



Tax Credits for Paid Leave Under the American Rescue Plan Act of 2021: Specific Provisions Related to Self-Employed Individuals

Note: These FAQs address the tax credits available under the American Rescue Plan Act of 2021 (the "ARP") by employers with fewer than 500 employees and certain governmental employers without regard to the number of employees ("Eligible Employers") for qualified sick and family leave wages ("qualified leave wages") paid with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, as well as the equivalent credits available for certain self-employed individuals. For information about the tax credits that may be claimed for qualified leave wages paid with respect to leave taken by employees prior to April 1, 2021, under the Families First Coronavirus Response Act ("FFCRA") and the COVID-related Tax Relief Act (the "Relief Act"), see [Tax Credits for Paid Leave Under the Families First Coronavirus Response Act for Leave Prior to April 1, 2021 FAQs](#).

Although the requirement that Eligible Employers provide leave under the Emergency Paid Sick Leave Act ("EPSLA") and Emergency Family and Medical Leave Expansion Act ("Expanded FMLA") under the FFCRA does not apply after December 31, 2020, the tax credits under sections 3131 through 3133 of the Internal Revenue Code ("the Code") are available for qualified leave wages an Eligible Employer provides with respect to leave taken by employees beginning on April 1, 2021, through September 30, 2021, if the leave would have satisfied the requirements of the EPSLA and Expanded FMLA, as amended for purposes of the ARP.

Throughout these FAQs, the use of the word "work," unless otherwise noted, is inclusive of telework.

106. Who is an eligible self-employed individual for purposes of the qualified sick leave equivalent credit and the qualified family leave equivalent credit? (added June 11, 2021)

An eligible self-employed individual is defined as an individual who regularly carries on any trade or business within the meaning of section 1402 of the Code, and would be eligible to receive qualified sick leave wages or qualified family leave wages that would have satisfied the requirements of the EPSLA or Expanded FMLA, as

amended for purposes of the ARP, if the individual were an employee of an Eligible Employer (other than the self-employed individual) that would have been subject to the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP.

Eligible self-employed individuals are allowed a credit against their federal income taxes for any taxable year equal to their "qualified sick leave equivalent amount" or "qualified family leave equivalent amount."

107. Which individuals regularly carry on a trade or business for purposes of being an eligible self-employed individual for the qualified sick leave equivalent credit and the qualified family leave equivalent credit? (added June 11, 2021)

An individual regularly carries on a trade or business for purposes of being an eligible self-employed individual for the qualified sick leave equivalent credit and/or the qualified family leave equivalent credit if the individual carries on a trade or business within the meaning of section 1402 of the Code, or is a partner in a partnership carrying on a trade or business within the meaning of section 1402 of the Code. Section 1402(c) of the Code defines trade or business and includes exceptions to this standard for purposes of section 1402 of the Code.

108. How is the "qualified sick leave equivalent amount" for an eligible self-employed individual calculated? (updated July 29, 2021)

For an eligible self-employed individual who is unable to work because the individual:

- is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- is:
 - experiencing symptoms of COVID-19 and seeking a medical diagnosis,
 - seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19 and the individual has been exposed to COVID-19 or is unable to work pending the results of the test or diagnosis, or
 - obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to the immunization,

the qualified sick leave equivalent amount is equal to the number of days during the taxable year that the individual cannot perform services in any trade or business for one of the three above reasons, multiplied by the lesser of \$511 or 100 percent of the "average daily self-employment income" of the individual for the taxable year, or the prior taxable year.

For an eligible self-employed individual who is unable to work because the individual is:

- caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- caring for a child if the child's school or place of care has been closed, or child care provider is unavailable due to COVID-19 precautions; or
- experiencing any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretary of the Treasury and the Secretary of Labor. The Secretary of HHS has specified, after

consultation with the Secretaries of Treasury and Labor, that a substantially similar condition is one in which the employee takes leave:

- to accompany an individual to obtain immunization related to COVID-19, or
- to care for an individual who is recovering from any injury, disability, illness, or condition related to the immunization.

the qualified sick leave equivalent amount is equal to the number of days during the taxable year that the individual cannot perform services in any trade or business for one of the three above reasons, multiplied by the lesser of \$200 or 67 percent of the "average daily self-employment income" of the individual for the taxable year, or the prior taxable year.

