BeachFleischman

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Employee Retention Credit

NOTE: Credit not available to small businesses that receive a Paycheck Protection Program Loan. In addition, wages claimed for employees under the Work Opportunity Credit are exempt.

The Employee Retention Credit is a refundable tax credit against certain payroll taxes equal to 50% of qualified wages a qualifying employer pays to employees after March 12, 2020, and before January 1, 2021. The maximum qualified wages per employee is $10,000, Therefore, the maximum credit per employee is $5,000.

The credit is available to all qualifying employers regardless of size, including tax-exempt organizations.

Qualifying Employer

Employers are eligible for the tax credit if they operate a trade or business in 2020 and experience either:

1. Full or partial suspension of business during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel or group meetings due to COVID-19, **or**

2. A significant decline in gross receipts is defined as the first quarter of 2020, for which an employer's gross receipts are less than 50% of its gross receipts of the same calendar quarter in 2019. The significant decline ends when the calendar quarter in which gross receipts are more than 80% of gross receipts for the same calendar quarter in 2019.

For tax-exempt organizations under 501(c) of the tax code, the requirement to be partially or fully suspended applies to all operations of the organization. Tax-exempt organizations cannot use the gross receipts option for qualification, only the suspension rule.

Qualified Wages

Maximum wages that can be considered for all quarters an employer may be eligible for this credit is $10,000 per employee for the period March 12, 2020, to December 31, 2020. Qualified wages are determined based on how many employees an eligible employer has.

- Employers with **less** than 100 full-time employees during 2019 – Wages, including health care costs (up to $10,000 per employee), paid to any employee during the period operations were suspended or the period of the decline in gross receipts, regardless of whether or not the employees are providing services.

- Employers with **more** than 100 full-time employees during 2019 – Wages, including certain health care costs (up to $10,000 per employee), paid to employees **who did not work** during the calendar quarter because the employer's business is fully or partially suspended because of a government shutdown due to COVID-19 or because there has been a significant decline in the business' gross receipts. Qualified wages for these employees cannot exceed the amount that the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

NOTE: Wages do not include wages paid under the family and/or sick leave under the FFCRA.

Claiming the credit

Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes, including federal income tax withholding, up to the amount of the allowable credit of $5,000 per employee.

Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns (Form 941) beginning with the second quarter of 2020. If the employer's employment tax deposits are less than the computed credit, eligible employers can request an advanced payment from the IRS by submitting Form 7200.

Deferral of Employer Social Security Taxes

Note: If an employer receives a Paycheck Protection Program Loan and is using the forgiveness of indebtedness option, this deferral is not available.

The CARES Act allows employers to defer payment of the employer share of Social Security tax (6.2% of wages), or the RRTA taxes imposed on an employer, up to the amount of regular Social Security tax, from date of enactment March 27, 2020, through December 31, 2020. The deferral must be repaid in two payments with 50% of the deferral due December 31, 2021, and the remaining balance due on December 31, 2022.

This payroll tax deferral is available to all employers with no size restriction. For an employer to take advantage of the deferral, they will reduce payroll deposits between the enactment date of March 27, 2020, through December 31, 2020, by the amount of the employer's share of the Social Security tax. If the employer uses a third-party payroll processor or a professional employer organization (PEO) for payroll processing, and the employer instructs the third-party or PEO to defer tax payment, the CARES Act requires the employer to bear the responsibility for timely payment of the taxes in 2021 and 2022. It will not be the responsibility of the third-party processor or the PEO.