

Commco Comments

Timely Information and Updates for Employers and Retirement Plan Sponsors

Employee Retention Tax Credit Extended Again

The CARES Act, passed in the spring of 2020, included broad measures designed to incentivize employers (especially small businesses) to keep employees on the payroll despite reduced revenues. While the Paycheck Protection Program (PPP) got most of the attention, the Employee Retention Credit (ERC) also provides some employers with a generous tax credit for retaining workers.

The original terms of the ERC under the CARES Act were changed with the passage of the Consolidated Appropriations Act (CAA) on December 27, 2020 – and then more recently, changed again in the American Rescue Plan Act (ARPA), which was passed on March 11, 2021.



Business owners may find that their company now qualifies for assistance under the newest version of the ERC, even if they did not initially qualify at the time of the CARES Act.

Who qualifies?

To qualify for the ERC, an employer has to meet one of two tests. Either:

1. The employer's business is fully or partially suspended by government order during the calendar quarter, due to the COVID-19 pandemic,
- or
2. The employer's gross receipts are below 50% (for 2020) or 80% (for 2021) of the comparable quarter in 2019.

Initially, employers were barred from qualification for the ERC if they had previously received a PPP loan. That restriction was lifted in the CAA, however, employers may not claim the ERC for any wages that were already counted as payroll costs in qualifying for PPP forgiveness.

Calculating the Credit

The amount of the credit is a percentage (50% for 2020; 70% for 2021) of up to \$10,000 in qualifying wages (including the employer-paid portions of health insurance premiums) per employee, per quarter. The definition of "qualifying wages" depends on the number of employees the employer had (on average) during 2019.

- For "small employers" (defined in 2020 as 100 or fewer employees and in 2021 as 500 or fewer), the credit is based on all wages paid to employees, whether they were working or not.

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Under the 2021 definition, an employer is considered small if they have no more than how many employees?



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- For “large employers” (defined in 2020 as greater than 100 employees and in 2021 as greater than 500), the credit is based only on wages paid to employees who did not work during the calendar quarter.

Claiming the Credit

Employers do not need to wait for a filing process to receive the credit, but can receive it immediately, by deducting the claimed amount from the quarterly payroll taxes they send to the Treasury. If an employer’s credit amount exceeds their payroll taxes, they may request a direct refund of the difference from the IRS.

Considerations

There is a lot of interplay between the ERC and other wage-based credits, as well as significant complication regarding changing rules, in multiple sets of legislation, covering different time periods. Details such as the factors that determine whether a business is considered partially or fully suspended, and who qualifies as a full versus part-time employee, will also affect eligibility and calculations.

Due to these complications, as well as the potential for fraud that arises when generosity meets complexity, the IRS has a five-year statute of limitations (extended from the normal three years) to review tax filings that claim the ERC. We recommend working closely with your company’s tax advisor to determine whether and how the ERC applies to your business.

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