

32nd Annual Tax Symposium

HOT TOPICS IN ERCS: IRS GUIDANCE AND MORATORIA

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I. BACKGROUND

- A. What is an ERC?
- B. COVID ERC basics
 - 1. The Employee Retention Credit, referred to as the ERTC or the ERC, was included as part of the CARES Act relief package.
 - 2. The ERC is still available retroactively for both 2020 and 2021.
 - 3. Qualifying businesses can get up to \$26,000 per W-2 employee.
 - 4. Employer can get paid in excess of what its paid in taxes (even though it is called a “tax credit”).
 - 5. Businesses that received PPP loans are eligible.
 - 6. Businesses have until April 2024 to amend their 2020 tax filing and until April 2025 to amend their 2021 filing to apply for the ERC.
- C. ERC legislative timeline
 - 1. CARES Act-2020
 - 2. Consolidated Appropriations Act 2021
 - 3. American Rescue Plan Act 2021
 - 4. Infrastructure Investment and Jobs Act 2021

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II. ELIGIBILITY MATRIX

- A. Step 1: Did the Company have employees and pay wages to them between March 13, 2020, and December 31, 2021?
- B. Step 2: Did the Company's trade or business experience a significant decline in gross receipts during the eligibility periods during 2020 or the first three calendar quarters (Jan. through Sept.) of 2021?
- C. Step 3: Is the company a Recovery Start Up Business?
- D. Step 4: Was the operation of the business or organization fully or partially suspended by a government order due to the COVID-19 pandemic during 2020 or the first three calendar quarters (Jan. through Sept.) of 2021?
 - 1. Special rules regarding supply chain issues

III. WORKING WITH ERC VENDORS

- A. The ERC Vendor's Pitch
 - 1. We don't get paid until you receive your refund.
 - 2. We work with national law firms ("DLA Piper") to make sure the ERC is received.
 - 3. We will provide support if you get audited.
 - 4. Filing an application is "Risk Free"

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5. Everyone is getting paid but you (FOMO).
 - B. Working with ERC Vendors.
 1. IRS' areas of concern
 2. Red Flags
 3. Best Practices
 - C. The IRS's moratorium on ERC processing