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Sent: Saturday, March 21, 2020 2:25 PM

Subject: Treasury Department Clarifies the Cash-flowing of Temporary Paid Sick and FMLA Leave



Treasury Department Clarifies the Cash-flowing of Temporary Paid Sick and FMLA Leave

The Department of Treasury yesterday issued an [important announcement](#) regarding how it plans to implement the recently enacted federal legislation relating to paid sick and FMLA leave. This announcement should address concerns that some dealers and dealer advisors have expressed about certain provisions under the new law. Specifically, people are concerned that the tax credit provisions of the legislation are insufficient to ensure the orderly funding of the payment obligations imposed, despite the fact that all of the direct costs a dealer would bear would ultimately be repaid via a refundable tax credit.

As can be seen in the announcement, Treasury’s implementing guidance should address the concerns that dealers will not have sufficient cashflow to fund the new entitlements.

Here are the particulars: Regarding the source of funding available to dealers providing the mandated sick and FMLA leave, the Treasury announcement states as follows:

“When employers pay their employees, they are required to withhold from their employees’ paychecks federal income taxes and the employees’ share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.

Under guidance that will be released next week, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.” (Emphasis added.)

This would mean that all dealership taxes held in escrow, including both employee income and payroll taxes and employer payroll taxes, could be used to pay employees on qualifying leave rather than be paid to the IRS. Importantly, this would allow employers to draw funds from the payroll and

income tax they withhold from or pay on behalf of *all* employees and not just those to whom they must provide paid leave under the new statute.

For example, if a dealership must provide paid leave under the statute to 10 of its 100 employees, the dealership could use the amount it withholds in income and payroll taxes from all 100 of its employees to meet this obligation. While dealerships would still report income and payroll taxes on its quarterly return, it would receive a credit from the IRS that would offset this amount.

Consequently, unless a dealership ends up having a significant percentage of its employees utilizing the new statutory leave entitlement, it should find that the collective amounts of its income and payroll tax withholdings are sufficient to meet its funding obligations under the new statute.

And, even if a dealer's withholdings are not sufficient to pay the full amount of the new leave entitlement, Treasury's announcement states that it will create a mechanism for a dealer to apply for **and obtain** payment of the remaining credit in two weeks. Here is the precise language Treasury used:

"If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. **The IRS expects to process these requests in two weeks or less.** The details of this new, expedited procedure will be announced next week." (Emphasis added.)

[NADA has submitted comments](#) which ask that the actual regulations issued by Treasury confirm the availability of these pools of immediately available funds to pay for the mandated leave.