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IRS Releases Revised Form 941-X, Instructions

The IRS released a revised **Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund**, and its **instructions**. Both were updated for changes under the American Rescue Plan Act of 2021 (ARPA) and have a July 2021 revision date. The revised form and instructions mainly conform to the draft versions.

Which version to use

The instructions state that employers can use the revised instructions and the July 2021 revision of Form 941-X for all years for which the statute of limitations on corrections has not expired. The instructions provide a few warnings:

Use the corresponding Form 941 instructions. The IRS advises using the specific instructions for Form 941, *Employer's Quarterly Federal Tax Return*, for the quarter being corrected since the Form 941-X instructions do not repeat all information included in the Form 941 instructions. For example, the Form 941-X instructions (July revision) do not discuss which employers are eligible to claim the credit for qualified paid sick and family leave wages; the employee retention credit (ERC); or the Consolidated Omnibus Budget Reconciliation Act (COBRA) premium assistance credit. Prior revisions of the Form 941 instructions are **available** (select

the link for **All Form 941 Revisions** under Other Items You May Find Useful).

Previous COBRA premium assistance tax credit. The IRS said it is extremely unlikely that any employers would still be providing health insurance coverage for an employee terminated between September 1, 2008, and May 31, 2010, so the agency is no longer accepting claims for the 2008-2010 COBRA premium assistance credit. However, employers that need to correct a previously claimed 2008-2010 COBRA premium assistance credit for a quarter for which the statute of limitations on corrections has not expired can file the **April 2017 revision of Form 941-X** and make the corrections on Lines 20a and 20b.

Changes to the form

Here are the major changes to the Form 941-X:

- Line 9 has a comment that it is to be used only for qualified sick leave wages paid after March 31, 2020, for leave taken before April 1, 2021.
- Line 10 has a comment that it is to be used only for qualified family leave wages paid after March 31, 2020, for leave taken before April 1, 2021.
- Line 17 is now for the nonrefundable portion of credit

for qualified sick and family leave wages for leave taken before April 1, 2021 (Form 941, Line 11b).

- Line 18 has been split into four parts:
 - Line 18a is the nonrefundable portion of employee retention credit (Form 941, Line 11c).
 - Line 18b is the nonrefundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021 (Form 941, Line 11d).
 - Line 18c is the nonrefundable portion of COBRA premium assistance credit (Form 941, Line 11e).
 - Line 18d is the number of individuals provided COBRA premium assistance (Form 941, Line 11f).
 - Line 25 is the refundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021 (Form 941, Line 13c).
 - Line 26 has been split into three parts:
 - Line 26a is the refundable portion of employee retention credit (Form 941, Line 13d).
 - Line 26b is the refundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021 (Form 941, Line 13e).
 - Line 26c is the refundable portion of COBRA premium assistance credit (Form 941, Line 13f).
 - Line 28 is the qualified health plan expenses allocable to qualified sick leave wages for leave taken before April 1, 2021 (Form 941, Line 19).
 - Line 29 is the qualified health plan expenses allocable to qualified family leave wages for leave taken before April 1, 2021 (Form 941, Line 20).
 - Line 31 has been split into two parts:
 - Line 31a is qualified health plan expenses for the employee retention credit (Form 941, Line 22).
 - Line 31b is a checkbox for a business that is eligible for the employee retention credit in the third or fourth quarter of 2021 solely because it is a recovery startup business.
 - Line 32 – the credit from Form 5884-C, Line 11, for this quarter (Form 941, Line 23) – can only be used to correct the second, third, and fourth quarters of 2020, and the first quarter of 2021.
 - Line 33a – qualified wages paid March 13 through March 31, 2020, for the employee retention credit (Form 941, Line 24) – can only be used to correct the second quarter of 2020.
 - Line 33b – the deferred amount of the employee share of social security tax included on Form 941, Line 13b (Form 941, Line 24) – can only be used to correct the third and fourth quarters of 2020.
 - Line 34 – qualified health plan expenses allocable to wages reported on Form 941, Line 24 (Form 941, Line 25) – can only be used to correct the second quarter of 2020.
- New lines 35-40 apply only to quarters beginning after March 31, 2021:
- Line 35 is for qualified sick leave wages for leave taken after March 31, 2021 (Form 941, Line 23).
 - Line 36 is for qualified health plan expenses allocable to qualified sick leave wages for leave taken after March 31,

2021 (Form 941, Line 24).

- Line 37 is for amounts under certain collectively bargained agreements allocable to qualified sick leave wages for leave taken after March 31, 2021 (Form 941, Line 25).
- Line 38 is for qualified family leave wages for leave taken after March 31, 2021 (Form 941, Line 26).
- Line 39 is for qualified health plan expenses allocable to qualified family leave wages for leave taken after March 31, 2021 (Form 941, Line 27).
- Line 40 is for amounts under certain collectively bargained agreements allocable to qualified family leave wages for leave taken after March 31, 2021 (Form 941, Line 28).
- Line 41 (previously Line 35) is for corrections of both underreported and overreported amounts and has been updated to reflect line number changes.
- Line 42 (previously Line 36) is to report any reclassified workers and has been updated to reflect line number changes.
- Line 43 (previously Line 37) is to provide a detailed explanation of corrections.

