

Don't Forget About the Employee Retention Credit

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PRACTICES Tax

The Employee Retention Credit (ERC) was enacted as part of The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) on March 27, 2020. At the time, it was not possible for an employer to receive both the ERC and a Paycheck Protection Program (PPP) loan, leading many employers to choose a PPP loan. However, it is now possible for an employer to receive the ERC even if it has received one or more PPP loans, although the ERC does not apply to payroll costs taken into account for purposes of PPP loan forgiveness.

For calendar year 2020, the ERC equals 50 percent of the qualified wages that an Eligible Employer pays in a calendar quarter, up to a maximum total of \$10,000 of qualified wages per employee for the year. Accordingly, the maximum credit is \$5,000 per employee for 2020.

For the first three calendar quarters of 2021, the ERC equals 70 percent of the qualified wages that an Eligible Employer pays in a calendar quarter, up to \$10,000 of qualified wages per employee per calendar quarter. Accordingly, the maximum credit is \$7,000 per employee per calendar quarter for the first three calendar quarters of 2021. The ERC is available in the fourth quarter of 2021 only to an Eligible Employer that is a recovery startup business.

An Eligible Employer must carry on a trade or business, and either (1) have had a significant decline in gross receipts for the calendar quarter, or (2) have fully or partially suspended operation during any calendar quarter due to government order due to COVID-19. Very generally, a significant decline in gross receipts is less than a certain percentage (50 percent for 2020, 80 percent for 2021) of gross receipts for the corresponding calendar quarter of 2019, subject to several special rules.

If an Eligible Employer averaged more than a certain number of full-time employees in 2019 (100 for 2020, 500 for 2021), qualified wages are generally limited to only those wages paid to employees not providing services because operations were fully or partially suspended. Otherwise, qualified wages generally includes all wages paid to all employees during the relevant period.

An employer can claim the ERC by filing the appropriate form to report adjustments to its employment taxes, typically Form 941-X, Adjusted Employer's Quarterly Federal Tax. Generally, Form 941-X must be filed within three years of the date the corresponding Form 941 was filed or two years from the date the tax reported on the Form 941 was paid, whichever is later. The ERC is not includable in the employer's gross income for federal income tax purposes.