



Employers Using ERC for 2021 Q4 Wages Gain IRS Relief

On December 6, 2021, the IRS issued additional guidance to provide some penalty relief for employers who choose to take advantage of ERC, or employee retention credit, for their 2021 fourth-quarter earnings. Though the ERC was terminated three months earlier than expected, effective September 30, 2021, as a part of the Infrastructure Investment and Jobs Act (IIJA), this penalty relief is a great benefit for many employers who had planned on using the ERC to the end of its original end date.

Introduced in the 2020 CARES Act and then expanded using the Consolidated Appropriations Act (CAA) of 2021, as well as under the American Rescue Plan Act (ARPA) of 2021, the credit was designed for employers, including tax-exempt organizations, to encourage them to retain employees on their company payroll while still providing health benefits as the COVID-19 pandemic ran wild.

The expansions under the CAA and ARPA meant that the ERC was originally intended to be made available to employers through the end of 2021. However, the IIJA, which was signed into law by President Biden on November 15, 2021, retroactively ended the ERC back to September 30, 2021, for most companies. Given that the quarter was half over by the time it was approved, a lot of employers were already counting on using the ERC to help support their payroll for the fourth quarter of 2021. The only exception to this rather abrupt retroactive action was for employers able to qualify as a “recovery startup business,” who can claim the ERC through the end of the year.

This issue obviously put a lot of employers in a lurch, especially given that the quarter was already half over by the time the IIJA was signed into law and acted into the past on the credit these employers may have been planning on taking advantage of. Fortunately, the IRS has released new guidance on the ERC for the fourth quarter for companies who have already received a refund on the fourth-quarter wages through claiming an advanced payment of the credit.

Under Notice 2021-65, employers who claimed an advanced payment of the credit for wages that would be paid after the September 30, 2021, cutoff and have received a refund erroneously on those fourth-quarter wages will need to repay those refunds by the due date for employment tax returns that include the fourth quarter of the 2021 tax year. As an example, for Form 941 filers, that will be on January 31, 2022.

Similarly, companies who have held back their payroll tax deposits for the fourth-quarter wages of 2021 while anticipating that they would be able to take advantage of the ERC will need to deposit the amounts they initially retained on or before the due date for any wages that are paid on December 31, 2021, regardless of whether your company is actually paying wages on that date. This relevant due date will be different based on the size of your company's tax payment that is due, and you'll also need to report the tax liability that can be attributed to terminating your employee retention credit using the applicable employment tax return.

It should be noted that the Notice 2021-65 relief that has been provided is not applicable to penalties for failure to deposit for an employer that has reduced deposits because they were anticipating the ERC after December 20, 2021. You do have the option to file for reasonable cause penalty relief if you're not eligible under the relief provided by Notice 2021-65, and recovery startup businesses are still eligible for the ERC for 2021's fourth quarter.

If you have questions or concerns about the changes in the ERC due to the IJJA's retroactive cessation of the credit for the fourth quarter of 2021, you're not alone. A lot of companies aren't quite sure how to handle these issues. But how will you stay on top of these issues and make sure that your company is in compliance with the rapidly-shifting government requirements? At Frankel Zacharia, our entire business is based on staying on top of the latest tax, finance, accounting, and business planning issues. Our experts stay on top of these issues, so you can do what you do best: run your company.

If you have any questions about the new ERC penalty relief, please contact any of our professionals at Frankel Zacharia, LLC, 402.496.9100.