In either case, the maximum number of days a self-employed individual may take into account in determining the qualified sick leave equivalent amount is ten.

Note: The only days that may be taken into account in a taxable year in determining the qualified sick leave equivalent amount for the year are days occurring during the year and during the period beginning on April 1, 2021, through September 30, 2021.

109. How is the "average daily self-employment income" for an eligible self-employed individual calculated? (added June 11, 2021)

Average daily self-employment income is an amount equal to the net earnings from self-employment for the taxable year, or prior taxable year, divided by 260. A taxpayer's net earnings from self-employment are based on the gross income that the individual derives from the taxpayer's trade or business minus ordinary and necessary trade or business expenses.

110. How is the "qualified family leave equivalent amount" for an eligible self-employed individual calculated? (added June 11, 2021)

During the second and third quarters of 2021, the qualified family leave equivalent amount with respect to an eligible self-employed individual is an amount equal to the number of days (up to 60) that the self-employed individual cannot perform services for which that individual would be entitled to paid family leave (if the individual were employed by an Eligible Employer (other than the self-employed individual)), multiplied by the lesser of two amounts: (1) \$200, or (2) 67 percent of the average daily self-employment income of the individual for the taxable year, or the prior taxable year.

111. Can a self-employed individual receive both qualified sick or family leave wages and qualified sick or family leave equivalent amounts? (added June 11, 2021)

Yes, but the qualified sick or family leave equivalent amounts are reduced by the qualified sick or family leave wages.

That is, if a self-employed individual is entitled to a refundable credit for a qualified sick leave equivalent amount under 9642(a) of the ARP, and also receives qualified sick leave wages as an employee, section 9642(e)(2) of the ARP reduces the qualified sick leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified sick leave equivalent amount described in section 9642(c)

of the ARP and any qualified sick leave wages under section 3131(b)(1) of the Code, exceeds \$2,000 (or \$5,110 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the EPSLA, as amended for purposes of the ARP).

Similarly, if a self-employed individual is entitled to a refundable credit for a qualified family leave equivalent amount under section 9643(a) of the ARP, and also receives qualified family leave wages as an employee, section 9643(e)(3) of the ARP reduces the qualified family leave equivalent amount for which the self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave equivalent amount described in section 9643(c) of the ARP and the qualified family leave wages under section 3132(b)(1) of the Code, exceeds \$12,000.

Example: In her capacity as an employee, Taxpayer A receives \$4,000 in qualified sick leave wages, comprised of:

- \$3,000 in qualified sick leave wages for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA, as amended for purposes of the ARP; and
- \$1,000 in qualified sick leave wages for reasons described in paragraphs (4), (5), or (6) of the EPSLA, as amended for purposes of the ARP.

In addition, in her capacity as a self-employed individual, Taxpayer A is eligible for a \$3,300 qualified sick leave equivalent credit comprised of:

- \$2,500 in qualified sick leave equivalent credits for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA, as amended for purposes of the ARP; and
- \$800 in qualified sick leave equivalent credits for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA, as amended for purposes of the ARP.

Taxpayer A must reduce the \$3,300 qualified sick leave equivalent credit for which she is eligible by \$2,190, which is comprised of:

- the excess of the qualified sick leave wages and qualified sick leave equivalent amounts for reasons described in paragraphs (1), (2), or (3) of section 5102(a) of the EPSLA over \$5,110 (that is, \$390); plus
- the excess of the qualified sick leave wages and qualified sick leave equivalent amounts for reasons described in paragraphs (4), (5), or (6) of section 5102(a) of the EPSLA over \$2,000 (that is, \$0); plus
- the remaining excess of the total leave credits to which Taxpayer A is entitled in her capacity as either an employee or a self-employed individual over \$5,110 (that is, \$1,800).

Accordingly, Taxpayer A may claim a qualified sick leave equivalent credit of \$1,110.

