

## Employee Retention Payroll Tax Credit

A lesser known benefit of the new laws designed to assist small businesses to retain employees AND receive a payroll tax credit.

See below for details, here are the highlights:

For employers with less than 100 employees in 2019—

- A maximum \$5,000 credit (50% credit on up to \$10,000 in compensation per employee) for each employee retained between March 12 and December 31, 2020 that can be applied to all Federal payroll taxes due for deposit.
- Employer must suffer a 50% or more drop in revenue for the quarter compared to the same quarter last year. Each quarter that this is true allows for the Retention Credit.
- Employers can't take both the credit and a SBA loan.
- The credit can be refundable if the credit exceeds total payroll tax deposit requirements. (You can get a check for the excess credit over taxes due by filing form 7200)
- IRS is authorized to waive penalties for companies that deposit less payroll taxes than due in anticipation of receiving the credit.

For employers with more than 100 employees in 2019—

- The \$5,000 credit is available only for employee that were furloughed and brought back to work.
- All other features are the same.

In some cases the Employee Retention Credit will be higher than the amounts available under the Payroll Protection Program Loans.

See attached excel worksheet for an example of a case where the Employee Retentions Program would be of more benefit. You can also change any of the numbers in yellow on the worksheet to see how it might impact your company. This spreadsheet is not meant take into account all aspects of the comparison but to give you a good idea of the comparison between the two programs.

### Details on the new Credit:

**New law.** This provision provides a refundable payroll tax credit for 50% of wages paid by eligible employers to certain employees during the COVID-19 crisis. (Act Sec. 2301(a))

*Eligible employers.* The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel, or group meetings. The credit is also provided to employers who have experienced a greater than 50% reduction in quarterly receipts, measured on a year-over-year basis. (Act Sec. 2301(c)(2))

The credit is not available to employers receiving Small Business Interruption Loans under Sec. 1102 of the Act. (Act Sec. 2301(j))

*Wages paid to which employees?* For employers who had an average number of full-time employees in 2019 of 100 or fewer, all employee wages are eligible, regardless of whether the employee is furloughed. For employers who had a larger average number of full-time employees in 2019, only the wages of employees who are furloughed or face reduced hours as a result of their employers' closure or reduced gross receipts are eligible for the credit. (Act Sec. 2301(c)(3)(A))

No credit is available with respect to an employee for any period for which the employer is allowed a Work Opportunity Credit (Code Sec. 21) with respect to the employee. (Act Sec. 2301(h)(1))

*Wages.* The term "wages" includes health benefits and is capped at the first \$10,000 in wages paid by the employer to an eligible employee. ((Act Sec. 2301(c)(3)(C); Act Sec. 2301(b)(1))

Wages do not include amounts taken into account for purposes of the payroll credits, for required paid sick leave or required paid family leave in the Families First Coronavirus Act (part of P.L. 116-127) (Act Sec. 2301(c)(3)(A)), nor for wages taken into account for the Code Sec. 45S employer credit for paid family and medical leave. (Act Sec. 2301(h)(2))

*Other.* IRS is granted authority to advance payments to eligible employers (Act Sec. 2301(l)(1)) and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit. (Act Sec. 2301(k))

**Effective date.** The credit applies to wages paid after March 12, 2020 and before Jan. 1, 2021. (Act Sec. 2301(m))