

NEW STIMULUS PACKAGE EXTENDS AND EXPANDS EMPLOYEE RETENTION CREDIT

[The Consolidated Appropriations Act of 2021](#) (Act), signed into law on December 27, 2020, contains significant enhancements and improvements to the Employee Retention Credit (ERC). The ERC, which was created by the CARES Act on March 27, 2020, is designed to encourage employers (including tax-exempt entities) to keep employees on their payroll and continue providing health benefits during the coronavirus pandemic. The ERC is a refundable payroll tax credit for wages paid and health coverage provided by an employer whose operations were either fully or partially suspended due to a COVID-19-related governmental order or that experienced a significant reduction in gross receipts.

Employers may use ERCs to offset federal payroll tax deposits, including the employee FICA and income tax withholding components of the employer's federal payroll tax deposits.

ERC FOR 2020

The Act makes the following *retroactive changes to the ERC*, which apply during the period March 13, 2020 through December 31, 2020:

- Employers that received PPP loans may qualify for the ERC with respect to wages that are not paid with proceeds from a forgiven PPP loan.
- The Act clarifies how tax-exempt organizations determine "gross receipts."
- Group health care expenses are considered "qualified wages" even when no other wages are paid to the employee.

Insights

- Employers that received a PPP loan and that were previously prohibited from claiming the ERC may now retroactively claim the ERC for 2020.
- With respect to the retroactive measures in the Act, employers that paid qualified wages in Q1 through Q3 2020 may elect to treat the qualified wages as being paid in Q4 2020. This should allow employers to claim the

ERC in connection with such qualified wages via a timely filed IRS Form 7200 or Form 941, as opposed to requiring an amended return (IRS Form 941-X) for the prior quarter(s) in 2020.

ERC FOR 2021 (JANUARY 1 – JUNE 30, 2021)

In addition to the retroactive changes listed above, the following changes to the ERC apply from January 1 to June 30, 2021:

Increased Credit Amount

- The ERC rate is increased from 50% to 70% of qualified wages and the limit on per-employee wages is increased from \$10,000 for the year to \$10,000 per quarter.

Broadened Eligibility Requirements

- The gross receipts eligibility threshold for employers is reduced from a 50% decline to a 20% decline in gross receipts for the same calendar quarter in 2019.
- A safe harbor is provided allowing employers to use prior quarter gross receipts compared to the same quarter in 2019 to determine eligibility.
- Employers not in existence in 2019 may compare 2021 quarterly gross receipts to 2020 quarters to determine eligibility.
- The credit is available to certain government instrumentalities, including colleges, universities, organizations providing medical or hospital care, and certain organizations chartered by Congress.

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Determination of Qualified Wages

- The 100-full time employee threshold for determining “qualified wages” based on all wages paid to employees is increased to 500 or fewer full-time employees.
- The Act strikes the limitation that qualified wages paid or incurred by an eligible employer with respect to an employee may not exceed the amount that employee would have been paid for working during the 30 days immediately preceding that period (which, for example, allows employers to take the ERC for bonuses paid to essential workers).

Advance Payments

- Under rules to be drafted by Treasury, employers with less than 500 full-time employees will be allowed advance payments of the ERC during a calendar quarter in which qualifying wages are paid. Special rules for advance payments are included for seasonal employers and employers that were not in existence in 2019.

Insights

- Employers that previously reached the credit limit on some of their employees in 2020 can continue to claim the ERC for those employees in 2021 to the extent the employer remains eligible for the ERC.
- Qualification for employers in 2021 based on the reduction in gross receipts test may provide new opportunities for businesses in impacted industries.
- Eligible employers with 500 or fewer employees may now claim up to \$7,000 in credits per quarter, paid to all employees, regardless of the extent of services performed. Previously this rule was applicable to employers with 100 or fewer employees and a maximum of \$5,000 in credit per employee per year. Aggregation rules apply to determine whether entities under common control are treated as a single employer.

The Act may provide significant opportunities for your company. However, the interplay between the Act, the CARES Act and various Internal Revenue Code sections is nuanced and complicated.

It is recommended that you contact your Frost, PLLC representative(s) with any questions.