

EMPLOYEE RETENTION CREDITS: ENHANCED BY RECENT STIMULUS PACKAGE

The recent stimulus package, the Consolidated Appropriations Act, 2021, (CAA), signed into law on December 27, 2020, made some significant changes to Employee Retention Credits (ERC). One major update is that employers who have received a Paycheck Protection Program (PPP) loan may also receive ERC, which had not been allowed under the previous rules. This change is retroactive to the law's effective date last March, which is good news for many employers, but there are some complexities to carefully consider. Please read on for a summary of changes to ERC brought by the CAA, starting with a brief overview of ERC, eligibility requirements, changes regarding PPP, and an explanation of how to claim credits.

What are ERC?

In addition to the PPP, the Coronavirus Aid, Relief, and Economic Security (CARES) Act authorized a refundable tax credit for employers struggling as a result of the COVID-19 pandemic, including companies suffering a significant decline in gross receipts and/or that continue to pay their employees, even though the business might be closed due to a COVID-19 lockdown.

Originally, the law allowed for ERC for qualified wages paid after March 12, 2020 and before January 1, 2021. Now, the law extends the credits to cover wages paid before July 1, 2021.

The law initially provided a tax credit of 50% of qualified wages paid to employees, plus the cost to provide health benefits, and was capped at \$5,000 (that is, it provided the credit for 50% of \$10,000) per employee during 2020. The new law increases the credit to 70% of qualified wages, with a new cap of \$7,000 (that is, 70% of \$10,000) per quarter for the first two quarters of 2021 for a total of \$14,000 per employee. Employers who collected the maximum credit in 2020 are not excluded in 2021.

Who is eligible to receive ERC?

Both the original and new law provide ERC to businesses closed (either fully or partially) by a COVID-19 lockdown order and/or had a "significant decline" in gross receipts. The original law allowed businesses with gross receipts for any quarter less than 50% of the same quarter in 2019 to take advantage of ERC. The credit would end on the first day of the quarter following the quarter in which gross receipts or 80% or more of the same quarter in 2019.

For 2021, the CAA expanded eligibility to those employers who experienced only a 20% decline in gross receipts and allows employers to continue to claim the credit in every quarter in which there is at least a 20% in gross receipts.

The original law contained some limitations based on whether employees were working or not: Companies with more than 100 employees could not receive credits for employees who were working (even if they were working reduced hours), while companies with 100 employees or fewer were eligible if employees were working. The new law raises the threshold from 100 to 500 employees, so wages for businesses with 500 or fewer employees will be eligible even if employees are working. Please note that employee counts for affiliated companies sharing more than 50% common ownership are aggregated.

Consideration

Business owners will want to make sure they have a clear idea of when mandated closures and/or business losses occurred because experiencing a closure or decline in one quarter does not make a business eligible to receive credits for the entire year. Each quarter will need to be reviewed to ensure the business is still eligible to collect ERC.

What if the business has received or would like a PPP loan?

Originally, a business that received a PPP loan was not eligible to receive ERC. Now, a business that received a PPP loan may claim ERC, though ERC may not be claimed for wages paid by PPP loan proceeds that were forgiven. This change is retroactive to March 12, 2020 (the effective date of the original law), so businesses that received a PPP loan in 2020 may claim ERC for any wages not paid by forgiven PPP loan funds. Remember, the annual cap for ERC in 2020 was \$5,000 per employee, as explained above.

How do employers claim ERC?

Per the IRS, employers may receive their ERC either by retaining “an amount of the employment taxes equal to the amount of...their employee retention credit, rather than depositing these amounts with the IRS” or by filing “Form 7200 to request an advance payment from the IRS.”

For employers who received a PPP loan and would now like to claim ERC, there are two ways to receive 2020 ERC: via your 2020 4th quarter 941 or by completing an IRS Form 7200. It is important that you contact your payroll provider and your CPA to determine how best to receive your 2020 ERC.

That said, our recommendation is that this credit be reviewed in arrears for both 2020 and 2021 credits so that you are able to fully assess each quarter. We do not recommend submitting for an advance.

Note: If you are a payroll client with BFG, please let us know if you qualify for ERC (as explained above, if you had a closure or “significant decline” in gross receipts). We will file for the credit on your 2020 Q4 941 return or amend any prior returns in order to receive the maximum credit for you.

Some of the credit will likely be in the form of a refund check up to \$5,000 per employee. Please let us know if you receive a check so we can ensure it is correct.

As with any piece of legislation, we are still awaiting additional guidance from government agencies to provide specific rules and guidance. Once this guidance has been released, we will help facilitate the process of claiming 2020 ERC and setting you up to receive 2021 ERC if you have your payroll with BFG.

What other changes were made?

The Consolidated Appropriations Act made a few additional changes to note:

- **Advance Payments:** The original law did not allow for advances, but the new law does. The Treasury Department will draft guidance to allow for advance payments, so companies may collect the credit before wages are paid. At the end of the quarter, if the company's credit is determined to be less than the advance paid, the company will have to pay back the excess.
- **Pay Increases:** Initially, no ERC were paid for pay rate increases, but the new law allows credits to be paid for hazard pay and other pay increases.
- **Credit for Government Entities:** Under the original law, federal, state, and local government entities were not eligible to receive credits. Under the new law, credits will be allowed for state or local run colleges, universities, organizations providing medical or hospital care, and certain organizations chartered by Congress.

For More Information

We expect more guidance will be released from the IRS and Treasury Department and will continue to monitor this situation and release updates. For more information or assistance, please contact our Payroll team at **210-293-6620**, toll-free at **1-888-757-2104**, or PayrollServices@BFGonline.com.



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