

PANDEMIC TAX CREDIT AVAILABLE TO MOST BUSINESSES

The federal Employee Retention Tax Credit (ERC) provides up to \$26,000 in tax credits to many businesses, including tax-exempt organizations, per full-time employee on the payroll, yet only about 10% of small businesses have applied for these tax credits. As a refundable tax credit, this is money that businesses can receive even if they don't have to pay federal taxes. While it relates to tax years 2020 and 2021, businesses have up until three years from the tax filing deadline for those years to file an amended return and claim the tax credit. Businesses should discuss the ERC program with their accountants or tax professionals, and should also recognize that not all such professionals are knowledgeable about the program.

The ERC was another federal program designed to encourage employers to retain employees during the pandemic, and it also recognized the financial hardship businesses endured during the pandemic. The program considers wages, and qualified health plan expenses, paid to full-time employees for each quarter of employment from March 13, 2020 (the beginning of the pandemic) through December 31, 2020, for the 2020 tax year, and for the first three quarters of the 2021 tax year (January 1, 2021 through September 30, 2021). Full-time employees are those who worked at least 30 hours/week and 130 hours/month. Majority owners of a business, and their close relatives, are excluded from being considered full-time employees.

There are different rules of eligibility for businesses in regard to tax year 2020 versus 2021, and different levels of tax credits for those years. For both years, businesses need to either show a "significant decline in gross receipts" or they must have experienced a full or partial suspension of their business operations due to a governmental order. However, for 2020, a significant decline in gross receipts is a decline of 50% or more as compared to the same quarter in 2019; while for 2021 it is a decline of 20% or more as compared to the same quarter in 2019. If business eligibility is instead based upon a full or partial suspension of business operations due to a governmental orders, the standards for both 2020 or 2021 are the same. If the business was completely shutdown during quarters of those tax years, due to a government order, eligibility is clear. A partial shutdown, which is less clear, could be caused by government orders restricting restaurants to takeout only, or outdoor dining and takeout only, for example, and, for other businesses, government orders that affected commerce, travel, group meetings, etc.

The tax credit level for 2020 is up to \$5,000/full-time employee on the payroll. It is calculated as one-half of the wages paid to the employee for the first \$10,000 in wages. For 2021, the tax credit is calculated quarterly and is up to \$7,000/full-time employee on the payroll/quarter. In this case, it is 70% of the wages paid to the employee for the first \$10,000 in wages, but per quarter. In 2020, businesses with 100 or fewer full-time employees can count wages paid even if the employee worked, while those over 100 employees may only count employees retained on the payroll who didn't work. For 2021, that threshold is increased to 500 full-time employees.

Businesses that began operations after February 15, 2020, known as "recovery startup businesses", may also be eligible for tax credits for the third and fourth quarters of 2021, as long

as these businesses have annual gross receipts of less than \$1 million. For these businesses, the tax credit is capped at \$50,000 per quarter.

While the tax credit payments are not subject to federal taxation, businesses will need to file amended tax returns to reduce their business payroll deduction by the amount of the credits. The resulting increased tax liability will be a small fraction of the benefit received through the tax credits, however. Additionally, businesses should know that they cannot use the ERC to “double dip”. For example, they cannot count the same wages for the ERC benefit that they counted for receiving a forgivable Payroll Protection Program (PPP) loan/grant and they cannot count the same wages that were paid by a Restaurant Revitalization Program grant.