Knueven, Schroeder & Co.
CERTIFIED PUBLIC ACCOUNTANTS
Jerome B. Schroeder, CPA
Douglas E. Schleucher, CPA
Ann E. Woolum, CPA
Timothy J. Gephart, CPA
Mark L. Schroeder, CPA
Angela L. Bursby, CPA
Jeffrey C. Quinlan, CPA

Balance sheet

Employee Retention Credit Modifications

By Angela L. Bursby, CPA

The American Rescue Plan Act (ARPA) signed by President Biden on March 11, 2021 makes modification to the employee retention tax credit (ERTC). Congress originally enacted the ERTC in the Coronavirus Aid, Relief and Economic Security (CARES) Act in March of 2020 to encourage employers to hire and retain employees during the pandemic. At that time, the ERTC applied to wages paid after March 12, 2020 and before January 1, 2021. However, Congress later modified and extended the ERTC to apply to wages paid before July 1, 2021.

ARPA extended and modified the ERTC to apply to wages paid after June 30, 2021 and before January 1, 2022. Thus, an eligible employer can claim the refundable ERTC against ‘‘applicable employment taxes’’ (as defined below) equal to 70% of the qualified wages (including health benefits) it pays to employees during the calendar year 2021.

Except as discussed below, qualified wages are generally limited to $10,000 per employee per calendar quarter in 2021. Thus, the maximum ERTC amount available is generally $7,000 per employee per calendar quarter or $28,000 per employee in 2021.

For purposes of the ERTC, a qualified employer is eligible for the ERTC if it experiences a significant decline in gross receipts or a full or partial suspension of business due to a governmental order. A significant decline in gross receipts are employers who have experienced a more than 20% reduction in quarterly receipts, measured on a year-over-year basis relative to the 2020 quarter compared to corresponding 2019 quarter, with the eligible quarters continuing until the quarter after there is a quarter in which receipts are greater than 80% of the receipts for the corresponding 2019 quarter. Employers with up to 500 full-time employees (i.e., small employers) can claim the credit without regard to whether the employees for whom the credit is claimed actually perform services. But, except as discussed below, employers with more than 500 full-time employees (i.e, large employers) can only claim the ERTC with respect to employees that do not perform services.

Employers who got a Payroll Protection Program (PPP) loan in 2020 can still claim the ERTC. But, the same wages cannot be used both for seeking PPP loan forgiveness or satisfying conditions of other COVID-relief programs (such as the restaurant revitalization grants enacted as part of the ARPA) and in calculating the ERTC.

Beginning in the third quarter of 2021, the following modifications will apply to the ERTC:

- Applicable employment taxes are the employer's share of Medicare (also called hospitalization insurance or HI) taxes (equal to 1.45% of the wages). For the first and second quarters of 2021, ‘‘applicable employment taxes’’ were defined as the employer’s share of Social Security tax (equal to 6.2% of the wages).

- A ‘‘severely financially distressed’’ employer who has suffered a decline in quarterly gross receipts of 90% or more compared to the same calendar quarter in 2019 will be able to treat all wages (up to the $10,000 limitation) paid during those quarters as qualified wages. This rule will allow a large employer (i.e., an employer with over 500 employees) under severe financial distress to treat those wages as qualified wages whether or not its employees actually provide services.

- Recovery startup businesses are qualified employers. A recovery startup business is generally a business that began operating after February 15, 2020, and that meets certain gross receipts requirements. A recovery startup business will be eligible for an increased maximum credit of $50,000 per quarter, even if the business has not experienced a significant decline in gross receipts or been subject to a full or partial suspension under a government order.

- The statute of limitations for assessments relating to the ERTC will not expire until five years after the date that the original return claiming the credit is filed or treated as filed. For example, if the Form 941 for the fourth quarter of 2021 claiming the ERTC is treated as filed on April 15, 2022, the return could be audited with respect to the ERTC as late as April 14, 2027.

We would be happy to assist you in analyzing whether claiming the modified and extended ERTC might benefit your business. If you have any questions relating to how the extension or modifications will affect your business claiming the ERTC, please contact us.