



Employee Retention Tax Credit

The COVID-19 Relief Package that was signed into law on December 27, 2020 made some significant changes to the Employee Retention Tax Credit. Originally a business had to choose between Employee Retention Tax Credits and the PPP Loan. The vast majority of businesses chose the PPP Loan for multiple reasons. This most recent law has stated that a business might be able to get the PPP loan and also qualify for the tax credit.

To qualify to receive both a business must meet the following criteria:

In short, a for-profit business or tax-exempt organization can claim a refundable payroll tax credit of up to \$5,000 per employee for wages paid between March 12 and December 31, 2020, but only for wages paid during a calendar quarter in which the business is either:

- 1) Scenario 1: Shut down by government order, or*
- 2) Scenario 2: Experiencing a large drop in year-over-year gross receipts.*

To qualify for the first scenario, for any quarter in 2020, the operation of the employer's trade or business must have been "fully or partially suspended" during the quarter 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." Once this occurs, the quarter is an "eligible quarter," but a business will only get a credit on wages paid during the part of the quarter the business was shut down. To illustrate, assume your business was closed from March 15 through April 15th. You will have an eligible quarter for both Q1 and Q2, but as we'll see shortly, for Q1, eligible wages can only be paid from March 15 – March 31st, and for Q2, eligible wages can only be paid from April 1 – April 15th.

To meet the second test, for any quarter in 2020, the "gross receipts" from the "trade or business" of the employer must be less than 50% of what they were for the same quarter in 2019. Once this happens, every quarter is an "eligible quarter" until the END of the quarter in which the business's receipts have returned to at least 80% of what they were for the same quarter in 2019.

Forbes Magazine December 25, 2020

Surprisingly enough that was actually the easy part. Where it gets really complicated is that a business owner cannot claim wages that they have used or plan to use as part of their PPP loan

forgiveness unless they are willing to not use those wages for PPP but instead use them for the tax credit. “Double Dipping”

In addition, the rules are different for businesses with less than 100 FTEs than for those with over 100 FTEs with regard to how much of the credit an employer is allowed. For business with over a 100 FTEs, you can only claim the credit for employees that you paid **not** to work due to business shut down or substantial decline in business. For businesses with less than 100 FTEs, you might be able to claim the credit for all wages paid even if the employee was performing actual work.

Sounds promising until you circle back to the “Double Dipping” policy. Again, you can’t use wages for both PPP forgiveness and for the Employee Retention Tax credit. There are also caps in place for the maximum amount a business can claim for the tax credit and the maximum tax credit is 50% of the paid wages. The original cap was \$10,000 in wages so a maximum credit of \$5,000 per employee. They have increased the cap to \$14,000 in wages with a \$7,000 tax credit but the higher amounts require 2021 qualifications.

ELM would love to be able to advise our clients on how to best proceed with weighing out all the different scenarios. However, we recommend that you consult with your accountant and/or tax professional to determine if this is something that you should pursue. A few questions arise that we just aren’t qualified to answer for you:

- Does my business qualify for both the PPP loan and the Employee Retention Tax Credit? Please re-visit the 2 qualifying scenarios above
- Do we use the wages for PPP or Employee retention Tax Credits?
- Even if I use the wages for PPP forgiveness are their wages still available to be used for tax credits?
- How does Round 2 of PPP loans play into this?
- What repercussions could my business suffer if I do this improperly?

We are hoping more guidance and clarity will be forthcoming on this issue. As of right now, this seems to be very convoluted and difficult to navigate. At the end of the day, many business owners will probably just stick with the PPP and avoid the pitfalls that could come with trying to take advantage of both. Unless this is watered down, small business owners that received PPP funds might spend more money and time trying to navigate through this than they will ever get in a tax credit.

Thank You,

Your Staff @ ELM