What's new

The instructions now include a table of contents. The IRS significantly revised Form 941-X to allow for correction of COVID-19-related employment tax credits reported on Form 941 due to changes under the ARPA. The revised Form 941-X will be used to report corrections to these items reported on Form 941:

- *Paid sick and family leave wages.* Corrections to amounts reported on Form 941, Lines 11d, 13e, 23, 24, 25, 26, 27, and 28, for the credit for qualified paid sick and family leave wages for leave taken after March 31, 2021, are reported on Form 941-X, Lines 18b, 26b, 35, 36, 37, 38, 39, and 40, respectively. Lines 9, 10, 17, 25, 28, and 29 are now applicable only to qualified paid sick leave and qualified paid family leave taken before April 1, 2021.
- *ERC.* Corrections to amounts reported on Form 941, Lines 11c, 13d, 21, and 22, for the ERC are reported on Form 941-X, Lines 18a, 26a, 30, and 31a, respectively.
 - Calculating the ERC for qualified wages paid after March 12, 2020, and before July 1, 2021, is different from calculating the credit for qualified wages paid after June 30, 2021, and before January 1, 2022.
 - For corrections to qualified wages paid after June 30, 2021, a business eligible for the ERC solely because it is a recovery startup business should complete new Line 31b.
- *COBRA premium assistance tax credit.* Corrections to amounts reported on Form 941, Lines 11e, 11f, and 13f, for the new COBRA premium assistance tax credit are reported on Form 941-X, Lines 18c, 18d, and 26c, respectively.

Other changes

- New worksheets to calculate credits.* The instructions now include five worksheets to calculate additional credits:
- Worksheet 1. Adjusted Credit for Qualified Sick and Family Leave Wages for Leave Taken Before April 1, 2021.
 - Worksheet 2. Adjusted Employee Retention Credit for

Wages Paid After March 12, 2020, and Before July 1, 2021.

- Worksheet 3. Adjusted Credit for Qualified Sick and Family Leave Wages for Leave Taken After March 31, 2021.
- Worksheet 4. Adjusted Employee Retention Credit for Wages Paid After June 30, 2021, and Before January 1, 2022.
- Worksheet 5. Adjusted COBRA Premium Assistance Credit.

Worksheet 1 (the only worksheet in the previous version of the instructions) has also been updated. Third-party payers

must complete each worksheet for each client for which it is applicable, on a client-by-client basis.

Leaving lines blank. If a line on Form 941-X does not apply, leave it blank. If corrections are for a quarter that began:

- Before April 1, 2020, leave blank Lines 9, 10, 17, 18a, 24, 25, 26a, 28, 29, 30, 31, 32, 33a, 33b, and 34.
- Before April 1, 2021, leave blank Lines 18b, 18c, 18d, 26b, 26c, 35, 36, 37, 38, 39, and 40.
- Before July 1, 2021, leave blank Line 31b. ■

IRS Releases Guidance on Form W-2 Reporting of COVID-19 Leave Wages

The IRS released guidance on how employers must report the amount of emergency sick leave wages and expanded family leave wages (together, qualified leave) paid to employees for leave taken in 2021 on Form W-2, *Wage and Tax Statement* [Notice 2021-53, 2021-39 IRB 438]. Eligible employers that claimed the credits for voluntarily providing qualified leave in 2021 must now include the leave wages on Form W-2.

In addition to including the qualified leave wages in the amounts reported in Boxes 1, 3 (up to the social security wage base), and 5 on Form W-2, employers must also report these amounts either in Box 14 or on a separate statement. The wage amount required to be reported on Form W-2 will provide employees who are also self-employed with the information necessary to determine the amount of any qualified leave equivalent credits they may claim.

Background

The Families First Coronavirus Response Act (FFCRA) required eligible employers to provide qualified leave in 2020. The Consolidated Appropriations Act, 2021 (CAA) extended the employment tax credits for certain employers that provide qualified leave from January 1 through March 31, 2021 (see [PAYROLL CURRENTLY, Issue 1, Vol. 29](#)). The American Rescue Plan Act of 2021 extended these tax credits for qualified leave wages paid for leave taken from April 1 through September 30, 2021 (see [PAYROLL CURRENTLY, Issue 4, Vol. 29](#)).

Neither the CAA nor the ARPA extended the requirement to provide qualified leave. Employers that would have been required to provide qualified leave under the FFCRA if the requirement had not expired were eligible for employment tax credits for voluntarily providing qualified leave under the new laws.

Overview of qualified leave

Here is a brief overview of qualified leave.

Emergency paid sick leave. There are six reasons for which an eligible employee could be paid emergency sick leave:

Reasons 1-3. Eligible employers could provide eligible employees up to two weeks (80 hours) of paid sick leave at the regular rate of pay (up to \$511 a day/\$5,110 in the aggregate), to an employee who was unable to work because the employee:

- (1) Was subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- (2) Had been advised by a health care provider to self-

quarantine due to concerns related to COVID-19; or

(3) Was experiencing COVID-19 symptoms and seeking a medical diagnosis.

