

EMPLOYEE RETENTION CREDIT EXPANDED AND EXTENDED BY CONGRESS THROUGH JUNE 2021

Under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) passed in March 2020, Congress created the Employee Retention Credit (ERC), a payroll tax credit available to employers whose businesses were adversely affected by the COVID-19 pandemic. This credit was available to eligible employers and limited to \$5,000 per employee for wages paid during 2020.

In the Consolidated Appropriations Act (CAA) passed on Dec. 27, 2020, the ERC was significantly expanded and now extends to wages paid from Jan. 1, 2021, through June 30, 2021. An eligible employer can now claim 70% of the first \$10,000 of an employee's qualified wages per calendar quarter in 2021. For example, an eligible employer who pays an employee \$15,000 per calendar quarter in 2021 may claim an ERC for \$7,000 on its first-quarter payroll tax return (70% of the first \$10,000 in wages paid from Jan. 1 through March 31), and then may claim another \$7,000 ERC on its second-quarter payroll tax return for the wages paid to the same employee from April 1 through June 30. The maximum credit per employee for 2021 is \$14,000.

Employers who received a Paycheck Protection Program (PPP) loan in 2020 were initially ineligible to claim the ERC per the CARES Act. The CAA now allows those PPP loan recipients to retroactively claim the ERC on their 2020 payroll tax filings, though to the extent an eligible employee's wages are used to substantiate forgiveness of a PPP loan, the employer may not double-dip by using those same wages to claim an ERC.

The CAA has also expanded the definition of an eligible employer from the initial ERC provisions in the CARES Act. To qualify as an eligible employer for 2021, a business must have a full or partial suspension of business due to COVID-19, as evidenced by a significant decline in gross receipts or a governmental order. A significant decline in gross receipts is generally defined in the CAA as having gross receipts in one calendar quarter that are less than 80% of gross receipts in the corresponding calendar quarter in 2019.

Effective for 2021, an eligible employer who averaged less than 500 full-time employees in 2019 can claim the ERC for all employees who are paid wages

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during the first two calendar quarters of 2021. For employers who averaged more than 500 full-time employees during 2019, the employer can only claim the ERC to the extent of wages paid to employees who have not been providing services in 2021. The new 500-employee threshold under the CAA represents a significant increase from the 100-employee threshold under the CARES Act.

These recent changes in the ERC may present significant tax saving opportunities for your business. Please contact your regular AT attorney or those listed on this advisory if you would like to explore the ERC further.