

New Stimulus Expands the Employee Retention Tax Credit

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On December 27, 2020, President Trump signed the Consolidated Appropriations Act into law, which includes various forms of COVID-19 relief (the “New Stimulus Act”). Specifically, the New Stimulus Act includes the Taxpayer Certainty and Disaster Tax Relief Act of 2020, effective January 1, 2021, which, among other things, amends and extends the employee retention tax credit (ERTC) and the availability of advance payments of the tax credits under the CARES Act. This article will revisit the ERTC under the CARES Act and highlight the differences of the ERTC as amended and extended by the New Stimulus Act.

ERTC Amount Increased

Under the CARES Act, enacted back on March 27, 2020, eligible employers were entitled to an ERTC (i.e., a refundable payroll tax credit) equal to 50% of the first \$10,000 in wages and certain health plan expenses paid per employee (**or \$5,000**). Under the New Stimulus Act, eligible employers are entitled to an ERTC equal to 70% of the first \$10,000 in wages and certain health care plan expenses paid per employee for each of the first two quarters of 2021 (**or \$14,000**). It is of critical importance to note that this combined maximum \$14,000 ERTC for the first two quarters of 2021 is available even if the employer obtained the \$5,000 maximum credit for wages paid to such employee in 2020.

ERTC Eligibility Expanded

Employers eligible for the initial ERTC under the CARES Act either (a) had operations suspended due to orders from an appropriate governmental authority limiting commerce, travel or group meetings (for commercial, social, religious or other purposes) due to COVID-19, or (b) experienced a reduction in gross receipts of **at least 50%** when comparing corresponding calendar quarters of 2020 and 2019. Eligibility for the ERTC under the New Stimulus Act has been expanded to include employers that experienced a reduction in gross receipts of **at least 20%** when comparing corresponding calendar quarters of 2021 and 2019. Therefore, this lower threshold of gross receipt reductions should expand the pool of eligible employers. Additionally, while governmental entities were not eligible for an ERTC under the CARES Act, the New Stimulus Act makes the ERTC available to state or local run colleges, universities, organizations providing medical or hospital care,

and certain organizations chartered by Congress.

ERTC Wage Period Extended

The original ERTC applied to qualified wages paid after March 12, 2020, and **before January 1, 2021**. The ERTC under the New Stimulus Act applies to qualified wages paid after March 12, 2020, and **before July 1, 2021**. In other words, the New Stimulus Act extends the period in which the ERTC is available through the first two quarters of 2021.

PPP Disqualification Eliminated

Further, if a business received a Paycheck Protection Program (PPP) loan, it was previously **not eligible** for an ERTC under the CARES Act. The New Stimulus Act makes it so that a **PPP loan no longer disqualifies** employers from receiving an ERTC. However, the credit may not be claimed for wages paid with the proceeds of a PPP loan that have been - or will be - forgiven (i.e., no “double-dipping”). This change is retroactive to the effective date under the CARES Act. In other words, a PPP recipient that paid more in qualified wages than the amount of the forgiven PPP loan in 2020 could claim the ERTC retroactively and apply it to that difference. Additional guidance on how to retroactively claim the ERTC is expected from the IRS.

Whether Employees Are Working is Now Less Relevant to ERTC Eligibility

Under the CARES Act, companies with **100 employees or fewer** were eligible for the ERTC, regardless of whether employees were working. Conversely, companies with more than 100 employees were rendered ineligible for the ERTC for wages paid to an employee that performed services, whether those services were provided remotely or at the workplace, even if hours were reduced due to reduction in business. Under the New Stimulus Act, however, the threshold will be raised to 500 employees. Put differently, for the first two quarters of 2021, a company **with 500 or fewer employees** will be eligible for the ERTC regardless of whether employees are working. Note, that in calculating this 500-employee threshold, the employees of all affiliated companies sharing more the 50% common ownership are aggregated. For more information on the affiliation rules, see [here](#).

Advance Payments on the ERTC Now Available

Under the CARES Act, businesses were unable to monetize the ERTC before qualified wages were paid. However, under the New Stimulus Act, companies with 500 or fewer employees will be allowed to receive advance payments on the ERTC, based on 70% of average quarterly payroll for the same quarter in 2019. If the amount of the actual credit determined at the end of the quarter is less than the amount of the advance payment, the company will need to repay the excess. The IRS is expected to issue additional guidance on this process.

In the meantime, the ERTC can be claimed by filing [Form 7200](#) with the IRS. Form 7200 may only be filed with the IRS by faxing the completed form to 855-248-0552.

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