NAPEO

COVID-19 RESOURCE

Understanding the Employee Retention Tax Credit

Current as of February 12, 2021

Generally speaking, the Employee Retention Tax Credit (the "ERTC") is a fully refundable tax credit applied to an employer's portion of social security taxes with two different calculations: one for 2020 and a second for 2021. The original 2020 ERTC was equal to 50% of qualified wages—up to $10,000 in wages for a total maximum credit of $5,000 per employee—from March 12, 2020 through the end of that year. In order to take advantage of the credit, an employer must have (i) experienced a 50% reduction in gross receipts during the applicable comparison period or (ii) fully or partially suspended operations due a government order due to the pandemic.

In contrast, the 2021 ERTC is limited to Q1 and Q2 of 2021 but (i) equals 70% of qualified wages, (ii) lowers the qualifying reduction in gross receipts to 20%, and (iii) increases the maximum credit to $7,000 per employee per quarter (up to a total maximum credit of $14,000 per employee in 2021). Additionally, following the enactment of legislation in December 2020, employers who received a loan under the Paycheck Protection Program are no longer prohibited from claiming the ERTC, including retroactively for 2020. Accordingly, many employers that were previously ineligible for the ERTC will now likely seek to claim the credit for qualified wages paid in 2020.

Under existing IRS procedures, the ERTC is claimed on the IRS Form 941 or, for retroactive credits, an amended Form 941 (the 941-X). Additionally, an advance payment of the ERTC can be requested on a prospective basis during a quarter through a Form 7200. However, the Form 7200 cannot be filed to claim or request a payment of retroactive credits and cannot be amended. If an employer that uses a PEO files a Form 7200, a copy should be given to the PEO to report on its Form 941, and the IRS will reconcile the two documents.

Unfortunately, the IRS does not accept Forms 941-X electronically, so PEOs will need to apply for the retroactive credits by hand. Additionally, the IRS is inundated by COVID-related issues and, as a result, many tax filings (and so credit refunds) may be delayed. This process to obtain a refund with respect to retroactive ERTC claims will take time—likely many months.

When partnering with a PEO, the PEO may request an attestation from the client or the client's CPA certifying that the client qualifies for the ERTC. This is because the PEO is unable to verify that the client incurred a reduction in gross receipts or otherwise qualified for the credit. Furthermore, an indemnification may be requested, given that incongruities with claiming the credit must be reconciled on the PEO's Form 941. Finally, in order to prevent multiple filings, it is possible a that a PEO may establish deadlines for clients claiming the ERTC and impose an administrative fee associated with processing the ERTC for former clients or clients seeking to claim the credit outside of specified time frames.

For more information about the ERTC, please contact your PEO service provider.