

**Alert | Health Emergency Preparedness Task Force:  
COVID-19 Economic Stimulus**



December 2020

## **Employee Retention Tax Credit Available to Businesses Because of New Lockdowns**

With the possible advent of widespread regional Coronavirus Disease 2019 (COVID-19) lockdowns around the United States, it is an appropriate time for a reminder about the availability of the **50% employee retention tax credit** for wages paid to employees while a business is shut down:

**Amount of Credit:** 50% of wages paid, and the cost of providing health care benefits between March 13, 2020, and Dec. 31, 2020, if the conditions to claim the credit are satisfied, up to a maximum of \$5,000 in tax credit to any particular employee. Accordingly, after the credit has been claimed for \$10,000 in wages and cost of health care benefits, no additional tax credit may be claimed. However, this \$5,000 credit cap might be expanded as part of ongoing economic stimulus negotiations in Congress. If a company is otherwise eligible to claim the credit, it should consider continuing to maintain records to claim the credit for an employee, even if the credit claimed for that employee has already exceeded the \$5,000 cap.

**Prerequisite for Credit:** To be eligible to claim the credit, one of two conditions must be satisfied: (1) the company's business operations are fully or partially suspended because of a state or local governmental order due to COVID-19; or (2) the business's gross receipts for the calendar quarter are less than 50% of the gross receipts for the same quarter in the prior year. For many businesses, the new lockdowns and lockdowns to be announced will satisfy this first prerequisite. For the time being, the credit is not available for wages paid after Dec. 31, 2020, even if lockdowns are in force, but this deadline might be extended under future economic stimulus legislation.

**Essential Business:** An essential business that is allowed to remain open during a lockdown is not eligible to claim the credit due to the lockdown (but it may still be eligible if it satisfies the 50% decline in gross receipts test). However, if a company has multiple lines of businesses, some of which are essential and some of which are not, then the credit may be claimed for wages paid to employees of the non-essential business during the lockdown ([COVID Related Employer Credit FAQ #30](#)). Consequently, a company which operates essential and non-essential businesses may consider taking steps to document that its non-essential business lines were suspended by the governmental order and differentiating between the employees occupied in its essential and non-essential business lines.

**Able to Maintain Comparable Operations:** The IRS has [stated in FAQ #33](#) that a company is not eligible to claim the credit if it is able to maintain comparable operations during the lockdown, such as through telework. Companies may consider taking steps to document that they were unable to maintain comparable operations during a lockdown, even though employees were able to continue to work.

**Size of Business:** There is no limit on the size of a company that can claim the credit; however, if a business has 100 or fewer employees, then it can claim the credit even if an employee is working from home. A business with more than 100 employees may claim the credit only for wages paid to employees who are not performing services. A company with more than 100 employees may consider implementing a system to track when employees are or are not working from home, so that the company may claim the credit for the periods that employees are not working. This “no work from home” requirement is applied on an aggregated related company basis, so all employees of related companies with more than 50% common ownership are counted toward this 100-employee “no work from home” limitation.

**No PPP Loan:** The credit is not available to a company which has received a Paycheck Protection Program (PPP) loan, even if the loan has been repaid (unless the PPP loan was returned by the May 18, 2020, safe harbor period). This limitation also applies if [a related company received a PPP loan](#). The IRS has recently published [COVID-19 Employer Credit FAQ 81a](#) to relax this prohibition of claiming the credit if a company acquires another company which has received a PPP loan (under certain circumstances). Future legislation could retroactively eliminate the PPP loan restriction on claiming the tax credit; consequently, even if a company has received a PPP loan, steps should be considered to document eligibility to claim the credit in the event such a legislative change is enacted.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) or [GT's COVID-19 Economic Stimulus Team](#).

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