



*Jones, Nale & Mattingly PLC*

## **New COVID-19 Stimulus Package Updates Employee Retention Credit**

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The CARES Act passed in March 2020 included a provision for the Employee Retention Credit (ERC), which 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. However, employers who had received Paycheck Protection Program loans were not eligible for this credit under the original law.

**The new stimulus package, The Consolidated Appropriations Act, signed into law on December 27, 2020, makes the original ERC available to the borrowers of the PPP loan retroactively to March 13, 2020.**

The Act also extended the credit to cover wages paid through June 30, 2021, at which time this credit is set to expire.

The outline below highlights the details of the updated Employee Retention Credit:

### **Covered Period**

Applicable to qualified wages paid after March 12, 2020 and before July 1, 2021 with some changes to the eligibility and credit computation to wages paid from January 1, 2021 to June 30, 2021 only.

### **Eligibility Requirements**

Eligible Employers must 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

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

## **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 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 12, 2020 and before January 1, 2021*

The maximum amount of wages that can qualify for the credit at \$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 entire 2020 covered period.

*Wages paid from January 1, 2021 to June 30, 2021*

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 \$14,000 per employee through the first two quarters of 2021.

## **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:
  - 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

## **Applying for Credit**

The Treasury has not issued guidance regarding how employers should apply for the credit at this time. It will likely be a credit taken on Form 941; however, they have not clarified if 2<sup>nd</sup> and 3<sup>rd</sup> quarter 2020 941 forms will need to be amended or if the entire 2020 credit will be taken on the 4<sup>th</sup> quarter form. Once guidance from the IRS is provided, we will make that information available.

## **Key Takeaways**

As the new law opens the doors for PPP loan borrowers to look back at 2020; businesses that did not (or could not) take advantage of the ERC in 2020 should review their payroll costs for 2020 and determine any qualified wages under the original law that are in excess of the wages included in PPP loan forgiveness.

Likewise, affiliated businesses that previously could not claim the ERC due to a PPP loan obtained by another affiliate under common control can now consider claiming the credit if they otherwise meet all eligibility requirements.

It appears that the healthcare costs paid for furloughed employees would qualify for this credit even though there are no accompanying wages associated with such healthcare costs.

Employers can also consider paying out bonuses that would normally be paid later in the year during the first two quarters of 2021 to maximize the credit allowed under the new law's maximum credit limit.

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