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- **New stimulus relief passed on December 27, 2020 contains provisions that significantly extend and expand the Employee Retention Credit.**

- **Business owners who took a PPP Loan are now eligible for the Employee Retention Tax Credit which is up to \$5,000 per employee.**

- **Beginning January 1, 2021 through June 30, 2021, there are a number of other beneficial modifications and additions to the Employee Retention Tax Credit, including the ability to receive an advance credit. Many business owners may have originally dismissed the Employee Retention Credit (ERC) since they were prohibited from taking the tax credit once they borrowed a Paycheck Protection Program (PPP) Loan. Now, even a PPP Loan borrower may claim the ERC for 2020 which includes up to \$5,000 per employee.**

New Stimulus Modifies the Employee Retention Credit; No Longer Precludes PPP Borrower from Claiming the Credit

By Mary Lundstedt, Esq.

Previously, we highlighted the CARES Act's ERC in our blog, EMPLOYERS: 3 THINGS TO KNOW ABOUT THE EMPLOYEE RETENTION CREDIT.¹ The ERC was implemented to provide much-needed relief to those employers hit hard by COVID-19—offering eligible employers a fully refundable tax credit if they keep their employees on payroll. More specifically, under the CARES Act, eligible employers could receive a refundable payroll tax credit for 50% of qualified wages, up to \$10,000 per employee (the maximum credit was capped at \$5,000 per employee).

The new Consolidated Appropriations Act of 2021 (CAA 2021), passed on December 27, 2020, includes noteworthy Division EE—Taxpayer Certainty and Disaster Tax Relief (TCDTR) Act of 2020, which contains provisions that significantly extend and expand the ERC.

Before we break out the new rules below, our readers may want to briefly consider the important technical differences between sections 206 and 207 of the TCDTR Act as they apply to the ERC. Section 206 changes who

is able to claim the ERC during March 12, 2020 through December 31, 2020. The computational rule changes are not contained within section 206. Rather, section 207 is responsible for the computational changes during the first six months of the program.

ERC Modifications

Beginning on January 1, 2021 through June 30, 2021, the TCDTR Act modifies the ERC via provisions that:

- Increase the credit rate from 50% to 70% of qualified wages;
- Expand eligibility by reducing the required year-over-year gross receipts decline from 50% to 20% and create a safe harbor permitting employers to use previous quarter gross receipts to determine eligibility;
- Increase per-employee creditable wages limit from \$10,000 for the year to \$10,000 for each quarter;
- Increase the 100-employee delineation for determining the relevant qualified wage base to employers with 500 or fewer employees;
- Allow certain public instrumentalities to claim the credit;

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- Remove the 30-day wage limitation, allowing employers to, for example, claim the credit for essential workers' bonus pay;
- Allow businesses with 500 or fewer employees to advance the credit at any point during the quarter based on wages paid in the same quarter in a previous year;
- Provide rules to permit new employers who did not yet exist for all or part of 2019 to be able to claim the credit; and
- Provide for a small business public awareness campaign regarding credit availability to be conducted by the Secretary of the Treasury in coordination with the Administrator of the Small Business Administration.²

Furthermore, retroactive to the effective date in section 2301 of the CARES Act, the modifications:

- Clarify the determination of gross receipts for certain tax-exempt organizations;
- Clarify that group health plan expenses can be considered qualified wages even when no other wages are paid to the employee, consistent with IRS guidance; and
- Provide that employers who receive PPP Loans may still qualify for the ERC with respect to wages that are not paid for with forgiven PPP proceeds.³

What's Brand New?

Besides modifications, the TCDTR Act also adds a new feature to the ERC. Now, small employers may be eligible to receive an advance credit. Guidance is forthcoming, but for now we can note that an employer with fewer than 500 fulltime employees may elect to receive an advance payment of the ERC for the chosen quarter. The advance ERC is limited to 70% of the average quarterly wages paid in 2019. If the actual credit due ultimately falls short of the amount of the advance payment, then the employer's payroll tax must be correspondingly increased for that quarter.

Finally, the new stimulus **removes the earlier prohibition** which prevented a PPP Loan borrower from taking the ERC. Instead, employers who receive PPP Loans may now qualify for the ERC with respect to wages that are not paid for with forgiven PPP proceeds.

If you need assistance applying for the ERC, please feel free to contact our team by calling (410) 862-3957 or [REQUESTING A CONSULT ONLINE](#).

Footnotes

1. [HTTPS://WWW.DISTRICTOFCOLUMBIATAXATTORNEY.COM/BLOG/2020/04/EMPLOYERS-3-THINGS-TO-KNOW-ABOUT-THE-EMPLOYEE-RETENTION-CREDIT/](https://www.districtofcolumbiataxattorney.com/blog/2020/04/employers-3-things-to-know-about-the-employee-retention-credit/)
2. [HTTPS://APPROPRIATIONS.HOUSE.GOV/SITES/DEMOCRATS.AP-PROPRIATIONS.HOUSE.GOV/FILES/SUMMARY%20OF%20H.R.%20133%20AUTHORIZING%20MATTERS.PDF](https://appropriations.house.gov/sites/democrats-appropriations.house.gov/files/summary%20of%20h.r.%20133%20authorizing%20matters.pdf)
3. *Id.*

Additional Resources



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