

Employee Retention Tax Credit (ERTC)

PPP? Yes. RRF? Absolutely. ERTC... Huh?

Lesser known than the Paycheck Protection Program (PPP) and the Restaurant Revitalization Fund (RRF), the Employee Retention Tax Credit (ERTC) can have a huge impact and result in thousands, even tens of thousands, of dollars back into your business. Case in point, by leveraging the ERTC one ORLA owner/operator was able to retrieve over \$160,000 in a combination of tax credits and direct rebate checks for the third and fourth quarters of 2020 and the first quarter of 2021. That's right: One hundred and sixty thousand dollars! Why?

Because President Biden's American Rescue Plan looks back to 2020, plus extends the ERTC beyond its original expiration date of June 30, 2021. As a result, eligible employers can claim the credit with respect to qualified wages paid through December 31, 2021. The American Rescue Plan adds the ERTC to new Section 3134 to the Internal Revenue Code and makes certain changes to the credit that was previously modified as part of the Consolidated Appropriations Act. Please consult your Tax Advisor for eligibility and applicability requirements – there could be thousands waiting for you, too.

As of January 2021, eligible employers are able to capture a refundable tax credit of up to 70 percent of each employee's share of Social Security tax qualified wages, up to \$10,000 per quarter. That's up from 50 percent of qualified wages per year under the original plan. Thus, **employers can now earn up to \$7,000 in credits per employee per quarter in 2021 — up from \$5,000 per employee per year in 2020.** For example, a small operator with 10 employees may now be able to earn an Employee Retention Tax Credit of up to \$330,000 between 2020 and 2021 (\$5000 + \$28,000 x 10).

	2020	2021
Credit Calculation:	50% of up to \$10,000 of wages per employee per year	70% of up to \$10,000 of wages per employee per quarter
Wages/Health Care Cap:	Annually	Quarterly
Max Credit per Employee:	\$5,000	\$28,000 ¹

The IRS explained changes to the Employee Retention Credit for the first two calendar quarters of 2021 in Notice 2021-23. The original credit was created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, then amended by the Consolidated

Appropriations Act of 2021. The beneficial tax credit changes include:

- The increase in the maximum credit amount from 50% to 70%;
- A modification of the gross receipts test threshold to 80% and changes in how the decline in gross receipts is calculated;
- In the calculation of qualified wages, the revised definitions of small and large eligible employers are used; and
- New restrictions that limit the ability to request an advance payment of the credit to certain small eligible employers with not greater than 500 employees.

Employers can access the ERTC for the first and second calendar quarters of 2021 before filing their employment tax returns by reducing employment tax deposits. Small eligible employers can request advance payment of the credit (subject to limits) on Form 7200, Advance Payment of Employer Credits Due to COVID-19, after first reducing their employment tax deposits. After the change in the law, advances are not available for employers with 500 or more employees in 2021.²

President Biden's American Rescue Plan Act of 2021, enacted March 11, 2021, further made the ERC available to eligible employers for wages paid during the third and fourth quarters of 2021. It will be important for owners/operators to follow future IRS guidance on this issue to ensure maximum benefit throughout 2021.

Additionally, The Small Business Administration (SBA) recently announced that any ERTC received in 2020 will NOT be counted against a restaurant's eligible grant amount under the RRF application and calculation. That is good news and greatly benefits an operator. SBA has concluded that economic relief like state/local grants, Economic Injury Disaster Loans (EIDL) and EIDL Advance Grants and other support will not count for a restaurant's "gross receipts" calculation in 2020 for the purpose of RRF calculation. If these dollar totals were to be included, they would reduce the otherwise eligible grant amount for eligible restaurants.

This article should not be construed as tax advice. Owners/Operators should seek their own tax counsel in order to take full advantage of all legal options, including the ERTC, that minimizes tax liability and maximizes tax credits and refunds. The National Restaurant Association also has a released a very useful guide to Understanding the Employee Retention Tax Credit.

¹ Tri-Merit, LLC 2021

² How to claim the employee retention credit for the first half of 2021, Journal of Accountancy, April 5, 2021