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Employee Retention Credit and Stimulus Bill Overview

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Two Major Stimulus Bills in 2020

- Coronavirus Aid, Relief, and Economic Security Act (CARES Act, H.R. 748)

- Consolidated Appropriations Act, 2021

CARES Act, H.R. 748

On March 27, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act H.R. 748) was signed into law.

CARES Act Review – applies to 2020 tax year

- Individual Recovery Rebate/Credit
- No 10% Penalty for Coronavirus-Related Retirement Plan Distributions
- RMD Requirement Waiver for 2020
- $300 Above the Line Charitable Deduction
- Modifications of limitation on Individual Cash Charitable Contributions during 2020

Consolidated Appropriations Act, 2021

On December 27, the Consolidated Appropriations Act, 2021 (CAA, 2021) was signed into law.

The act contains numerous individual, business, payroll, disaster, and energy-related tax provisions, as well as tax extenders.

Individual Provisions – New Recovery Rebate

- In addition to the current credit, there is an additional credit allowed as follows:
  - $600 for an individual
  - $1,200 for a married couple filing jointly
  - $600 per qualifying child

- The new credit is also being referred to as an Economic Impact Payment.

Individual Provisions – New Recovery Rebate (cont.)

- Phaseouts are the same as the first rebate payment. Credit is reduced by 5% of the taxpayer's AGI in excess of:
  - $150,000 for a joint return and surviving spouses,
  - $112,500 for a head of household return, and
  - $75,000 for single taxpayer

Individual Provisions – New Recovery Rebate (cont.)

- Credit is completely phased-out when AGI exceeds:
  - $198,000 for a married filing joint filer
  - $146,500 for a head of household filer
  - $99,000 for a single filer

Individual Provisions – New Recovery Rebate (cont.)

- Eligibility for Credit:
  - – Any individual, other than a nonresident alien or an individual who is a dependent of another
    - Children who are (or can be) claimed by their parents aren't eligible
    - However, a child who wasn't eligible for 2019 may become eligible in 2020 – if they were a dependent in 2019 but not in 2020. These kids, wouldn't have received an advance rebate, but will still be eligible and will get the credit when they file their 2020 tax return.

Individual Provisions – New Recovery Rebate (cont.)

- The IRS and Treasury have already started sending out these payments. If the IRS has your bank account information, it will be direct deposited into that account. If not, a check will be mailed.
- You can check the status of both of the payments at www.irs.gov using the "Get My Economic Impact Payment" tool.

Individual Provisions - $250 Educator Expense Deduction Changes

- Eligible educators are allowed a $250 above-the-line deduction for items that they purchase for their classrooms.
- The CAA allows them to include as eligible expenses personal protective equipment (PPE), disinfectant, and other supplies used for the prevention of the spread of COVID-19.
  - This applies for expenses paid or incurred after 3/12/20

Individual Provisions – Charitable Contributions Changes

- The CARES Act provided for a $300 above-the-line deduction for cash contributions to qualified charitable organizations for 2020.
  - The $300 limit applied to MFJ returns as well
- The CAA extends this deduction through 2021 and allows $600 for married filers.

Individual Provisions – Charitable Contributions Changes (cont.)

- The CARES Act provided that taxpayers could elect to take an itemized deduction of 100% of AGI (instead of 60%) of cash contributions made to qualified charities made in 2020
- The CAA extends this change through 2021

Individual Provisions – Temporary Rules for Flex Plans

- An employer may amend their Flex Spending Plans for health and dependent care to allow carryovers of all unused amounts.
  - Amounts remaining from 2020 can be used throughout 2021.
  - Amounts from 2021 can be used throughout 2022.

Business Provisions – Tax Treatment of Expense Deductions and PPP Loan Forgiveness

- The CAA clarified that taxpayers whose PPP loans are forgiven are allowed deductions for otherwise deductible expenses paid with the proceeds of a PPP loan.
- The tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness.

Business Provisions – Business Meal Deductions

- 100% deduction allowed for the cost of food or beverages <u>provided by a restaurant</u> and paid or incurred in 2021 and 2022.
- This is a new exception to the general rule that meals are only 50% deductible.
- All other areas of Sec. 274 remain the same.

Business Provisions – Business Meal Deductions: What does this mean though?

Pre CAA, and after 2018 TCJA w/ 2020 Final Regs

100% Deductible based on 2020 final regs (pre-Consolidated Appropriations Act)

- Meal expenses primarily for the benefit of all employees
- Food and beverages provided to the general public

Business Provisions – Business Meal Deductions: What does this mean though?

Pre CAA, and after 2018 TCJA w/ 2020 Final Regs

50% Deductible based on 2020 final regs (pre-Consolidated Appropriations Act)

- Meals provided to employees for the “convenience of the employer” such as situations with short meal break and/or working late.
- “de minimis food and beverages”
- Meals with a business purpose for meetings with for employees, stockholders, etc
- Meals with a business purpose for meetings with clients, vendors, etc.
- Travel meals

Business Provisions – Business Meal Deductions: What does this mean though?

