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CLIENT ALERT BUSINESS/CORPORATE/TAX

Employee Retention Credits Under the CARES Act

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What's an Employee Retention Credit? In the effort to incentivize employers to keep employees on their payrolls – even if the employees are not working – the CARES Act provides certain employers with a payroll tax credit in the amount of 50% of the wages and health benefits paid to employees between March 12, 2020 and December 31, 2020, with a cap of $5,000 of credit per employee. The credit is taken against the employer's portion of FICA taxes, among others. If the credit exceeds the amount of taxes you paid, the excess is refundable by the IRS.

Who is eligible for the tax credits? There are lots of exceptions and conditions in the law, but here are the most important points:

- If you are a **for-profit** business that conducted business in 2020, you are eligible for the tax credit if your business is fully or partially suspended due to a COVID-19 government-mandated shut-down order, or if your gross receipts declined by greater than 50 percent when compared to the corresponding calendar quarter of the prior year.
- **Nonprofit**, tax-exempt 501(c)(3) employers are eligible for the credit if their operations are fully or partially suspended due to a COVID-19 government-mandated shut-down order, without regard for any decline in gross receipts. This credit is NOT available if you have received a forgivable SBA loan through the Paycheck Protection Program.

How much is the tax credit? There are lots of complexities, but here are the fundamentals:

- You can claim the tax credit in the amount of the "qualified" wages you paid between March 12, 2020 and before January 1, 2021. The credit is computed on a calendar-quarter basis.
- If your average number of employees is **greater than 100**, "qualified" wages are wages paid while an employee is *not* providing services due to a government order, or due to a 50 percent decline in gross receipts – cutting through the legalese, it's the wages you paid to employees who would otherwise be laid off.
- If your average number of employees is **100 or fewer**, qualified wages are wages paid during the period when operations are fully or partially suspended *or* during a period in which you had a 50 percent decline in gross receipts, whether or not your employees are providing services.

- The credit is reduced by certain other tax credits to avoid double-dipping, most notably credits taken for the new paid sick leave and family and medical leave mandated by the Families First Coronavirus Response Act.
- The credit is capped at $10,000 of wages per employee (equaling a $5,000 per employee credit).

How do you get the Employee Retention Credit? The credit is used against your quarterly payroll tax returns. If you overestimate the credit and underpay taxes, you will not be hit with penalties as long as your overestimation was in reasonable anticipation of the tax credit. For refunds of credit amounts you cannot use, the IRS will provide a form you can use to claim the Employee Retention Credit when you file your tax return.

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Please contact Michael G. Trachtman, Esquire at mtrachtman@wispearl.com or (610) 825-8400 for more information on how we can help you today with your business.

This article represents our best effort to assemble accurate information on an accelerated basis. However, the subject is complex, and many details have been summarized or omitted in the interest of focusing on key points. In addition, the law and the guidance issued by the government is constantly changing. You should not rely on the accuracy or completeness of this information for your business and personal decisions but, rather, should seek updated, personalized legal advice as needed.

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