, you should contact the union's counsel or accountant to help you calculate the tax credit you may claim.

How does a union claim the tax credit? What if the amount of the credit that's available is *more* than the total amount of money the union will owe in payroll taxes?
Most unions will claim the tax credit on their regular quarterly payroll tax filings. A union that calculates it is eligible for a credit should reduce the amount of money it deposits into their EFTPS to account for the credit it can receive. The union can withhold from deposit the employer portion of Social Security (or RRTA) taxes—*and also* the federal income tax withheld, the employee portion of Social Security, and the employer and employee portions of Medicare taxes – up to the total amount of the credit that the union is due for that quarter. The union still has to file the quarterly tax form (IRS Form 741 for most) but if the amount of the credit is more than the total amount of Social Security (or RRTA) tax that the union would normally deposit, the IRS will pay the excess to the union.

The IRS has announced that it will update the quarterly payroll tax forms to include an option for requesting a refund of the excess credit. The IRS has asked that employers *wait* to apply any credit in the first quarter of 2020 (March 13 to March 31) until filing their employment tax forms for the second quarter of 2020 (in July). However, a union *can* request an advance of the excess credit by filing IRS Form 7200 if the total amount of the credit for a quarter is more than the total amount of Social Security (or RRTA) tax that the union would normally deposit, *and* the union is in immediate need of cash flow.

When does the tax credit stop being available?
The tax credit is meant to incentivize employers to keep employees on their payroll during the COVID-19 crisis. A union can claim the tax credit for an employee until one of the following things happens:

- The employee no longer works for the union,
- The union has claimed the maximum allowable tax credit for that employee, *or*
- The union no longer meets either of the hardship requirements—full or partial suspension of operations due to a COVID-19 government order *or* a 50% reduction in gross revenue.

Specifically, the hardship measured by a reduction in gross revenue ends after a union returns to taking in more than 80% of the amount of gross receipts in a quarter, compared to the previous year. In other words, if a union experiences a 50% reduction in the second quarter of 2020 and in the third quarter, the union bounces back to receiving 85% of what it took in during the third quarter of 2019, then the *fourth quarter* of 2020 is when it can no longer claim the tax credit.

My union has a small number of employees—what is an EXAMPLE of how this federal tax credit will work in practice?

In this example, a local union meets the hardship requirement for the second and third quarters of 2020 because the union's operations were partially suspended in April due to an order by the Governor and then from July to September, the union's gross receipts were less than 50% of what it took in during the same time period in 2019. The union has three employees:

- **Employee A** is paid $5,000 per month in wages and the union pays $1,000 per month for her health insurance coverage, for a total of $6,000 in credit-eligible pay per month.
- **Employee B** works part-time and is paid $2,000 per month in wages and does not have health insurance through the union.
- **Employee C** is paid $10,000 per month in wages and the union pays $2,000 per month for her health insurance coverage, for a total of $12,000 in credit-eligible pay per month.

	Employee A	**Employee B**	**Employee C**
2nd Quarter *April-June, 2020*	Total credit-eligible pay = $18,000 50% x $18,000 = $6,000, *higher than $5,000 max per employee* **Payroll credit available = $5,000**	Total credit-eligible pay = $6,000 50% x $6,000 = $3,000 **Payroll credit available = $3,000**	Total credit-eligible pay = $36,000 50% x $36,000 = $18,000, *higher than $5,000 max per employee* **Payroll credit available = $5,000**
3rd Quarter *July-Sept., 2020*	The union already claimed the maximum amount of payroll credit for this employee in the previous quarter. **Payroll credit available this quarter = $0**	Total credit-eligible pay = $6,000 50% x $6,000 = $3,000, *but the union already claimed $3,000 credit in the 2nd quarter, leaving only $2,000 in remaining possible credit* **Payroll credit available this quarter = $2,000**	The union already claimed the maximum amount of payroll credit for this employee in the previous quarter. **Payroll credit available this quarter = $0**

In total, the union can claim $15,000 in tax credits for its employees—$13,000 for taxes owed in the second quarter of 2020 and another $2,000 for taxed owed based on the third quarter of 2020. Without the tax credit, the union would normally deposit $7,803 into their EFTPS for the combined employer and employee FICA taxes due on the second quarter wages only—that is, 15.3% of the total $51,000 of normally taxable wages paid to all employees. But the union can retain the entire amount instead, because it is less than the total $13,000 credit it is due for the second quarter. The union can also apply the remaining $5,197 in credit to the amount of its employees' federal income tax it must deposit. If the amount of federal income tax is *less* than remaining credit the union is owed for the second quarter, then the union can also request the balance by filing IRS Form 7200 (requesting the total $13,000 credit for the second quarter *minus* the amount of taxes it would otherwise owe but is retaining). The union can then repeat the process to claim the remaining $2,000 credit at the end of the third quarter.

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