Are You Taking Advantage of the Employee Retention Tax Credit?

By Michelle Kaneshiro

With so many small businesses struggling to stay afloat during the COVID-19 pandemic, it is helpful to know that the US government has created or extended various programs to assist business owners. However, managing the day-to-day struggles of operating a business in addition to trying to stay on top of the various governmental programs can be difficult.

One of the wider reaching government assistance programs for 2021 is the Employee Retention Tax Credit ("ERTC"). ERTC is available from March 2020 through December 2021. This article will focus on the rules for the ERTC for January 2021 - June 2021, but a table at the end summarizes some of the larger differences between the 2020 and 2021 regulations.

In short, if your business has been partially suspended or your quarterly gross revenue has decreased by 20% as compared to 2019, you may be eligible to receive a refundable federal employment tax credit of up to $7,000 per employee. To apply for the ERTC, eligible employers will report their total qualified wages for the ERTC on their federal employment tax return, which for most employers is the quarterly form 941, Employer's Quarterly Federal Tax Return. If the credit exceeds the employment taxes for that quarter, the excess is treated as an overpayment and refunded to the employer.

An eligible employer is a trade or business (including non-profit organizations) in operation from March 12, 2020 and with respect to any calendar quarter (1) operations were fully or partial suspended due to government orders, or, (2) the employer experienced a significant decline in gross receipts. If you own more than one company, you will need to analyze whether or not the businesses are combined via a Control Group.

IRS Notice 2021-20 defines a Control Group as a group of corporations or trades or businesses under common control under sections 52(a) or (b) of the Code, members of an affiliated service group under section 414(m) of the Code, or otherwise aggregated under section 414(o) of the Code. A Control Group's gross receipts are analyzed based on the Control Group and not at an individual company level.

Gross receipts are analyzed utilizing the same method (cash or accrual) as the method that the company uses when it files its income tax return. A significant decline in gross receipts is a 20% decline in gross receipts for the quarter as compared to the same quarter in 2019. If the business was not in existence in 2019, you can utilize the same quarter in 2020. Alternatively, you can also analyze the significant decline in gross receipts based on the prior quarters gross receipts as compared to that same quarter's gross receipts in 2019.

For example, to qualify for the ERTC in the first quarter of 2021 you can either have a 20% decline in gross receipts when comparing (1) first quarter 2021 to first quarter 2019, or (2) fourth quarter 2020 to fourth quarter 2019. Therefore, if your company has a 20% decline in gross receipts when comparing the first quarter 2021 and the first quarter 2019, you will be eligible for the ERTC for both the first and second quarter in 2021.

	2020	2021
Significant decline in gross receipts	50%	20%
Credit is a % of the first $10,000 in wages & healthcare costs per employee	50% of qualified wages	70% of qualified wages
Large eligible employer	Averaged more than 100 employees during 2019	Averaged more than 500 employees during 2019