Employee Retention Credit For Non-Profit Organizations

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Cordell, Neher & Company, PLLC, one of the largest Certified Public Accounting firms in North Central Washington with individual and business clients spanning the globe. The Firm has been providing businesses, not-for-profit organizations and individuals with financial and tax planning assistance for more than 50 years. The Firm is comprised of experienced, dedicated professionals with widely diverse backgrounds and areas of technical expertise. Because business and personal accounting today is so broad in scope, specialized expertise is needed to offer a full range of accounting services.

Today's Webinar

- Employee Retention Credit
  - What is it?
  - Why was it established?
  - Who qualifies to receive it?
  - How is it calculated?
  - How is it claimed?

Employee Retention Credit (ERC)

- Federal Payroll Tax Credit
- Established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020
- Modified by the Taxpayer Certainty and Disaster Tax Relief Act (Relief Act) in December 2020
- Further modified by the American Rescue Plan Act in March 2021
- And finally ERC mostly eliminated by the recent Infrastructure Investment and Jobs Act in November 2021

Employee Retention Credit (ERC)

- Intent of the credit is to help employers keep employees on the payroll – limit unemployment claims
- Payroll tax credit
  - Originally credit against Social Security Tax
  - Later credit against Medicare Tax
- Credit Available to Eligible Employers

Employee Retention Credit (ERC)

Two Major Steps in ERC Calculations
(and a bunch of sub-steps)

1. **Determine if your organization is an Eligible Employer**

2. **Determine the amount of Qualified Wages**

Who Is An Eligible Employer

Eligible Employers for purposes of ERC are employers that carry on a trade or business during calendar year 2020 or 2021 that have either:

Operations fully or partially suspended due to orders from government related to COVID-19

Or

Significant decline in revenue during a calendar quarter of 2020 or 2021 as compared to the same calendar quarter of 2019

(There is a third qualification that we will get to later.)

Tax Exempt Organizations

For purposes of the employee retention credit, a tax-exempt organization described in section 501(c) of the Code that is exempt from tax under section 501(a) of the Code is deemed to be engaged in a "trade or business" with respect to all operations of the organization.

IRS Notice 2021-20

Who Is An Eligible Employer

Federal, State, or Local Government employers are <u>not</u> eligible for ERC (unless College, University or providing Medical or Hospital services)

Large employers with greater than 100 <u>full time employees</u> for 2020 or 500 <u>full time employees</u> for 2021 are still eligible employers but the credit is limited

(FTE ≠ Full Time Employees)

Fully Suspended Operations

Fairly straight forward determination

- Non-essential employers forced to suspend operations entirely
- Work from home or other telecommuting options not available

Partially Suspended Operations

A whole lot of Gray

Each employer needs to assess their own operations based upon facts and circumstances

Partially Suspended Operations

The operation of a trade or business is partially suspended if an appropriate governmental authority imposes restrictions on the employer's operations by limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19 such that the employer can still continue some, but not all of its typical operations.

https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-general-information-faqs

Some Items That May Indicate Partial Suspension of Operations

- A more than nominal portion of business operations are suspended
- Reduction of business hours
- Restriction of capacity/limiting occupancy
- Restriction on size of gatherings
- Inability to acquire critical goods or services
- Changing format of services

Some Items To Consider When Determining Suspension of Operations

- Employer's telework capabilities
- Portability of employee's work
- Need for presence in employee's physical work space
- Transitioning to telework operations (when can operations start-up)

- Voluntary restrictions do not qualify
  - Must be restricted by Government mandate

Open for Some Operations Closed for Other Operations

If an employer's workplace is closed due to a governmental order for certain purposes, but the employer's workplace may remain open for other limited purposes, the employer's operations would be considered to be partially suspended if, under the facts and circumstances, the operations that are closed are more than a nominal portion of its business operations and cannot be performed remotely in a comparable manner. If all, or all but a nominal portion, of an employer's business operations may continue, but the operations are subject to modification due to a governmental order (for example, to satisfy distancing requirements), such a modification of operations is considered to be a partial suspension of business operations due to a governmental order if the modification required by the governmental order has more than a nominal effect on the business operations under the facts and circumstances.

IRS Notice 2021-20

More Than Nominal

Solely for purposes of this employee retention credit, a portion of an employer's business operations will be deemed to constitute more than a nominal portion of its business operations if either (i) the gross receipts from that portion of the business operations is not less than 10 percent of the total gross receipts (both determined using the gross receipts of the same calendar quarter in 2019), or (ii) the hours of service performed by employees in that portion of the business is not less than 10 percent of the total number of hours of service performed by all employees in the employer's business (both determined using the number of hours of service performed by employees in the same calendar quarter in 2019).

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Examples

Employer F, a restaurant business, must close its restaurant to on-site dining due to a governmental order closing all restaurants, bars, and similar establishments for sit-down service. Employer F is allowed to continue food or beverage sales to the public on a carry-out, drive-through, or delivery basis. On-site dining is more than a nominal portion of Employer F's business operations. Employer F's business operations are considered to be partially suspended because, under the facts and circumstances, more than a nominal portion of its business operations—its indoor and outdoor dining service—is suspended due to the governmental order.