- **And finally, what is the definition of a restaurant?**
  - Does this mean *not* a catering company? Ex. Hy-vee?
  - Is this specific to dining-in? We wouldn't think so.
- **Start tracking these expenses as of 1/1/2021. Idea: new "tags" feature in QBO**

Business Provisions – Farmers' NOL Changes

- Before the enactment of the CARES Act, farmers could carry back NOLs 2 years.
- The CARES Act provides that NOLs arising in a tax year beginning after 12/31/17 and before 12/31/21, can be carried back 5 years.
- The CAA allows farmers who have already elected a 2-year carryback, to retain that.
- It also allows farmers who previously waived the carryback election to revoke the waiver.

Tax Extenders – through at least 2021

- Reduction in the Medical Expense Deduction Floor to 7.5%
- Work Opportunity Credit
- Exclusion for Certain Employer Payments of Student Loans
- Treatment of Mortgage Insurance Premiums as Qualified Residence Interest
- Nonbusiness Energy Property Credit
- Energy Efficient Homes Credit
- Extension and Phaseout of Energy Credit

Family First Coronavirus Response Act (FFCRA)

- New stimulus bill renewed these credits through March 31, 2021 for sick pay and expanded family medical leave pay benefits at an employer's discretion.
- No changes have been made to the hour limitations or credit amounts; those all stay the same.
- The FFCRA credits were also extended for self-employed individuals – and the Act allows them to use their reported wages from 2019 instead of 2020 to compute the credit.

Employee Retention Credit

Employee Retention Credit

- The employee retention credit is a payroll tax credit to encourage businesses to retain employees while suffering during the pandemic.

- The new stimulus bill extended this beyond 2020 through June 30, 2021 and allowed businesses who took out PPP loans to participate in this credit for 2020 retroactively and prospectively for 2021.

Employee Retention Credit

- Eligible employers must carry on a trade or business and meet one of the two tests below:

1. Gross receipts test (see next slide)
2. Operations were fully or partially suspended during any calendar quarter of 2020 due to orders from a governmental authority limiting group meetings, commerce, or travel due to COVID-19

Employee Retention Credit

- Gross Receipts Test
  - 2020 Gross receipts for the quarter were less than 50% of the gross receipts for the same calendar quarter in the prior year. You STOP qualifying in 2020 during the quarter that gross receipts are over 80% of the same calendar quarter in 2019.
  - 2021 Gross Receipts in Q1 or Q2 were less than 80% of the gross receipts for the same calendar quarter in the prior quarter in 2020 or 2019.

Employer Retention Credit

- Qualifying wages - 2020:
  - Employers averaging greater than 100 full-time employees (FTE) during 2019, qualified wages are for wages paid to employees that are not providing services because operations are suspended or due to gross receipts decline.
  - Employers with 100 or fewer full-time employees during 2019, qualified wages are wages paid to employee whether or not employees are providing services.

Employer Retention Credit

- Qualified Wages – 2021:
  - Employers with 500 or fewer full-time employees, qualified wages are wages paid to employees whether or not employees are providing services. This is a significant change for businesses with over 100 employees and under 500 employees.

Employee Retention Credit

- What is part of qualified wages?
  - Wages paid to employees
  - Qualified health plan expenses
- When can I start using these qualified wages?
  - 2020 wages - Wages paid after March 12, 2020 through December 31, 2020.
  - 2021 wages - Wages paid during Q1 and Q2 of 2021.

Employee Retention Credit

- 2020 Credit -

  50% of qualified wages paid to employees during a quarter from March 13 to December 31, 2020, capped at $10,000.

- 2021 Credit -

  70% of qualified wages paid to employees during Q1 and Q2, capped at $10,000. Note the 2020 credit was $10,000 annually and 2021 is $10,000 per quarter for qualified wages.

Employee Retention Credit

- What if I took a Paycheck Protection Program (PPP) loan or used the FFCRA tax credits?
  – The new stimulus bill allows businesses to utilize the employee retention credit even if they took out PPP loans. However, a business cannot use the same wages for the employee retention credit that they are claiming as qualified wages for PPP loan forgiveness. A business cannot use the employee retention credit and FFCRA credits or work opportunity tax credit on the same wages.

Employee Retention Credit

- What should I do if I took the PPP loan and I qualify for the employee retention credit?
  - There is a need for a more strategic approach while submitting forgiveness applications. Try to utilize more non-payroll costs when submitting PPP loan forgiveness applications. For payroll costs, make sure to utilize state and local taxes assessed and retirement plan costs. Those qualify for PPP loan forgiveness costs as payroll costs and do not qualify for the employee retention credit.

Employee Retention Credit

- Where do I claim this credit?
  - The credit is claimed on the Form 941 filing. If you have not taken advantage of the credit in prior quarters, you can apply for it on your Q4 Form 941 filing for all 2020 quarters. The credit is a refundable credit.
  - Can take an advance on the credit using Form 7200.
  - 2021 credit should be taken on Q1 and Q2 Form 941 filings if you qualify.

