**BizBoost News  
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**Employee Retention Credit Update**

The Employee Retention Credit (ERC) was rolled out in March 2020 as part of the CARES Act to help businesses with the cost of keeping employees on payroll through the COVID-19 pandemic. It is a tax break in the form of refundable employment tax credits for those businesses that qualify.

Although the ERC is no longer available for the 2022 tax year, many businesses are still waiting to receive the credit or are working to claim it retroactively for prior quarters. Therefore, this remains a hot topic and there are a few important updates and reminders to be aware of.

**Businesses Can Retroactively Claim the ERC**

Some employers who qualified for the ERC for quarters in 2020 and 2021, but didn’t file a claim at the time, may think they have missed out on taking advantage of this opportunity. However, businesses have three years from the filing of the original IRS Form 941 (Employer’s Quarterly Federal Tax Return) to file amended returns to claim the credits. The qualifications and credit amounts are as follows:

For 2020:

* Applies to wages paid after March 12, 2020 and on or before December 31, 2020
* To be eligible, an employer must have experienced either a full or partial suspension of operations due to a COVID-related governmental order or a greater-than 50 percent reduction in gross receipts compared to the same quarter in 2019
* The credit is 50 percent of qualified wages, which is capped at $10,000 per employee for the year (maximum annual credit of $5,000 per employee)

For 2021:

* Applies to wages paid after December 31, 2020 and on or before September 30, 2021 (exception: extends through December 31, 2021 for “recovery startups”)
* To be eligible, an employer must have experienced either a full or partial suspension of operations due to a COVID-related governmental order or a greater-than 20 percent reduction in gross receipts compared to the same quarter in 2019 (for 2021 there is an election available to use prior quarter gross receipts compared to the same quarter in 2019 to determine eligibility – for example, for Q1 2021, the employer can elect to use Q4 2020 compared to Q4 2019 to determine if the gross receipts test is met)
* The credit is 70 percent of qualified wages, which are capped at $10,000 per employee per quarter (maximum annual credit of $21,000 per employee)

**Employee Retention Credit IRS Penalty Relief**

The IRS stipulates that businesses must reduce their deductible payroll expenses on their income tax returns by the amount of the credit received or to be received, and this reduction must occur on the tax return for the year the credit is related to. This causes an increase to the bottom-line profit and associated income tax due, and in many cases triggers penalties for employers who did not remit enough in estimated taxes due to the jump in taxable profit.

The penalties may be even higher for employers who are still waiting to receive the credit, because it would create a hardship for them to remit the additional tax without having received the refund, so they wait even longer to pay their income taxes due – which causes the penalties to grow.

Per a news release from April 2022, the IRS is aware of this situation and has indicated that taxpayers may be eligible for relief from penalties if they can show reasonable cause and not willful neglect for failing to pay. While lack of funds is not *generally* accepted as reasonable cause, the underlying reason of not having received the ERC refund that triggered the additional tax could be.

Alternatively, another possibility is to claim relief using the First Time Penalty Abatement program, which can be used if the taxpayer:

* Did not have to previously file a return or had no penalties for the three prior tax years
* Filed all currently required returns or requested an extension of time to file
* Paid, or arranged to pay, any tax due

**Beware of Scam ERC Providers**

There are a number of “specialty” providers popping up who are offering to recalculate the ERC for a percentage of the “take” or who are using an overly aggressive interpretation of the rules that likely wouldn’t hold up if scrutinized by the IRS. While many businesses legitimately qualify for the ERC, some of these providers are using risky practices to maximize the credit amount, which if later found to be wrong could lead to anything from civil penalties to criminal tax fraud. The IRS has a five-year statute of limitations on these ERC claims, so even if they aren’t yet auditing claims now, they very well could (and likely will) in the future.

So, what signs or red flags should you look for? You should be wary of working with any providers who:

* Give specific credit amounts without reviewing all relevant information or documentation
* Don’t ask for details regarding any changes in the business or impacts of COVID-related governmental orders
* Do not provide any assurances about defending their work in the case of IRS scrutiny or an audit
* Are not credentialed as CPAs, Enrolled Agents, or attorneys, or claim they are, but you can’t find them in the state or federal directories
* Push back on regulations or guidance provided by the IRS
* Claim that you don’t need to show any documentation or prove anything to the IRS
* Have not been in existence that long and seem to have popped up during the peak of the pandemic, and whose CEO and team members appear to have little or no prior experience with tax credits
* State that they are associated with established providers without providing proof of a link

If you have further questions about the ERC or any other taxes, feel free to contact us any time.

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Tweets

Insert a link to your newsletter, website or blog before you post these:

Our latest blog: “Employee Retention Credit Update” is available now! Subscribe here: [link]

Do you know the Employee Retention Credit qualifications and credit amounts for the 2020 tax year? Find the list and learn more about recent ERC updates here: [link]

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There are a number of “specialty” providers popping up who are offering to recalculate the Employee Retention Credit for a percentage of the “take” or who are using an overly aggressive interpretation of the rules that likely wouldn’t hold up if scrutinized by the IRS. Learn what red flags you should be aware of here: [link]

Do you know the Employee Retention Credit qualifications and credit amounts for the 2021 tax year? Learn more about recent ERC updates here: [link]

Have you kept up-to-date on the Employee Retention Credit? Sign up for our newsletter to learn more about the recent ERC updates: [link]