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Examples

Employer G, a retail business, must close its retail storefront locations due to a governmental order. The retail business also maintains a website through which it continues to fulfill online orders; the retailer's online ordering and fulfillment system is unaffected by the governmental order. The retail storefront locations are more than a nominal portion of Employer G's business operations. Employer G's business operations are considered to have been partially suspended due to the governmental order requiring it to close its retail storefront locations, which are more than a nominal portion of its business operations.

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Examples

Employer K operates a food processing facility that normally operates 24 hours a day. A governmental order issued by the local health department requires all food processing businesses to deep clean their workplaces once every 24 hours in order to reduce the risk of COVID-19 exposure. In order to comply with the governmental order, Employer K reduces its daily operating hours by five hours per day so that a deep cleaning may be conducted within its workplace once every 24 hours. Employer K is considered to have partially suspended its operations due to the governmental order requiring it to reduce its hours of operation.

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Fully or Partially Suspended Operations

Employers qualify for ERC during the time period that their operations were fully or partially suspended

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Or

Significant decline in revenue during a calendar quarter of 2020 or 2021 as compared to the same calendar quarter of 2019

(There is a third qualification that we will get to later.)

Significant Decline In Gross Receipts

For 2020

Reduction of 50% or more in gross receipts during a calendar quarter of 2020 as compared to the same calendar quarter of 2019

Significant Decline In Gross Receipts

For 2021

Reduction of 20% or more in gross receipts during a calendar quarter of 2021 as compared to the same calendar quarter of 2019

Significant Decline In Gross Receipts

Employers qualify for ERC beginning the first day of the first quarter that they had a significant decline in gross receipts

Employers stop qualifying for ERC the first day of the quarter following the quarter in which gross receipts rise above 80% of the same calendar quarter of 2019

Significant Decline In Gross Receipts

Alternative comparison periods can be elected for organizations not in existence during 2019.

What Are Gross Receipts For NFP's

- Contributions and gifts
- Grants
- Dues or assessments from members
- Investment income: Interest, Dividends, Capital Gains
- Rents and Royalties
- Unrelated Business Income

What Are Gross Receipts For NFP's

NFP's should use the same method of accounting to determine gross receipts as they do for accounting records.

Example: If accounting records are maintained on the accrual basis with pledges considered a gross receipt when pledged then the pledges should be considered a gross receipt when pledged for ERC purposes.

Now that we know which employers qualify… lets determine qualified wages

Qualified Wages

- Gross wages paid after March 12, 2020
- Gross wages paid prior to October 1, 2021
- For small employers wages paid to all employees qualify
- Wages must be paid for on-going employment
- Calculated on a quarterly basis
- Maximum qualified wage per employee
  - For 2020: $10,000 for the year
  - For 2021: $10,000 per quarter
- Wages must be subject to Social Security Tax
  - Clergy Wages
  - Certain pre-tax benefit deductions

Health Plan Expenses

Amounts paid for qualified health plan expenses for hours worked by employees during which they received other ERC qualifying compensation

Include both employee and employer portions of health plan costs unless employee pays with after tax dollars

Interaction with PPP

- Original law excluded ERC when employers had forgiven PPP loans
- Relief Act retroactively allowed ERC to be claimed by employers with forgiven PPP loans
- Wages paid with PPP funds are not qualified ERC wages
  - Election made on the PPP forgiveness application

Families First Act

Wages used for Families First Covid Sick Leave and Covid FMLA Leave Credits not qualified ERC wages

Credit Amount

- For 2020, Employee Retention Credit is equal to 50% of qualified wages ($5,000 maximum per employee)
- For 2021, Employee Retention Credit is equal to 70% of qualified wages ($7,000 maximum per employee per quarter)

Recovery Start-Up Business

The third qualifier for ERC

- Business that started new operations after February 15, 2020
- Average annual gross receipts under $1.0 million

Eligible for ERC during Q3 and Q4 of 2021

Other rules the same however limited to $50,000 of total ERC per quarter

Claim ERC on Form 941

- ERC is a credit against the employer portion of Federal payroll taxes
- ERC claimed on Form 941
  - Make sure to use proper version of form 941
- Previously filed Forms 941 may be amended to claim ERC
  - Form 941-X – Watch for proper version of the form

Claim ERC on Form 941

- Make sure to complete the proper worksheets for Form 941.
  - Different worksheets for various time periods

- Credit is split between non-refundable and refundable portion
  - Non-refundable reduces tax liability
  - Refundable acts just like a payroll tax deposit

(Don’t let this confuse you, employers receive the entire ERC as a refund)

A Price to Pay (But Worth It)

- ERC is treated as a reduction of wage expense for employers
- This reduction of wages is recognized during the same quarter the wages were earned
- This reduction in wage expense must be reported on appropriate Federal Tax Returns (Form 990 for most NFP's)
- Previously filed returns should be amended to reflect the reduction of wage expense

Anything Else To Know

There are other rules and guidelines for ERC including wages paid to business owner's family members, business under common ownership, rules for large business and others.

Most will not apply to NFP's

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