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Attention Nonprofit Employers: Did You Forget to Claim Refundable Tax Credits from the IRS?

By: Steven Woolf

A small human services provider based in Washington, D.C. utilized the Employee Retention Tax Credit (ERTC) to keep 11 full-time employees and several part-time workers on the job throughout the pandemic. The nonprofit was able to claim ERTC relief of \$85,000 for 2020 and about \$115,000 for the first three quarters of 2021 based on the city-wide closure orders – one of two ways employers can meet eligibility requirements for the ERTC. This nonprofit received these refundable tax credits *in addition to* forgivable Paycheck Protection Program (PPP) loans of \$200,000.

A nonprofit serving children in the Pacific Northwest was able to claim \$230,000 under the ERTC, which actually made it possible for the organization to add four staff positions to address increased demand for their services.

A faith-based nonprofit community center in Pennsylvania, focusing on fitness, cultural, educational, and inclusive programming, received \$100,000 from ERTC in 2020 and more than \$250,000 in 2021.

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Sometimes nonprofits qualified for the ERTC because of government-ordered "full or partial suspensions" that limited travel, meetings, or commerce. Other times, nonprofits qualified because of suffering a certain reduction in gross receipts compared with the same quarter of 2019.

Although Congress canceled the Employee Retention Tax Credit, effective the end of September 2021, there is still time for eligible businesses, including nonprofits, to claim this **refundable** tax credit that can offset employment taxes and generate a refund.

The PPP had an enormous impact in helping to sustain nonprofits through the pandemic - but the PPP program has ended. The ERTC is still available. There are two ways to qualify, and the credit can be claimed retroactively for parts of 2020 and 2021.

Bottom Line: What Nonprofits Need to Know About the ERTC

- Q: Why does this still matter in 2022?
- A: If your nonprofit is eligible for this significant tax credit for parts of 2020 and 2021 and hasn't claimed it yet, you can still file an amended return to claim the credit.
- Q: How can my nonprofit claim a tax credit when we don't pay income taxes?
- A: The ERTC was intentionally written to apply to the taxes charitable organizations do pay - payroll taxes; and it was made refundable, meaning employers get a check back from the Treasury for the amount of the credit that exceeds the payroll taxes you owe.
- Q: What is the maximum ERTC an employer can receive?
- A:
 - For 2020, the maximum credit is \$5,000 per employee for the year.
 - For 2021, the maximum credit is \$7,000 per employee per *quarter* for the first three quarters of the year, or up to \$21,000 per employee for the

year.

- Q: How long do we have to file an amended return to claim the tax credit?
- A: Form 941-X generally must be filed within three years from the date the original return was filed, or two years from the date the payroll taxes were paid.
- Q: Didn't getting PPP loans disqualify employers from also claiming the ERTC?
- A: Originally, yes; but Congress retroactively removed that prohibition at the end of 2020. The only catch is that you can't claim both the PPP and ERTC for the same employment expenses.
- Q: How do I know if my nonprofit is eligible?
- A: Read on! We delve into the details in this blog post. It's complicated, but worth it.
- Q: What questions should I ask my CPA?
- A:
 - Did we claim the Employee Retention Tax Credit (ERTC/ERC) in 2020 and/or 2021?
 - If not, were we eligible in either year, based on either of the two ways to qualify?
 - If we were eligible and didn't claim the credit, can we retroactively claim the credit by filing Form 941-X now for one or both years?

The Details: to learn and/or share with your nonprofit's tax professional

The ERTC, also referred to as the Employee Retention Credit (ERC), was created at the beginning of the COVID-19 emergency as part of the CARES Act in 2020, and expanded by the Tax Relief Act of 2020 and the American Rescue Plan in 2021. Despite a barrage of protests from many in the business and nonprofit communities, the Infrastructure Investment and Jobs Act passed in November 2021 terminated the ERTC for the fourth quarter of 2021. The ERTC was effectively available from March 2020 through September 2021.

Many nonprofit employers have been struggling to stay afloat during the pandemic. And many remain unaware of their ability to qualify for the ERTC because eligibility and recoverable amounts have changed significantly over time. The program has been impacted by four major congressional recovery packages and voluminous pages of regulations and guidelines issued by the Treasury Department and the

Internal Revenue Service (IRS) to address qualification, computation, and filing requirements.

Despite the shifting landscape, it remains clear that large amounts of unclaimed tax credits are available, and nonprofits would be well served to examine this time-sensitive opportunity with their professional advisors.

The guidelines are different for claiming the ERTC for 2020 (for wages paid from March 13 through December 31, 2020) and 2021 (for wages paid between January 1 through September 30, 2021). Keeping that in mind, here are four questions to review (and potentially discuss with outside professionals):

1. Is my nonprofit eligible?

1. For the 2020 period, there are two ways to qualify:
 1. Employers whose operations were fully or partially suspended due to emergency orders from a government authority, **or**
 2. Employers that had at least a 50 percent reduction in gross receipts for a given calendar quarter (compared with the same quarter in 2019).
2. For the 2021 period, the two ways to qualify are:
 1. Employers whose operations were fully or partially suspended due to emergency orders from a government authority, **or**
 2. Employers that had at least a 20 percent reduction in gross receipts for a given calendar quarter (again, compared with the same quarter in 2019) may be eligible.

2. Which wages qualify?

1. For 2020:
 1. Those with 100 or fewer full-time employees may be eligible to claim the credit on wages paid to *all* employees.
 2. For employers with more than 100 employees, the credit applies only to wages paid to employees during the time they were not providing services.
2. For 2021:
 1. Those with 500 or fewer full-time employees may be eligible to claim the credit for wages paid to *all* employees.
 2. For employers with more than 500 employees, the credit applies to those not providing services.

3. *Note: The Consolidated Appropriations Act of 2021 provides that employers that received Paycheck Protection Program (PPP) loans can receive ERTC tax credits as well, as long as they are not claiming the ERTC for the same wages that were paid from forgiven PPP proceeds.*

3. How is credit calculated?

1. For 2020, the credit is equal to 50 percent of qualified wages, including qualified health plan expenses, up to a total of \$10,000, or a maximum credit of \$5,000 per eligible employee for the year.
2. For 2021, the credit is equal to 70 percent of up to \$10,000 of wages (and qualified health plan expenses) per calendar *quarter*, or a maximum credit of \$21,000 per eligible employee for the first three quarters of 2021.

4. How does my nonprofit claim the credit?

1. Employers claim the ERTC on the Form 941 filed with the IRS.
2. Employers who did not claim the ERTC on their originally filed Form 941 may claim the credit retroactively by filing Form 941-X.
3. ***It is important to note that Form 941-X generally must be filed within three years from the date the original return was filed, or two years from the date the payroll taxes were paid. Once the IRS processes the amended return, it will forward a refund check to the address on file.***
4. Also note: Some businesses and nonprofits across the country have reported that they've not received their ERTC payments, with delays sometimes lasting for more than a year. The IRS workforce was significantly affected by the pandemic, with multiple offices closed for months early on and multiple pandemic-related duties imposed by Congress, such as issuing three rounds of stimulus checks to most Americans in 2020 and 2021, and monthly child tax credit checks in 2021, resulting in considerable backlogs. Even if your nonprofit already submitted its claim for ERTC, it's possible you haven't received the check. Again, it's best to consult with your tax professional to determine whether you need to take any additional actions to claim this credit.

For more detailed information on the ins and outs of the ERTC, please [see our March 2021 blog post](#) (updated as new laws and regulations came into effect).

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