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CARES Act: Six Questions About the Employee Retention Credit

1. What is the Employee Retention Credit?

This is a benefit provided for by the CARES Act that permits eligible employers to receive a credit against their employment taxes for a portion of the wages paid to employees and the cost of maintaining a healthcare plan per employee despite certain economic hardships.

2. Can I receive the Employee Retention Credit if I also receive a Paycheck Protection Program (PPP) loan?

No. The CARES Act provides that the credit is not available to employers that receive a PPP loan.

3. Does it matter how many employees I have?

Yes. While all non-government (federal, state, and local government employers are excluded from the credit) employers that do not take a PPP loan may be able to receive a credit, employers that averaged greater than 100 full time employees in 2019 are eligible for fewer benefits than employers that averaged 100 full time employees or less during this same time period. Internal Revenue Code aggregation rules treating affiliated employers as one employer apply for purposes of counting the number of employees.

4. What makes an employer eligible for the Employee Retention Credit?

An employer is eligible for the Employee Retention Credit if it is in business in 2020 and it either suffers a full or partial shutdown because of a government order or a “significant decline” in revenue. For these purposes, a “significant decline” means the first quarter for which there is a 50% reduction in gross receipts compared to the same quarter in the prior year and ends with the quarter following the first quarter in which gross receipts are greater than 80% of the gross receipts in the same quarter in the prior year.

5. How much is the credit?

The credit is equal to 50% of the “qualified wages” with respect to each employee for each applicable quarter. For employers that averaged greater than 100 full time employees in 2019, qualified wages means wages paid to an employee who is NOT providing services because of a COVID-19-related full or partial shutdown or significant decline in gross receipts. For employers that averaged 100 full time employees or less in 2019, qualified wages means wages paid to ANY employee during any full or partial shutdown or any quarter in which there was a significant decline in gross receipts. Qualified wages for each employee are capped at $10,000 and only cover wages paid after March 12, 2020, and before January 1, 2021. Further, no employee’s wages for determining the credit can exceed the wages he/she received in the 30 days immediately prior. Qualified wages also include qualified health plan expenses that are properly allocable to the wages on a pro rata basis

Employers cannot receive a “double credit” under the CARES Act if they are already receiving a credit under the Families First Coronavirus Response Act (FFCRA) for wages and healthcare expenses paid to its employees.

6. How is the credit paid to me?

The credit is applied against an employer’s share of social security taxes. If the amount of the credit is greater than the social security taxes owed for the quarter, the excess amount is treated as an overpayment, meaning that it is applied to offset other employment tax liabilities and related offsets and then refunded to the employer. In order to receive these funds in a more timely manner, employers are permitted to access federal employment taxes, including withheld taxes, deposited with the IRS. Employers may also request an advance from the IRS.

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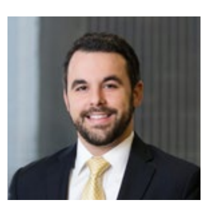

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