Employee Retention Credit

(Act Sec 2301)
4/11/2020

NOTE: This is not elective, it us a requirement!

In order to help businesses retain employees and keep them employed during the COVID-19 crisis, Congress has provided a refundable Employee Retention Credit that immediately compensates the employer by offsetting quarterly employment taxes.

The credit is available to all employers regardless of size, including tax-exempt organizations. There are only two exceptions: State and local governments and their instrumentalities.

An employer who secures an SBA Paycheck Protection Loan created by the CARES Act is also ineligible for the Employee Retention Credit. The reason for that is a Paycheck Protection Loan can be forgiven for wages paid during an 8-week period, thereby leading to double dipping if both CARES Act benefits were allowed.

- *Eligible Employers* – Must fall into one of two categories:
    - **Business Operations Curtailed**: Eligible employers are employers who were carrying on a trade or business during 2020 and for which the operation of that business is fully or partially suspended.

      The operation may be partially suspended if an appropriate governmental authority imposes restrictions upon the business operations by limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19 such that the operation can still continue to operate but not at its normal capacity.

      Example: A state governor issues an executive order closing all restaurants, bars, and similar establishments in the state in order to reduce the spread of COVID-19. However, the executive order allows those establishments to continue food or beverage sales to the public on a carry-out, drive-through, or delivery basis. This results in a partial suspension of the operations of the trade or business due to an order of an

appropriate governmental authority with respect to any restaurants, bars, and similar establishments in the state that provided full sit-down service, a dining room, or other on-site eating facilities for customers prior to the executive order

- **Significant Decline in Gross Receipts:** Employers that have gross receipts that are less than 50% of their gross receipts for the same quarter in 2019 are also eligible.

  The significant decline in gross receipts ends with the first calendar quarter that follows the first calendar quarter for which the employer's 2020 gross receipts for the quarter are greater than 80 percent of its gross receipts for the same calendar quarter during 2019. (Act Sec. 2301(c)(2))

Example: An employer's gross receipts were:

Calendar Year	Q1 Gross Receipts	Q2 Gross Receipts	Q 3 Gross Receipts
2020	$100,000	$190,000	$230,000
2019	$210,000	$230,000	$250,000
2020 GR / 2019 GR	48%	83%	92%

Accordingly, the employer had a significant decline in gross receipts commencing on the first day of the first calendar quarter of 2020 (the calendar quarter in which gross receipts were less than 50% of the same quarter in 2019) and ending on the first day of the third calendar quarter of 2020 (the quarter following the quarter for which the gross receipts were more than 80% of the same quarter in 2019). Thus, the employer is entitled to a retention credit with respect to the first and second calendar quarters.

- *Credit Amount* - The credit is a refundable payroll tax credit and is 50% of qualified wages, up a maximum wage of $10,000 per employee. (Act Sec. 2301(a)). Thus, $5,000 is the maximum credit for qualified wages paid to any employee.

Example 1: Eligible Employer pays $10,000 in qualified wages to Employee A in Q2 2020. The Employee Retention Credit available to the Eligible Employer for the qualified wages paid to Employee A is $5,000.

Example 2: Eligible Employer pays Employee B $8,000 in qualified wages in Q2 2020 and $8,000 in qualified wages in Q3 2020. The credit available to the Eligible Employer for the qualified wages

paid to Employee B is equal to $4,000 in Q2 and $1,000 in Q3 due to the overall limit of $10,000 on qualified wages per employee for all calendar quarters.

No credit is available with respect to an employee for any period for which the employer is allowed a Work Opportunity Credit with respect to the employee. (Act Sec. 2301(h)(1))

- *Application Period* - Eligible Employers may claim the Employee Retention Credit for qualified wages that they pay after March 12, 2020, and before January 1, 2021. Therefore, an Eligible Employer may be able to claim the credit for qualified wages paid as early as March 13, 2020.
- *Credit Application* - The credit is allowed against the employer's portion of social security taxes, i.e., the 6.2% portion (IRC Sec 3111(a)), and the equivalent portion of taxes imposed on railroad employers under section 3221(a) of the Railroad Retirement Tax Act.

Example: An Eligible Employer paid $10,000 in qualified wages (including qualified health plan expenses) and is therefore entitled to a $5,000 credit, and is otherwise required to deposit $8,000 in federal employment taxes, including taxes withheld from all of its employees, for wage payments made during the same quarter as the $10,000 in qualified wages. The Eligible Employer has no paid sick or family leave credits under the FFCRA (Families First Coronavirus Relief Act). The Eligible Employer may keep up to $5,000 of the $8,000 of taxes the Eligible Employer was going to deposit, and it will not owe a penalty for keeping the $5,000. The Eligible Employer is required to deposit only the remaining $3,000 on its required deposit date. The Eligible Employer will later account for the $5,000 it retained when it files Form 941, Employer's Quarterly Federal Tax Return, for the quarter.

Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter. If the employer's employment tax deposits are not sufficient to cover the credit, the employer may receive an advance payment from the IRS by submitting Form 7200, Advance Payment of Employer Credits Due to COVID-19.

- *Qualified Wages* - Qualified wages are wages, as defined in IRC Sec 3121(a) and compensation as defined in IRC Sec 3231(e), paid by an Eligible Employer to employees after March 12, 2020, and before January 1, 2021. Qualified wages include the Eligible Employer's qualified health and disability plan expenses that are properly allocable to the wages.

Wages does not include life insurance or reimbursed employee expenses included in income. The definition of qualified wages depends, in part, on the average number of full-time employees, employed on average at least 30 hours of service per week (IRC Sec 4980H(c)(4)) employed by the Eligible Employer during 2019.

- **100 or fewer Employees**: If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless if they worked or not. If the employees worked full time and were paid for full-time work, the employer still receives the credit.
- **More than 100 Employees**: If the employer had more than 100 employees on average in 2019, then the credit is allowed only for wages paid to employees who did not provide services during the calendar quarter.

Wages do not include amounts taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave under the Families First Act. In other words, no double dipping.