Employee Retention Credit

- Wow, that was a lot of information!!!

- How does this help my business?
  – Here are some examples of how businesses can qualify and the calculations of the credit.

Employee Retention Credit

Example 1: Business has 200 full-time employees. They have $5M gross receipts in Q2 2019 and only $2M gross receipts in Q2 2020. They qualify for the credit based upon the gross receipts test but only for employees paid for not providing services.

Employee Retention Credit

Example 2: Business has 200 full-time employees. They have $3.5M of gross receipts in Q2 2021. This is less than 80% of 2019 gross receipts. They qualify for the credit in Q2 2021 for all employees.

Employee Retention Credit

- Example 3: Business has 25 employees. Gross receipts for Q2 2020 are $900K. Gross receipts in Q2 2019 were $2M. Business qualifies for employee retention credit for Q2. Gross receipts in Q3 2020 are $1.5M, Q3 2019 was $2M. Business is less than 80% of gross receipts and still qualifies through Q3 2020. Gross receipts in Q4 2020 are $2M, Q4 2019 was $1.5M. Q4 is the final quarter the business qualifies. Note the business still qualifies in Q4 of 2020.

Employee Retention Credit

- Example 4: Business has 25 employees. Gross receipts for Q2 2020 are $900K. Gross receipts in Q2 2019 were $2M. Business qualifies for employee retention credit for Q2. Gross receipts in Q3 2020 are $2.5M, Q3 2019 was $2M. Q3 is the final quarter the business will qualify.

Employee Retention Credit

- Example 5: Restaurant did not have a decline in gross receipts to meet the qualifications for the employee retention credit, but they were ordered to close inside seating. The restaurant still had carryout orders, outside seating, and deliveries but had a partial suspension of operations and qualify for the credit. Even if the inside seating is allowed but tables need to be spaced six feet apart, the restaurant still qualifies as the spaced seating has a more than nominal effect on the business operations.

Employee Retention Credit

- Example 6: Retail business is forced to close their storefront location but still sells products online. The retail business operations are partially suspended. They would qualify for the employee retention credit regardless of a decline in gross receipts. They qualify for the employee retention credit for suspended operations until the storefront is open again.

Employee Retention Credit

- Example 7: Grocery store is required to close self-serve offerings. They instead pre-package and sell the same meals. The business operations are not considered to be partially suspended as this is considered a nominal portion of the business.

Employee Retention Credit

- Example 8: Business qualifies for employee retention credit for only Q2 and Q3 2020. Business takes a PPP loan. PPP loan is $200,000 and used over 24 weeks from April – September. Business has $250,000 payroll costs and $50,000 nonpayroll costs qualifying for loan forgiveness. Business should use as much of the nonpayroll costs as possible to maximize the employee retention credit benefits. Note up to $10,000 of qualified wages ($5,000/employee maximum) can be used for 2020 employee retention credit.

Employee Retention Credit

- Example 9: Business qualifies for employee retention credit in Q3 and Q4 of 2020. Business takes PPP loan and uses those entire funds in Q2 of 2020 on qualifying expenses. Business has 10 employees that were paid over $10,000 of qualified wages in Q3 and Q4 combined and 6 employees that were paid $5,000 in qualified wages in Q3 and Q4 combined. Employee retention credit calculation is as follows:
  - 10 employees x $10,000 wages + 6 employees x $5,000 wages = $130,000 qualified wages
  - Credit = 50% of qualified wages or $65,000 claimed on Q4 Form 941.

Employee Retention Credit

- Example 10: Business qualifies for employee retention credit in Q1 and Q2 of 2021. Business has 10 employees that were paid over $10,000 of qualified wages in both Q1 and Q2 and 6 employees that were paid $5,000 in qualified wages in Q1 and Q2. Employee retention credit calculation is as follows:
  - 10 employees x $10,000 wages + 6 employees x $5,000 wages = 130,000 qualified wages per quarter.
  - Q1 Credit (70% of qualified wages in 2021) = $91,000
  - Q2 Credit = $91,000
  - Total credit = $182,000 in 2021 vs. $65,000 in 2020.

Employee Retention Credit

- Example 11: Business has 200 employees. Meets qualifications for gross receipts decline in 2020 and 2021. Does not pay employees who are not providing services. Business has $2M of wages paid during Q2-Q4 2020 but does not qualify for the credit in 2020 because they are over 100 employees and not paying employees who are not providing services. In 2021, the business has $1.5M of qualified wages in Q1 and Q2. The credit is calculated as follows: $1.5M x 70% = $1,050,000 per quarter. Business has a $2.1M tax credit for 2021.

Employer Retention Credit

- Here are the take-aways and things to consider:
  - Do you meet the gross receipts test?
  - Were business operations partially suspended?
  - Did you take a PPP loan (round 1 or 2)?
  - If you took a PPP loan, what expenses did you use for forgiveness?
  - These credits are significant and should not be ignored.

Thank You!

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