

Employee Retention Credit

The Employee Retention Credit is a fully refundable credit against the employer's share of Social Security Tax. We are encouraging our business clients that qualify to take advantage of it. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 (which was part of the Consolidated Appropriations Act of 2021), enacted Dec. 27, 2020, made a number of changes to the employee retention tax credits previously made available under the CARES Act. In particular, businesses that received PPP loans will be surprised that not only can they now participate, but they can do so retroactively for 2020. It is important to note that unless specified otherwise, the remainder of the information in this notice applies to the 2021 credit. Any credit taken for 2020 will, generally, still be calculated using the criteria under the CARES Act.

The new legislation increases the maximum credit to 70% of qualified wages paid to employees after 12/31/2020 through 6/30/2021. Qualified wages and health care expenses are limited to \$10,000 per employee per quarter. Thus the maximum ERC for 2021 is \$7,000 per employee per quarter, for a total maximum credit of \$14,000 per employee.

Eligible Wages:

- If your business had fewer than 500 full time employees, then all wages paid to employees during an eligible quarter are "qualified wages".
- If your business had more than 500 full time employees, then only wages paid to employees *not to provide services* during an eligible quarter are "qualified wages".
- The term "full time employee" means any employee who, with respect to any calendar month in 2019 had 30 hours of service per week or 130 hours of service in the month.
- The Taxpayer Certainty and Disaster Tax Relief Act of 2020 eliminates the 30-day look-back, allowing any raises and bonuses to be counted (once paid) for the ERC wage calculation.
- The one caveat for borrowers who receive PPP loans as well as the Retention Credit is that they may only claim the Credit on employee wages NOT paid with PPP funds.

Eligible Employer:

- To be eligible for the Employee Retention Credit an employer must carry on a trade or business during the calendar year and either (1) have the operation of the business fully or partially suspended due to **orders from a government authority** limiting commerce, travel, or group meetings due to COVID-19 (this includes reduced hours) OR (2) suffer a 20% reduction in gross receipts when

comparing an eligible quarter in 2021 to the same quarter in 2019. If the employer was not in business in 2019, then the employer can use the corresponding quarter(s) in 2020.

Additional Gross Receipts Election: In addition, the new rule allows a company to elect to use the gross receipts from the immediately preceding quarter, and compare these prior quarter gross receipts to the same quarter in 2019, rather than the current quarter.

Example: Company B wants to determine whether they can use the gross receipts test to satisfy the ERC eligibility with regard to qualified wages paid to employees in 2021. Company B can choose to compare the first quarter 2021 gross receipts (once known) to the gross receipts from 1st quarter 2019 or Company B can, instead, use the gross receipts from the fourth quarter of 2020 and compare those gross receipts to the gross receipts to the fourth quarter of 2019. If either test shows a more than 20 percent decline, Company B is eligible for the ERTC in the first quarter of 2021.

- Governmental employers are not eligible
- Self-employed individuals are not eligible for the ERC for their self-employment earnings.

Claiming the Credit – Two Options:

- Advance Credit - Small employers (i.e., employers with an average of 500 or fewer full-time employees in 2019) may request advance payment of the credit (subject to certain limits) on [Form 7200, Advance of Employer Credits Due to Covid-19](#). In lieu of claiming the credit against payroll tax deposits for the prior period, **employers can now claim the credit before the qualified wages are actually paid**. The advance credit is capped at 70 percent of the average quarterly qualifying wages paid by the employer in 2019 and must be subsequently reconciled with the actual credit to which the business is entitled. So an employer that anticipates qualifying for the ERC for the first two quarters of 2021 can claim an advance credit of up to 70 percent of the average quarterly wages paid in 2019, subject to the applicable caps.

-or-

- Although the IRS has yet to issue final regulations on how to claim the credit, it is anticipated that eligible employers will report their total qualified wages and the related health insurance costs for each qualifying quarter on their quarterly employment tax returns, which will be Form 941 for most employers. The credit is taken against the employer's share of social security tax but the excess is refundable under normal procedures.

In summary, the ERC is going to prove an extremely valuable credit for many more businesses in 2021. We expect the IRS to provide details on the many confusing aspects of this new and improved ERC by the end of January. We will keep you posted.