The CAA reset the 10-day limit for paid sick leave on March 31, 2021.

Reasons 4-6. Eligible employers could provide up to two weeks (80 hours) of paid sick leave at 2/3 the regular rate of pay (up to \$200 a day/\$2,000 in the aggregate), when an employee was unable to work because of:

(4) A need to care for an individual subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who had been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(5) A need to care for the employee's son or daughter whose school or place of care was closed, or whose child care provider was unavailable, due to COVID-19 related reasons; or

(6) The employee was experiencing a substantially similar condition.

The ARPA added three reasons for granting emergency paid sick leave when an employee was: seeking or awaiting the results of a COVID-19 test if the employee had been exposed to COVID-19 or the employer had requested the test; obtaining a COVID-19 vaccine; or recovering from a COVID-19 vaccination.

Expanded family and medical leave. Eligible employers could provide up to 12 weeks of expanded family and medical leave when an eligible employee was unable to work because of a need to care for a son or daughter whose school or place of care was closed, or whose child care provider was unavailable, due to COVID-19-related reasons. The first two weeks would be unpaid, but employees could substitute any accrued vacation leave, personal leave, or medical or sick leave. The remaining 10 weeks were paid at 2/3 of the employee's regular rate of pay (up to \$200 a day/\$10,000 in the aggregate).

The ARPA increased the amount of wages eligible for the tax credit for expanded family and medical leave wages from \$10,000 per employee to \$12,000. For leave taken between January 1 and September 30, 2021, all 12 weeks could be paid, and employers could receive a tax credit for the qualified wages paid at a rate of 2/3 the employee's regular rate of pay (up to \$200 per day).

The reasons for which the expanded family and medical leave could be taken were also broadened. Under ARPA, all

of the reasons for which emergency paid sick leave could be provided were qualifying reasons for expanded family and medical leave.

Reporting leave amounts

Only eligible employers that claim credits under the FFCRA or IRC §§3131 and 3132 are required to separately report qualified leave wages to their employees. Eligible employers that forego claiming these refundable tax credits are not required to separately report qualified leave wages. Governmental employers that are prohibited from claiming these credits are not required to separately report qualified leave wages.

Eligible employers have separate reporting requirements for:

(1) *Qualified leave provided to employees between January 1 and March 31, 2021, under the FFCRA.* Eligible employers claiming credits must separately state the total amount of qualified leave wages paid.

(2) *Qualified leave provided to employees between April 1 and September 30, 2021, under IRC §§3131 and 3132.* Eligible employers claiming credits must separately state the total amount of qualified sick leave wages paid.

In addition to including qualified leave wages in the wages paid to the employee reported in Form W-2, Boxes 1, 3 (up to the social security wage base), and 5, employers must **separately** state the total amount of qualified sick leave wages paid for reasons 1-3; qualified sick leave wages paid for reasons 4-6; and qualified expanded family leave wages either in Box 14 or on a separate statement.

Model language

In July 2020, the IRS issued Notice 2020-54, which provided guidance regarding Form W-2 reporting of qualified sick leave and family leave under the FFCRA for wages paid to employees for leave taken in 2020 (see [PAYROLL CURRENTLY, Issue 7, Vol. 28](#)). The guidance for 2021 is similar, but there are additional requirements because of the way the credit was calculated for wages paid for the period from January 1 through March 31, 2021. The credit differed from the way it was calculated for the period from April 1 through September 30, 2021. Notice 2021-53 also includes language employers may use for

employee instructions to provide additional information about qualified leave wages.

As part of the Instructions for Employee, under the instructions for Box 14 of Forms W-2, or in a separate statement sent to the employee, the employer may provide additional information about qualified leave wages. The following model language may be used and modified as necessary.

“Included in Box 14, if applicable, are amounts paid to you as qualified sick leave wages or qualified family leave wages under the Families First Coronavirus Response Act and/or IRC §§3131 and 3132. Specifically, up to six types of paid qualified sick leave wages or qualified family leave wages may be reported in Box 14:

- Sick leave wages subject to the \$511 per day limit paid for leave taken after December 31, 2020, and before April 1, 2021, because of care you required.
- Sick leave wages subject to the \$200 per day limit paid for leave taken after December 31, 2020, and before April 1, 2021, because of care you provided to another.
- Emergency family leave wages paid for leave taken after December 31, 2020, and before April 1, 2021.
- Sick leave wages subject to the \$511 per day limit paid for leave taken after March 31, 2021, and before October 1, 2021, because of care you required.
- Sick leave wages subject to the \$200 per day limit paid for leave taken after March 31, 2021, and before October 1, 2021, because of care you provided to another.
- Emergency family leave wages paid for leave taken after March 31, 2021, and before October 1, 2021.

If you have self-employment income in addition to wages paid by your employer, and you intend to claim any qualified sick leave or qualified family leave equivalent credits, you 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 your income tax return, and may have to reduce (but not below zero) any qualified sick leave or qualified family leave equivalent credits by the amount of these qualified leave wages. If you have self-employment income, you should refer to the instructions for your individual income tax return for more information.” ■