

How to Get the COBRA Tax Credits Your Business is Entitled To

We have written a lot about the COBRA Subsidy ([here](#) and [here](#)) that is in place from April 1, 2021 to September 30, 2021. We want all our clients to obtain the tax credits they are entitled to. Here is how to do that.

The IRS recently issued [Notice 2021-31](#), or “The Notice”, providing guidance on COBRA premium assistance benefits.

Employees that qualify as “Assistance Eligible Individuals” or AEIs do not have to pay their COBRA continuation coverage premiums. If they do, they are entitled to be reimbursed. Employers reimburse the AEI and then claim the credit on the date of reimbursement. The limit on the assistance that an AEI may receive is the cost of coverage before AEI status. The limit prevents fraud from AEIs trying to find the highest paid coverage.

Employer Credits

The Notice allows employers to take a refundable credit against employment taxes for subsidized premium payments.

Who May Claim the Credit Included in The Notice’s definition of premium payee is the employer that maintains the health insurance plan. The employer takes the credit against its share of Medicare tax for the quarter on the amount of premiums not paid by the AEI. The credit cannot exceed the employer’s share of Medicare tax for the quarter for all its employees.

Timing of Credit Employers are allowed the credit on the date they are informed of the AEI's election of COBRA continuation coverage. Once the employer is informed, it is allowed the credit for premiums not paid by the AEI for any period of coverage that began on such date before employer was informed. Moreover, the employer is allowed a credit for any following period of coverage that the AEI does not pay the premiums as a result of electing COBRA premium assistance.

Amount of Credit The amount of the credit is dependent on whether the employer subsidizes the premium costs. If the employer does NOT subsidize the premium costs for similarly situated qualified beneficiaries who are not AEIs, then the quarterly credit is based on the premiums NOT paid by the AEIs for their COBRA continuation coverage. To determine those amounts, the employer takes the premium charged to similarly situated covered employees and qualified beneficiaries. Alternatively, if the employer DOES subsidize the premium costs, then the amount of the credit assumes that the premium assistance is not a factor.

The credit is the amount that the employer would have paid for the coverage without the subsidy of the premium assistance. [The COBRA credit is limited by other credits allowed by the IRS.](#) The COBRA credit is decreased by any paid sick leave, paid family leave, or employee retention credits.

Claiming the Credit In order to claim the credit employers must report on their federal tax return the credit and the number of individuals that are receiving the COBRA premium assistance. This information is reported on Form 941, Employer's Quarterly Federal Tax Return. Employers will include the credit in their gross income. Employers can claim

the credit even in anticipation of making the requisite premium payments.

Employers may reduce their federal employment tax deposits and can request an advance of the amount of the potential credit that exceeds the deposit requirements. However, such reduction in deposits is only allowed for periods of coverage that have begun. The Notice waives penalties for the failure to deposit if it is determined that such failure was due to the anticipation of the credit. Any additional credits will be refundable, while overstated credits are considered an underpayment of employment taxes.

Employers will not have to refund any of the credit that they receive when an AEI no longer qualifies for the COBRA premium assistance. However, the employer must NOT have had knowledge that the AEI no longer qualified. Once an employer learns of the AEI's ineligibility, that employer is no longer entitled to the credit from that date moving forward.

Record Keeping If your business claims the credit, it must keep a record of the employee's eligibility status either by a self-certification or attestation regarding eligibility status (e.g., the AEI suffered a qualifying event such as a reduction in hours or being involuntarily terminated). Businesses can use these records to substantiate that they qualified for the COBRA premium assistance.

Employer Takeaways

Your accountant or CCM can make sure your business receives the tax credits it deserves for COBRA subsidy payments. Remember too, that although these COBRA subsidy payments will expire at the end of September, it would not be surprising if they became a permanent entitlement for the foreseeable future.

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