Example: In his capacity as an employee, Taxpayer B receives \$8,000 in qualified family leave wages. In addition, in his capacity as a self-employed individual, Taxpayer B is eligible for a \$4,500 qualified family leave equivalent credit. Taxpayer B may claim a qualified family leave equivalent credit of \$4,000, because he must reduce the qualified family leave equivalent amount to which he is entitled to the extent that the sum of the qualified family leave equivalent amount and his qualified family leave wages (that is, \$12,500) exceeds \$12,000 (that is, \$500).

112. Do self-employed individuals need to account for wages excluded under section 3121(b)(1)-(22) of the Code, or compensation excluded under section 3231(e)(1) of the Code, when determining the amount by which to reduce their self-employed equivalent leave credit? (added June 11, 2021)

Yes. Section 9642(e)(2) of the ARP reduces the qualified sick leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified sick leave equivalent amount described in section 9642(c) of the ARP and any amounts described in section 3131(b)(1) of the Code exceeds the applicable thresholds under section 5102(a) of the EPSLA, as amended for purposes of the ARP. Similarly, section 9643(e)(2) of the ARP reduces the qualified family leave equivalent amount for which a self-employed individual may claim a tax credit to the extent that the sum of the qualified family leave amount described in section 9643(c) of the ARP and any amounts described in section 3132(b)(1) of the Code exceeds \$12,000.

Sections 3131(b)(1) and 3132(b)(1) of the Code describe the amounts of qualified sick leave wages and qualified family wages taken into account for purposes of the employer payroll tax credits for paid sick leave and paid family leave, respectively. Section 3131(c) and (f)(2) and section 3132(c) and (f)(2) of the Code define these qualified leave wages as wages (as defined in section 3121(a) of the Code determined without regard to the exclusions from employment under section 3121(b)(1)-(22) of the Code), and compensation (as defined in section 3231(e) of the Code, determined without regard to the exclusions from compensation under section 3231(e)(1) of the Code).

Therefore, when determining the amount by which to reduce their self-employed equivalent credits, self-employed individuals should account for wages excluded under section 3121(b)(1)-(22) of the Code or compensation excluded under section 3231(e)(1) of the Code.

113. Do self-employed taxpayers need to account for sick leave and/or family leave wages reported by United States government employers on Form W-2,, either in Box 14 or in a statement provided with the Form W-2? (added June 11, 2021)

No. Generally, federal governmental employers are not eligible to claim the tax credits under sections 3131 and 3132 of the Code. Accordingly, any sick leave wages and family leave wages paid by a federal governmental employer are not taken into account to reduce the self-employed taxpayer's self-employment equivalent credits on [Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals](#). If a federal governmental employer reports the sick leave wages or family leave wages in Box 14 of [Form W-2, Wage and Tax Statement](#) or a separate statement with Form W-2, the self-employed person should not take these reported leave wages into account when determining the amount by which to reduce his or her self-employment equivalent credits.

This rule does not apply to the government of any State or political subdivision thereof, any agency or instrumentality of those governments, Tribal governments, or federal government employers described in section 501(c)(1) and exempt from tax under section 501(a) of the Code that are Eligible Employers permitted to claim the tax credits for sick leave wages and family leave wages paid to employees.

114. How does a self-employed individual claim the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts? (added June 11, 2021)

The refundable credits are claimed on the self-employed individual's [Form 1040, U.S. Individual Income Tax Return](#).

115. How does a self-employed individual determine the sick and family leave equivalent tax credit that the individual may claim? (added June 11, 2021)

A self-employed individual will determine the paid sick and family leave equivalent tax credit to which the individual is entitled by completing [Form 7202, Credits for Sick Leave and Family Leave for Certain Self-Employed Individuals](#). This form is available at [irs.gov](https://www.irs.gov). To complete the Form 7202, self-employed individuals who are also employees will need any amount of qualified sick and family leave wages that their employers reported on the [Form W-2, Wage and Tax Statement](#). For more information on the requirement for Eligible Employers to report the amount of qualified sick and family leave wages paid to employees on Form W-2, see [Special Issues for Employers: Other Issues](#) and [Notice 2020-54](#).

