The Consolidated Appropriations Act, 2021 provides relief to eligible employers by extending the employee retention tax credit as a result of COVID-19.

The Consolidated Appropriations Act, 2021 provides emergency assistance and health care response for individuals, families and businesses as a result of the Coronavirus (COVID-19) pandemic. The employee retention credit is designed to encourage businesses to keep workers on their payroll and support small businesses and nonprofits during the COVID-19 emergency.

New Legislation Explained

The employee retention tax credit is a refundable tax credit against certain employment taxes equal to 70% of qualified wages up to $10,000 per quarter that an eligible employer pays to an employee beginning January 1, 2021 through June 30, 2021. Eligible employers can get immediate access to the credit by reducing employment tax deposits they are otherwise required to make. Also, if the employer's employment tax deposits are not sufficient to cover the credit, the employer may get an advance payment from the IRS.

This in contrast to the 2020 payroll tax credit which allowed an employer to claim a refundable payroll tax credit for 50 percent of wages paid during the coronavirus (COVID-19) crisis if (1) business operations were suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent as compared to the same quarter in the prior year. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for this employee retention credit. For eligible employers with more than 100 full-time employees, only wages paid to employees when they are not providing services due to the COVID-19-related circumstances will qualify. The credit applies to the first $10,000 of compensation (including health benefits) paid to an eligible employee from March 13, 2020, through December 31, 2020.

Eligible employers. An employer is eligible to claim the employee retention credit if:

- the employer was carrying on a trade or business during the calendar quarter for the period beginning on January 1, 2021 and ending June 30, 2021; and
- either:
  (1) the operation of the employer’s trade or business is fully or partially suspended during a calendar quarter for the period beginning on January 1, 2021 and ending June 30, 2021 under orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
  (2) the employer’s calendar quarter is within the period during which the employer is experiencing a 20% decline in gross receipts.

Note - While a company may not have been required to close due to direct orders, a company could be deemed as “partially suspended” when they may not be operating at “normal capacity” due to imposed restrictions from a government authority that limits commerce, travel, or group meetings. A government order imposed on a member of your company’s supply chain could have resulted in your company not operating at normal capacity if the business became unable to acquire needed materials and supplies required to provide full service to customers. Thus, a company may be an Eligible Employer for purposes of the ERC from both direct and indirect causes.

Qualified Wages. The extension of the employee retention credit applies to qualified wages paid beginning on January 1, 2021 through June 30, 2021. Qualified wages are based on the business's average number of full-time employees in 2019.

Decline in Gross Receipts. The Act expands eligibility for the credit by reducing the required year-over-year gross receipts decline of 20% (down from 50% required in the original payroll tax credit) and provides a safe harbor allowing employers to use prior quarter gross receipts to determine eligibility. Additionally, the credit is now expanded to allow new employers who were not in existence for all or part of 2019 to claim the credit by using the same calendar quarter in 2020.

For an employer other than a tax-exempt organization, gross receipts includes:

- total sales (net of returns and allowances);
- all amounts received for services; and
- any income from investments and from incidental or outside sources.

The period of significant decline in gross receipts:

- begins with the first calendar quarter in January 1, 2021 through June 30, 2021 for which the employer's gross receipts (within the meaning of IRC §448(c)) are less than 80% of its gross receipts for the same calendar quarter in 2019; and
- ends with the earlier of: July 1, 2021; or the first calendar quarter after the first calendar quarter in 2021 for which gross receipts are greater than 80% of its gross receipts for the same calendar quarter in 2019.

Claiming the Employee Retention Tax Credit

In order to claim the employee retention tax credit, eligible employers report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns, Form 941, Employer's Quarterly Federal Tax Return, beginning with the second quarter. The credit is taken against the employer's share of social security tax but the excess is refundable under normal procedures.

Eligible employers can also request an advance of the employee retention credit by submitting Form 7200, Advance Payment of Employer Credits Due to COVID-19 for an advance credit.

There are limitations when considering an eligible employer's ability to claim the employee retention credit. This credit is impacted by other credit and relief provisions as follows:

- wages that are paid for with forgiven Payroll Protection Program (PPP) proceeds cannot qualify for the employee retention credit
- qualifying wages counted for this credit cannot be counted for the credit for paid sick and family leave; and
- employees are not counted for this credit if the employer is allowed a work opportunity tax credit.

Note – It is critical that you talk to us prior to submitting your PPP loan forgiveness application as all eligible expenses included on the PPP loan forgiveness application are excluded for the payroll tax credit purposes.

Note – You are able to amend your 2020 quarterly tax filings to claim this credit.

Employee Retention Credit Example 2020					
Quarter	Gross Receipts 2019	Gross Receipts 2020	2020 Vs 2019	Eligible	
1	$ 157,000	$ 95,000	39%	?	Credit starts 3/13/2020
2	$ 165,000	$ 85,000	48%	No	Not Eligible - not a 50% or more decline
3	$ 170,000	$ 85,000	50%	Yes	Eligible - 50% or more decline
4	$ 145,000	$ 75,000	48%	Yes	Eligible based on the fact Q3 can be used

Employee	Q2	Q3	Q4	Total Wages	Total Eligible Wages - $10,000 per employee for the year
1	15,000.00	15,000.00	10,000.00	40,000.00	10,000.00
2	7,000.00	11,000.00	6,000.00	24,000.00	10,000.00
3	3,000.00	3,000.00	3,000.00	9,000.00	6,000.00
	25,000.00	29,000.00	19,000.00	73,000.00	26,000.00

Potential Credit = Eligible Wages *50% 13,000.00

Employee Retention Credit Example 2021					
Quarter	Gross Receipts 2020	Gross Receipts 2021	2021 Vs 2020	Eligible	
1	$ 157,000	$ 85,000	46%	Yes	Eligible - 20% or more decline
2	$ 165,000	$ 160,000	3%	Yes	Eligible based on the fact Q1 can be used
3	N/A				Credit only available through 6/30

Employee	Q1	Q2	Total Wages	Total Eligible Wages - $10,000 per employee per quarter
1	15,000.00	15,000.00	30,000.00	20,000.00
2	7,000.00	11,000.00	18,000.00	17,000.00
3	9,000.00	9,000.00	18,000.00	18,000.00
	31,000.00	35,000.00	66,000.00	55,000.00

Potential Credit = Eligible Wages *70% 38,500.00