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Employee Retention Credit Updates

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The recently signed Consolidated Appropriations Act of 2021 expands the Employee Retention Credit and now allows PPP Loan recipients to potentially receive payroll tax credits. This could result in the need to file amended payroll tax returns for 2020.

In Spring 2020, the CARES Act enacted the Employee Retention Tax Credit (ERC) offering financial assistance and encouraging businesses to retain employees during the COVID-19 pandemic. The law originally allowed eligible employers a credit against payroll taxes for 50% of qualified wages paid between March 12, 2020, and December 31, 2020. Recently, the Consolidated Appropriations Act of 2021 both expanded the credit to qualified wages paid between January 1, 2021, and December 31, 2021, and also modified the original rules under the CARES Act to potentially allow PPP borrowers to also claim the credit based on 2020 wages.

The original credit was offered to eligible employers, identified as:

- An employer whose trade or business is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel or group meetings (for commercial, social, religious, or other purposes due to COVID-19
OR
- An employer that experiences a 50% decline in gross receipts for the calendar quarter compared to the same quarter in the prior year.

The original credit applies to qualified wages paid between March 12, 2020, and December 31, 2020. Qualified wages depend upon the number of full-time employees:

- If an employer has fewer than 100 full time employees in 2019; then all wages qualify
OR
- If an employer has more than 100 full time employees in 2019; qualified wages included only those paid to employees who cannot work because of COVID-19

Under the original terms of the new law, the credit could not be claimed if the employer received a PPP loan. The 2020 tax credit is equal to 50% of qualified wages paid by eligible employers. The credit is claimed on a quarterly basis against the employer portion of Social Security taxes. The amount of qualified wages, including health benefits for which the credit can be claimed, is capped at \$10,000 per employee for **all** quarters of 2020. Therefore, the maximum credit is capped at \$5,000 per employee, for 2020.

New Legislation-Consolidated Appropriations Act, 2021

The extended credit applies to eligible employers, identified as:

- An employer whose operations were fully or partially suspended during a calendar quarter for the period beginning on January 1, 2021, and ending December 31, 2021

under order from an appropriate governmental authority limiting commerce, travel, or group meeting (for commercial, social, religious, or other purposes due to COVID-19
OR

- An employer that experiences a 20% decline in gross receipts for the calendar quarter compared to the same quarter in 2019.

The extended credit applies to qualified wages paid between January 1, 2021, and December 31, 2021. Qualified wages depend upon the number of full-time employees:

- If an employer has fewer than 500 full-time employees; all wages qualify
OR
- If more than 500 full-time employees; qualifies wages consist of those paid to employees who cannot work because of COVID-19

For 2021, the new law allows a credit for 70% of qualified wages, capped at \$10k per employee, per quarter, as a credit against payroll taxes. Thus, a maximum credit is \$7,000 per employee, per quarter. Qualified wages used for purposes of the employee retention credit computations cannot be the same as those used in determining PPP loan forgiveness, the credit for paid sick and family leave, or the work opportunity credit. No “double dipping” is permitted.

The enhancements and expansion of the employee retention credit may allow your business a substantial credit against employer payroll taxes. This document serves as a limited overview of the credit. The rules and laws applicable to this credit are complex and are subject to changes and further clarification and guidance.

Please contact us at 402-496-9100 for further assistance in evaluating your specific situation.