116. How does a self-employed individual elect to use prior year net earnings from self-employment income to determine average daily self-employment income for purposes of the credits for qualified sick leave equivalent amounts or qualified family leave equivalent amounts? (added June 11, 2021)

A self-employed individual may elect to use prior year (rather than current year) net earnings from self-employment to determine his or her average daily self-employment income by indicating this election when filing their 2020 or 2021 [Form 1040, U.S. Individual Income Tax Return](#). See applicable instructions for the form for more information.

117. How can a self-employed individual cover the individual's qualified sick leave equivalent and qualified family leave equivalent amounts before filing his or her Form 1040? (added June 11, 2021)

The self-employed individual may cover sick leave and family leave equivalents by taking into account the credit to which the individual is entitled and will claim on [Form 1040, U.S. Individual Income Tax Return](#), in determining required estimated tax payments. This means that a self-employed individual can effectively reduce payments of estimated income taxes that the individual would otherwise be required to make if the individual was not entitled to the credit on the Form 1040.

118. Can an independent contractor who generally performs services for multiple clients as a nonemployee claim the tax credit with regard to the lost services due to COVID-19? (added June 11, 2021)

Yes. If an individual is an independent contractor who generally performs services for multiple clients as a nonemployee, the individual is self-employed and is eligible for the tax credits for days the individual is not able to work for reasons related to COVID-19.

For more information on whether an individual is an independent contractor or an employee, and the tax consequences of either status, see [Self-Employed Individuals Tax Center](#).

119. Can a partner in a partnership claim the tax credits? (added June 11, 2021)

Maybe. A partner in a partnership is a self-employed individual if the partner's distributive share constitutes net earnings from self-employment or if the partner receives guaranteed payments for services. If the partner is a self-employed individual and is not able to work for reasons related to COVID-19, the partner is eligible for the tax credits.

Generally, partners in a partnership (including members of a limited liability company (LLC) that is treated as a partnership for federal tax purposes) are considered to be self-employed, not employees, when performing services for the partnership.

120. Can a self-employed individual use the Form 7200 to apply for an advance of the tax credits? (added June 11, 2021)

No. [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), is only available for employers that file [Form 941, Employer's Quarterly Federal Tax Return](#), or certain other employment tax returns. However, a self-employed individual may reduce payments of estimated income taxes equal to the credit to which the individual is entitled.

For more information about how a self-employed individual can reduce estimated income taxes to cover a credit for qualified sick leave equivalent amounts and qualified family leave equivalent amounts, see "How can a self-employed individual cover the individual's qualified sick leave equivalent and qualified family leave equivalent amounts before filing his or her Form 1040?"

121. Does an eligible self-employed individual who is allowed a credit under section 9642 of the ARP for the qualified sick leave equivalent amount or a credit under section 9643 of the ARP for the qualified family leave equivalent amount include any amount of these credits in gross income? (added June 11, 2021)

No, the amount of the credits allowed under sections 9642 and 9643 of the ARP are not included in the gross income of the eligible self-employed individual.

122. How should a self-employed individual substantiate eligibility for tax credits for qualified leave wage equivalents? (added June 11, 2021)

Self-employed individuals should maintain documentation establishing their eligibility for the credits as a self-employed individual. That documentation should be similar to the documentation that employers claiming the credits for qualified leave wages under sections 3131 and 3132 of the Code should maintain. See "[How Should an Eligible Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages?](#)".

123. May a nonresident alien (NRA) claim the self-employed equivalent credits under sections 9642 and 9643 of the ARP? (added June 11, 2021)

Yes. The qualified sick leave equivalent credits and qualified family leave equivalent credits under sections 9642 and 9643 of the ARP, respectively, are available to NRAs who otherwise meet the requirements to claim the tax credits. That is, an individual's status as an NRA does not preclude the individual from claiming the tax credits if the individual both (1) regularly carries on a trade or business within the meaning of section 1402 of the Code, and (2) would be eligible for paid leave that would have satisfied the requirements of the EPSLA or Expanded FMLA, as amended for purposes of the ARP, if the individual was an employee of an Eligible Employer (other than the self-employed individual).

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