

Employee retention credit: Opportunities remain

By Maria L. Murphy, CPA

November 9, 2021

The employee retention tax credit (ERC) has been valuable for some, but seemingly out of reach for others. "It is a really powerful credit that at a high level seems pretty easy, but there are a lot of twists and turns to the implementation," said Courtney Vitale, CPA, tax director at CBIZ MHM LLC.

"There is a diversity of understanding, but there is real value in understanding how the credit applies to your business because, even if you didn't understand it or think you were eligible, you can still file for it," Vitale, who is scheduled to present a session on the ERC on Dec. 8 at the AICPA & CIMA Construction and Real Estate Conference (<https://cor.aicpastore.com/>) in Las Vegas, said during a preconference telephone interview.

The ERC was established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136, in March 2020. It was intended to help businesses retain their workforces and avoid layoffs during the coronavirus pandemic. It provides a per employee credit to eligible businesses based on a percentage of qualified wages and health insurance benefits paid to employees.

The CARES Act did not allow businesses that received Paycheck Protection Program (PPP) loans to also claim the ERC, but the Consolidated Appropriations Act, 2021, P.L. 116-260, which was enacted at the end of 2020, retroactively removed the limitation so employers that had applied for or received PPP loans could still get the ERC.

In March 2021, the IRS issued detailed guidance (Notice 2021-20) about the ERC to address specific questions about eligibility requirements and calculations.

"The ERC is a federal credit from the IRS taken on businesses' quarterly payroll tax returns using Form 941, and it is not the kind of credit that gets passed through to shareholders," Vitale said. "The credit calculation is based on how many employees you had for the time period when you were eligible for the credit."

Although the American Rescue Plan Act, P.L. 117-2, provided that the ERC would go through Dec. 31, 2021, infrastructure legislation awaiting President Joe Biden's signature (H.R. 3684) includes a provision that will end the ERC for many businesses after Sept. 30, 2021, rather than Dec. 31, 2021.

Once Biden signs the infrastructure legislation, it will repeal the ERC for the fourth calendar quarter of 2021. The third-quarter Form 941, *Employer's Quarterly Federal Tax Return*, will be the final quarter eligible to be amended, and beginning Oct. 1, 2021, the ERC will be considered terminated with an applicable exception related to eligible recovery startup businesses.

Vitale shared some highlights of the ERC provisions:

- It is a refundable payroll tax credit claimed quarterly, and it can provide reductions to payroll taxes or cash refunds.
- It is available to both for-profit and not-for-profit employers, but not every business is eligible.
- There are two critical tests for eligibility — a partial or total government-ordered shutdown, or the applicable decline in gross receipts.
- There are two categories of eligible employer — small or large — defined in the ERC, based on the average number of full-time employees in 2019 pre-COVID-19.
- The decline in gross receipts test is based on a "significant" decline in gross receipts in quarters of 2020 (more than 50%) and 2021 (more than 20%) compared with the same quarters in 2019.
- There are different rules for 2020 and 2021. "The ERC for 2020 was a little more confined, but for 2021 it was more expansive and opened up to more possibility and higher dollars," Vitale said. At a high level, for wages paid after March 12, 2020, and on or before Dec. 31, 2020, the credit is equal to 50% of qualified wages with a \$10,000 maximum per employee (\$5,000) for the year 2020. For wages paid Jan. 1, 2021, through Sept. 30, 2021, the credit increases to 70% of qualified wages, but the \$10,000 maximum per employee is considered for each quarter (so the maximum credit is \$7,000 per quarter, or \$21,000 for three quarters) rather than annually.
- There is no cap on the number of employees that are paid in any quarterly period for purposes of the ERC.

Vitale encourages every business to become more familiar with the ERC provisions to determine if they are eligible for it, because it can provide substantial amounts of money based on the number of employees and how many quarters the business was eligible.

"There are nuances to maximize the program, so every business should find out about it and evaluate the opportunities," she said. "Even if you missed it or didn't completely understand it, but you now find you were eligible, you can still file an amended Form 941 for prior quarters, utilize the program, and not leave money on the table."

— **Maria L. Murphy**, CPA, is a freelance writer based in North Carolina. To comment on this article or to submit an idea for another article, contact Ken Tysiac, the JofA's editorial director, at Kenneth.Tysiac@aicpa-cima.com (<mailto:Kenneth.Tysiac@aicpa-cima.com>).

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