Employee Retention Credit

The CARES Act

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic.

The newer **Employee Retention Credit** is available to eligible employers under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and is designed to encourage businesses to keep employees on their payrolls. This article highlights a few of the provisions related to the Employee Retention Credit.

What is the Employee Retention Credit?

The Employee Retention Credit is a fully refundable tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that Eligible Employers pay their employees. This Employee Retention Credit applies to qualified wages paid after March 12, 2020, and before January 1, 2021 by an eligible employer whose business has been financially impacted by COVID-19. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is $10,000, so that the maximum credit for an Eligible Employer for qualified wages paid to any employee is $5,000.

Some limits based upon employer size apply to the number of employees for whom the credit may be claimed. Eligible Employers for the purposes of the Employee Retention Credit are those that carry on a trade or business during calendar year 2020, including a tax-exempt organization, that either:

- Fully or partially suspends operation during any calendar quarter in 2020 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
- Experiences a significant decline in gross receipts during the calendar quarter.

Note: Governmental employers (state and local) are not Eligible Employers for the Employee Retention Credit as well as employers who take small business loans under the Payroll Protection Program. Also, self-employed individuals are not eligible for this credit for their self-employment services or earnings.

What is a "significant decline in gross receipts"?

A significant decline in gross receipts begins with the first quarter in which an employer's gross receipts for a calendar quarter in 2020 are less than 50 percent of its gross receipts for the same calendar quarter in 2019. The significant decline in gross receipts ends with the first calendar quarter that follows the first calendar quarter for which the employer's 2020 gross receipts for the quarter are greater than 80 percent of its gross receipts for the same calendar quarter during 2019.

What are "qualified wages"?

Qualified wages are wages (as defined in section 3121(a) of the Internal Revenue Code (the "Code")) and compensation (as defined in section 3231(e) of the Code) paid by an Eligible Employer to employees after March 12, 2020, and before January 1, 2021. Qualified wages include the Eligible Employer's qualified health plan expenses that are properly allocable to the wages.

The definition of qualified wages depends, in part, on the average number of full-time employees (as defined in section 4980H of the Code) employed by the Eligible Employer during 2019.

If the Eligible Employer averaged more than 100 full-time employees in 2019, qualified wages are the wages paid to an employee for time that the employee is not providing services due to either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts. For these employers, qualified wages taken into account for an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

If the Eligible Employer averaged 100 or fewer full-time employees in 2019, qualified wages are the wages paid to any employee during any period of economic hardship described in (1) and (2) above.

Note: While an employer is permitted to receive tax credits for emergency paid sick leave and expanded family medical leave under the Families First Coronavirus Response Act (FFCRA), as well as for the CARES Act employee retention payments, *these tax credits cannot be applied to the same wages.*

As this legislation is relatively new and continues to be evolving, please consult your tax professional before applying and review the following websites daily for further information and updates:

Small Business Administration - https://covid19relief.sba.gov/#/
Small Business Administration - https://www.irs.gov/newsroom

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