



January 4, 2021

Employee Retention Credit

Changes to the Employee Retention Credit

On December 27, 2020, President Donald Trump signed into law the latest measure in pandemic relief and economic stimulus. Among other provisions, the \$908 billion bill creates changes to the overall requirements and determinations in claiming federal Employee Retention Credits. Some measures within the bill provide retroactive relief for employers who have been negatively impacted by the COVID-19 pandemic. Other measures provide ongoing, forward-facing relief based on the uncertainty faced by many businesses. The summary below provides a brief introduction into the changes.

Changes to 2020 Employee Retention Credit

PPP Loan Eligibility – Previously, employers who received a Paycheck Protection Program loan were not eligible for claiming employee retention credits, regardless of forgiveness. This also prohibited any affiliated company (more than 50% common ownership) from claiming the retention credit when the brother-sister company received PPP funding.

As a result of the changes brought on by the stimulus bill, companies who received funds from the PPP loan can also claim employee retention credits, but only on wages in excess of those utilized for forgiveness of the PPP loan. Further, the latest legislation removed the affiliation limits on claiming the credits.

In order to claim the credit, employers must file an amended Form 941 for each quarter the credit is eligible to be claimed.

Changes to 2021 Employee Retention Credit

Period of Credit Availability – As provided in the CARES Act, the Employee Retention Credit was set to expire on January 1, 2021. As a result of the recent stimulus bill, this period has been extended to July 1, 2021.

Amount of Credit Available – For credits claimed in the 2020 period, the maximum credit was 50% of the qualified wages paid to the employee, including the cost of providing health benefits. This amount has been increased to 70% of the employee's wages, as well as health benefit expenses.

In a similar vein, the credit for 2020 is capped at \$5,000 for all qualified wages paid during 2020. Drastic changes were made for 2021, whereby the cap has been increased to \$7,000 per quarter, for each of the first two quarters (credit period ends at the conclusion of the 2nd quarter). All credits are based on per-employee wages.

Eligibility Requirements – For 2020, businesses desiring to claim the retention credit could do so if they could substantiate one of two results: a) business operations were either fully or partially suspended by a COVID-19 lockdown order; or b) for any quarter in 2020, gross receipts were less than 50% of the gross receipts for the same quarter of 2019. For 2021, the bill has greatly increased the eligibility provisions by substituting 80% gross receipts for the previous 50%. In addition, businesses are allowed to continue to compare gross receipts to 2019 quarters for determining eligibility. **This is expected to significantly increase the number of employers who are eligible to claim the credit in first two quarters of 2021.**

Credit Eligibility and Working Employees – The bill substantially changed the determinations for employees who could be claimed as “retained” and therefore whose wages were eligible for a credit claim. For employers with greater than 100 employees, no credit was available for wages paid to an employee who

continued to provide services to the employer (this included telecommuting, working reduced hours in the workplace due to capacity reductions, etc.). Employers with less than 100 employees were eligible for the credit regardless of the employees' working condition.

For the 2021 periods, the number of employees used in determining the threshold has been increased to 500. This, coupled with the provision above regarding gross receipts tests, furthers the expectation that the credits will be available to far more employers in the 2021 periods.

Changes Applying to Both Periods

Limitations on Pay Increases – Previous to the latest bill, increases in pay for things such as hazardous duty pay were not eligible for the credit. The recent legislation has repealed this for all periods.

Advance Payments – The Treasury Department has been staffed with drafting and issuing guidance on this, but the framework has been largely constructed. Employers with fewer than 500 employees will be eligible for claiming advanced payments of credits yet to be claimed. In general, the advance payment will be based on 70% of average quarterly payroll and will be required to be reconciled against actual credits eligible to be claimed at the end of the quarter. In short, this will allow employers to receive credits for employee compensation prior to the wages actually being paid to the employees.

More information regarding COVID-19 for businesses and individuals can be found [here](#). If you have further questions or need additional guidance, please leave a message at (616) 575-3482 or email info@ehtc.com. Thank you for choosing EHTC as your strategic partner.