Employee Retention Tax Credit Significantly Expanded

Under the Consolidated Appropriations Act (CAA) passed in December 2020, the Employee Retention Tax Credit (ERTC), a provision of the CARES Act, is extended through June 30, 2021 to eligible employers who retained employees during the COVID-19 pandemic. The CAA changed some provisions of the CARES Act retroactively from March 13, 2020, while other changes only became effective beginning January 1, 2021.

**Retroactive changes include:**

1. Companies that obtained Paycheck Protection Program (PPP) loans are now able to apply for the ERTC, as long as the wages that were used to support the payroll portion of the PPP loan forgiveness are not used to support the ERTC qualified wages, or qualified health expenses (i.e., no “double dipping”).

As a client of Resourcing Edge, if you were previously not eligible for the ERTC in 2020 but now are, you can work directly with your Client Account Manager to apply for a refund for applicable 2020 quarters.

For 2020, qualification for the ERTC was determined by one of two factors for eligible employers, with one factor having been that the company applied in the same calendar quarter the employer wished to utilize the credit. The first qualification was a business that was fully or partially suspended or had to reduce business hours due to a government order. The credit applied only for the portion of the quarter the business was suspended, not the entire quarter. Alternatively, the second qualification was a business that had a significant decline in gross receipts. If gross receipts in a calendar 2020 quarter were below 50% of gross receipts compared to the same calendar quarter in 2019, an employer would have qualified. They were no longer eligible in the calendar quarter immediately following the quarter in which gross receipts exceeded 80% compared to the same calendar quarter in 2019.

For 2020, a company with more than 100 full-time employees in 2019 that satisfied one of the two tests above could only use the qualified wages of employees not providing services because of suspension or decline in business. For 2020, a company with less than 100 full-time employees, that satisfied one of the two tests above, could use all eligible employee compensation whether the employees were working or not.

2. Compensation that was subject to FICA taxes, as well as qualified health expenses, qualified when calculating the employee retention credit. The CAA clarified that if an employee was furloughed but the employer continued to pay pre-tax health benefits, the pre-tax health benefit amounts can be counted as qualified health expenses for the ERTC calculation.

**Prospective changes effective January 1, 2021 include:**

1. The CAA change extends the ERTC for two more calendar quarters, through June 30, 2021.

2. The maximum ERTC amount was $5,000 per employee for the entire 2020 period (50% of each qualified employee’s aggregate qualified compensation which was capped at $10,000 for the entire 2020 period). The CAA increases the maximum credit to $7,000 per employee per quarter for each of the first two quarters in 2021 (70% of each employee’s aggregate qualified wages and qualified health expenses, capped at $10,000 for each quarter).

3. For 2020, a “small” employer (with no more than 100 full-time employees in 2019) was allowed to use all qualified wages paid to employees, whether or not such employees were working. For 2021, the CAA changed the definition of a “small” employer to a company with no more than 500 full-time employees.

4. Under the CARES Act, a company needed more than a 50% decline in gross receipts, compared to the same quarter in 2019, in order to qualify for the ERTC using the gross receipts test. The CAA changed the test so a company that has had more than a 20% decline in gross receipts in 2021, compared to the same quarter in 2019, satisfies the gross receipts test. The new rule also allows a company to elect to use the gross receipts from the preceding quarter and to compare these prior quarter gross receipts to the same quarter in 2019.

Overall, the CAA changes to the ERTC program are significant and, in general, support more companies obtaining these payroll tax credits. Eligible companies must ensure they meet all of the eligibility requirements, however, and avoid “double dipping” as previously mentioned. If you and your tax advisor determine your company is eligible for the ERTC for 2020 and/or 2021, please contact your Resourcing Edge Client Account Manager to discuss next steps in obtaining these credits.