

Updated Employee Retention Tax Credit

The recently enacted (December 27, 2020) COVID relief stimulus legislation, “Stimulus #2,” made significant modifications to the Employee Retention Tax Credit. Originally enacted by the CARES Act, the Employee Retention Tax Credit was previously unavailable to PPP borrowers (see our original alert [here](#)). Stimulus #2 expanded the availability of the credit to PPP borrowers, provided that wages paid with PPP funds are not eligible for the credit. This change was made retroactive to the date of enactment of the CARES Act (March 12, 2020), meaning that businesses eligible for the credit can file for an immediate refund of the credit for wages paid in 2020 (up to a maximum credit of \$5,000 per employee for 2020 wages).

The changes below are effective for wages paid January 1, 2021—June 30, 2021.

Am I Eligible?

- Operations fully or partially suspended due to a COVID-19 related governmental order, OR
- For Q1 and Q2 2021, a greater than 20% decline in gross receipts compared to the same quarter in 2019 (quarters in 2020 still require a greater than 50% reduction in gross receipts).

How Much is the Credit?

- 70% of qualified wages* paid to an eligible employee.
- Capped at \$7,000 per employee, per quarter (\$14,000 for 2021 + \$5,000 for 2020).
- Maximum credit of \$19,000 per employee.

*For employers with 500 employees or less, wages paid to all employees are “qualified wages”; for employers with greater than 500 employees, “qualified wages” are limited to wages paid to employees not providing services—meaning the employee is not teleworking or providing partial work but remains on the employer’s payroll.

When Do I Receive the Credit?

- For wages paid in 2020, employers can file Form 7200 to claim an immediate refund.
- Employers can claim the anticipated credit for 2021 in advance of paying wages, based on 70% of the average quarterly payroll for the same quarter in 2019.