CARES Act: Employee Retention Tax Credit for Impacted Employers

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) encourages employers to keep employees on payroll despite experiencing economic hardship due to COVID-19 with an employee retention tax credit (Employee Retention Credit).

The Families First Coronavirus Relief Act (FFCRA) requires certain employers to pay sick or family leave wages to employees who are unable to work or telework due to certain circumstances related to COVID-19. Employers are entitled to a refundable tax credit for the required leave paid, up to specified limits. The same wages cannot be counted for both credits.

**Eligible Employers**

Private employers, including non-profits, carrying on a trade or business in 2020 that either:

- Fully or partially suspends operation at any time in 2020 due to orders from a governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
- Experience a decline in gross receipts by more than 50% in a quarter compared to the same quarter in 2019 (eligibility ends when gross receipts in a quarter exceed 80% compared to the same 2019 quarter)

**Note:** Governmental employers are not eligible. Self-employed individuals are also not eligible for this credit for their self-employment services or earnings. Employers who receive a Paycheck Protection Program (PPP) loan are also not eligible for a tax credit.

**Employees That Count Toward Eligibility**

- Employers with more than 100 employees: Full-time employees who are (i) being paid but (ii) not providing service due to either a full or partial shutdown or a reduction in gross receipts count toward eligibility
- Employers with 100 or fewer full-time employees: All employees, regardless of whether those employees are providing service, count toward eligibility
Employers may not claim the same employee for this credit and the Work Opportunity Tax Credit for the same period. In addition, employers may not claim the same wages for an employee under this credit and also under the employer credit in section 45S for FMLA

**Amounts Available to Employers**

This new employee retention tax credit is a 50% tax credit for the first $10,000 of compensation, including the employer portion of health benefits, for each eligible employee. Compensation does not include paid sick or family leave for which the employer is reimbursed under the FFCRA.

The credit only applies to wages paid after March 12, 2020 and before January 1, 2021

- **Example:** 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.

**How to Claim the Refundable Tax Credit**

Eligible Employers will report their total qualified wages and the related credits for each calendar quarter on their federal employment tax returns, usually Form 941, Employer's Quarterly Federal Tax Return. Form 941 is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer’s portion of social security and Medicare tax.

In anticipation of receiving the credits, Eligible Employers can fund qualified wages by accessing federal employment taxes, including withheld taxes, which are required to be deposited with the IRS or by requesting an advance of the credit from the IRS.

**How the Credit is Paid**

The refundable credit is applied against the employer portion of payroll taxes. The Treasury Department will develop a process for employers to receive an advance payment of the tax credit.

**Questions?**

We understand you likely have a number of unanswered questions. More information can be found at www.IRS.gov. The Arts & Business Council will regularly publish updated information regarding small business loan assistance and tax credits as it is made available. We invite any questions you may have in the meantime. Please feel free to visit our website, https://artsandbusinesscouncil.org/covid-19, for more information or email us at VLA@artsandbusinesscouncil.org with any questions.