



Jones, Nale & Mattingly PLC

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IRS Releases Updated Guidance on Employee Retention Credit for 2021

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The Internal Revenue Service has issued updated guidance on the Employee Retention Credit which was first introduced in the CARES Act passed in March 2020. The credit for wages paid after March 13, 2020 and before January 1, 2021 is a refundable payroll tax credit of 50% of up to \$10,000 in qualifying wages per employee paid by an eligible employer whose business had been impacted by COVID-19. The second time period, during which the credit is 70% of up to \$10,000 in qualifying wages per employee, has been extended to include wages paid after June 30, 2021 and before January 1, 2022*.

The outline below highlights the details of the revisions to the Employee Retention Credit:

Covered Period

Applicable to qualified wages paid after March 13, 2020 and before January 1, 2022*.

Eligibility Requirements

Eligible Employers must still fall into one of the following categories:

The employer's business was fully or partially suspended by government order due to COVID-19 during the calendar quarter, in which case only the wages paid during the full or partial shutdown period qualify for the credit.

OR

The employer experienced a significant decline in gross receipts.

- For 2020 – the IRS defines “a significant decline in gross receipts” as a 50% or greater drop in gross receipts in a calendar quarter as compared to the same calendar quarter in 2019
- For 2021 – the IRS defines “a significant decline in gross receipts” as a 20% or greater drop in gross receipts in a calendar quarter as compared to the same calendar quarter in 2019
- Special rules have been put in place for “severely financially distressed employers” who have experienced a decline in gross receipts of 90% or more as compared to the same calendar quarter in 2019

The gross receipts test is a quarter-by-quarter comparison. Only wages paid during quarters that experienced the decrease are eligible for the credit.

“Recovery Startup Businesses” may be eligible employers for the 3rd and 4th quarters of 2021. These are employers who:*

- *Began carrying on any trade or business after February 15, 2020*
- *Have average annual gross receipts of less than \$1 million*
- *Have not been suspended by government order or experienced a decline in gross receipts*

Qualified Wages and Number of Employees Threshold

For purposes of calculating the ERC, qualified wages are based on the monthly average number of employees in 2019.

For 2020 – if the employer had 100 or fewer “full time equivalent” (FTE) employees on average in 2019, the credit is based on wages paid to all employees, regardless of whether they worked or not. If the employees were paid for full-time work, the employer still receives the credit.

For employers with more than 100 FTE employees on average in 2019, the credit is only allowed for wages paid to employees who were paid but did not work during the quarter.

For 2021 – effective January 1, 2021, if the employer had 500 or fewer “full time equivalent” (FTE) employees on average in 2019, the credit is based on wages paid to all employees, regardless of whether they worked or not. If the employees were paid for full-time work, the employer still receives the credit.

For the 3rd and 4th quarters of 2021 *only*, employers who experienced a decline in gross receipts of 90% or more are considered to have fewer than 500 FTE regardless of the actual number.

For employers with more than 500 FTE employees on average in 2019, the credit is only allowed for wages paid to employees who were paid but did not work during the quarter.

Credit Amount for Qualified Wages

Wages paid after March 13, 2020 and before January 1, 2021

The maximum amount of wages that can qualify for the credit are \$10,000 per employee (including qualified health plan costs). The credit is 50% of such qualified wages; therefore, an eligible employer can claim up to \$5,000 per employee in payroll tax credits for the entire 2020 covered period.

*Wages paid from January 1, 2021 and before January 1, 2022**

The maximum amount of wages that can qualify for the credit is \$10,000 per employee per quarter (including allocable group healthcare costs). The credit is increased from 50% to 70% of such qualified wages, and accordingly an eligible employer can claim up to a maximum of \$7,000 per employee in payroll tax credit per quarter – for a total of \$28,000 per employee for the calendar year.

For the 1st & 2nd quarters of 2021, the credit may be taken against employer paid Social Security. For the 3rd & 4th quarter, the credit is taken against the employer portion of Medicare.

Advance Credit Payments

Effective January 1, 2021, employers with 500 or fewer employees can claim an advance payment of the credit of up to 70% of average quarterly wages in the corresponding quarter in 2019. Any excess advance received will have to be reconciled to the actual and repaid back to the Treasury.

Miscellaneous

- Only health benefits that are not included in employee wages can be used to calculate the credit (example: employer contribution to HSA)
- Wages paid to certain family members are NOT eligible for the credit:
 - a. Child, sibling, parents, niece or nephew, aunt or uncle, etc.

- Wages paid to owners of more than 50% of the employer are NOT eligible for the credit
- Wages that are being used to obtain PPP loan forgiveness are NOT eligible for the credit
- Wages being used for any wage-related credit (WOTC, Indian Employment, Family & Medical Leave, etc) cannot be used for Employee Retention Credit.

Applying for Credit

Credit for wages paid between March 13, 2020 and March 31, 2020 will be taken on the 2nd quarter, 2020 Form 941. The 1st quarter 2020 Form 941 is not eligible to be amended in order to receive this credit. For subsequent periods, the credit is to be taken on the Form 941 for the quarter in which the eligible wages were paid. For the 1st & 2nd quarters of 2021, Worksheet 2 will need to be completed and filed along with Form 941. For the 3rd and 4th quarters of 2021*, Worksheet 4 will be used to calculate the credit and will be filed along with Form 941.

The new rules have extended the limitation on the period for assessment from three years to five years.

Key Takeaways

Even if an employer has elected not to claim ERTC in one calendar quarter, the eligible employer is not prohibited from claiming ERTC in a later calendar quarter for qualified wages provided it meets the requirements to claim ERTC.

Eligible employers who have not yet paid out bonuses now have until the end of 2021 to pay those out and still receive ERTC on the wages. The wages must be paid out prior to December 31, 2021, as accrued wages are not eligible for the credit.

Unlike year-end tax credits, the ERTC can be taken immediately and bring timely financial relief to your business when it needs it the most.

*If the \$3.5 trillion infrastructure bill that is currently before Congress is passed, the ERTC will end September 30, 2021 rather than December 31, 2021.