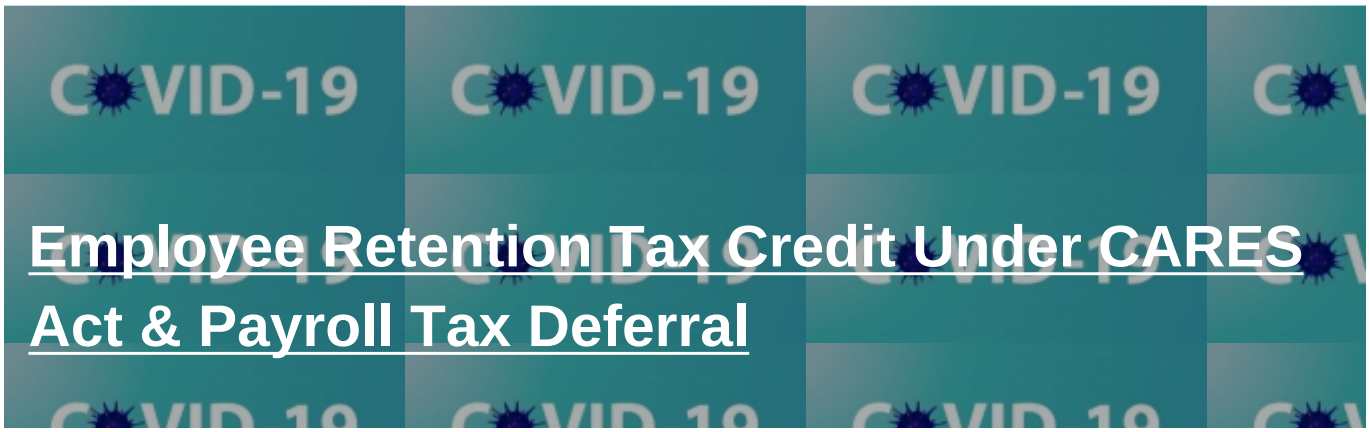


Employee Retention Tax Credit Under CARES Act & Payroll Tax Deferral

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Employee Retention Tax Credit

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), enacted on March 27, 2020, offers employers an incentive to keep employees on their payroll, in the form of an employee retention tax credit (Employee Retention Credit). Employers may claim the Employee Retention Credit for qualified wages that they pay after March 12, 2020, and before January 1, 2021.

To qualify, an employer, including, tax-exempt organizations, must carry on a trade or business during calendar year 2020, that either: fully or partially shuts down during any calendar quarter in 2020 due to orders from an appropriate governmental authority due to COVID-19; or experiences a “significant decline” meaning a 50 percent or more decline in gross receipts during a calendar quarter as compared to the same calendar quarter during 2019. For example, second quarter gross receipts in 2020 would be compared to second quarter gross receipts from 2019, not the first quarter gross receipts from 2020. Each quarter in 2020 is calculated independently, so it is possible that an employer may qualify for some quarters and not others. With respect to an employer that qualifies due to a “significant decline”, once the employer’s gross receipts go above 80 percent of a comparable quarter in 2019, the significant decline is deemed to be over and the employer no longer qualifies after the **end of that quarter.**

If qualified, an employer receives a tax credit equal to 50 percent of the “qualified wages” that the employer pays in a calendar quarter, inclusive of certain qualified health plan expenses allocable to such wages. The maximum amount of qualified wages considered with respect to each employee for each calendar quarter is $10,000, so that the maximum credit for qualified wages paid to any employee is $5,000 per quarter.

For this credit, “qualified wages” are calculated differently based on the employer. If the employer averaged more than 100 full-time employees in 2019, qualified wages are the wages actually paid to an employee **for time that the employee is not providing services** due to either (1) a full or partial suspension of operations by order of a governmental authority due to COVID-19, or (2) a significant decline in gross receipts. For these employers, qualified wages considered for an employee may not

exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

If the employer averaged 100 or fewer full-time employees in 2019, qualified wages are the wages paid to **any employee** during any period of economic hardship described in (1) and (2) above.

The Employee Retention Credit is allowed against the employer portion of social security taxes. For any calendar quarter the amount of the credit the employer is entitled to exceeds the employer portion of the social security tax on all wages paid to all employees, then the excess is treated as an overpayment and refunded to the employer.

To aid in employers by providing cash-flow relief, the IRS permits employers that pay qualified wages to its employees in a calendar quarter before their required deposits of federal employment taxes with the IRS for the same quarter to reduce their federal employment tax deposits as they become due. If the amount equal to 50 percent of the qualified wages exceeds the employer's federal employment taxes due for the quarter, then the employer may request an advance payment of the credits from the IRS by submitting the new IRS Form 7200. The employer must still account for the reduction in deposits on the Form 941, Employer's Quarterly Federal Tax Return. This advance on tax credit amounts is also available for the Families First Coronavirus Relief Act (FFCRA) tax credits on qualified leave wages.

If an employer takes a credit through the FFCRA for required sick pay or family leave wages to employees who are unable to work or telework due to certain circumstances related to COVID-19, the same wages paid for such leave cannot be counted for both credits. **Also, an employer may not receive the Employee Retention Credit if the employer receives a Small Business Interruption Loan under the Paycheck Protection Program.**

Payroll Tax Deferral

For the period beginning March 27, 2020 and ending before January 1, 2021 an employer may defer payment of the employer's 6.2 percent portion of the Social Security Tax. The deferred amounts will be paid back in two installments with half of the deferred amount from 2020 due December 31, 2021, with the remaining half due December 31, 2022.

As with the Employee Retention Credit, an employer may not receive payroll tax deferral if the employer receives a Small Business Interruption Loan under the Paycheck Protection Program. It appears as though employers will be allowed to claim the Employee Retention Credit and defer payroll tax.

This article is general in nature and does not constitute legal advice. Please note that new guidance is being provided by authorities on a daily basis so please monitor new developments and guidance. Readers with legal questions about how these orders apply to your business and your employees should consult the authors Mark Opara (mopara@sb-kc.com) or Brandon Oldham at (boldham@sb-kc.com) or your regular contact at Seigfreid Bingham at 816-421-4460.

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