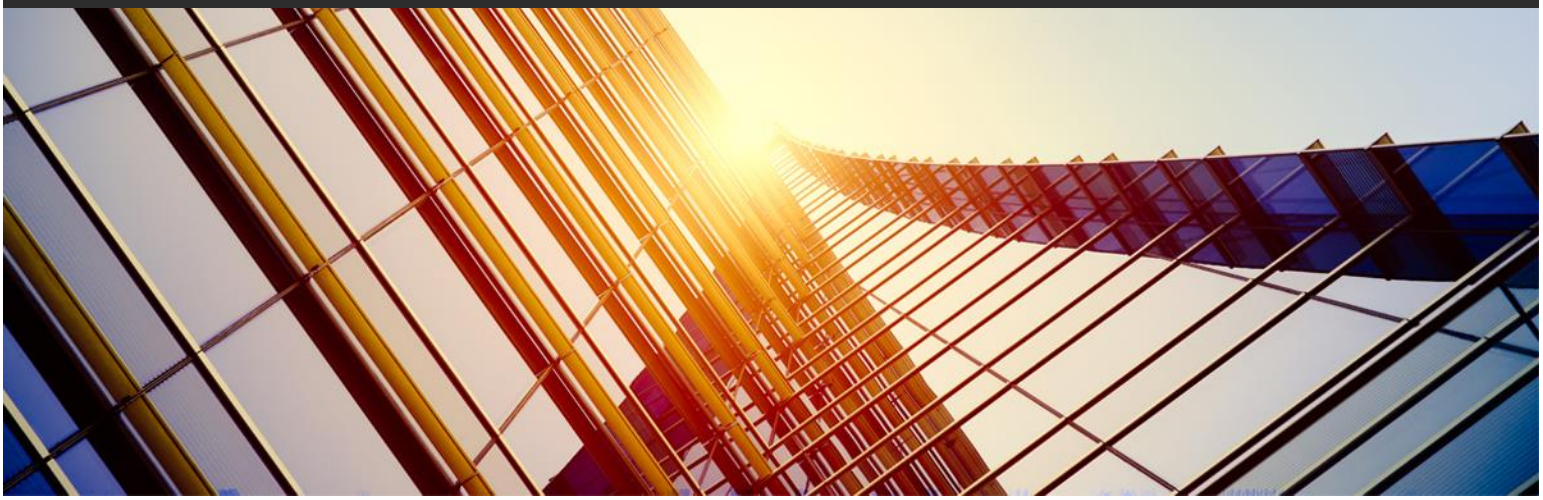
GT GreenbergTraurig

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



December 2020

Employee Retention Tax Credit Enhanced and Extended by COVID-19 Stimulus Package

The Coronavirus Disease 2019 (COVID-19) stimulus package signed into law by President Trump on Dec. 27 contains significant enhancements to the employee retention tax credit enacted under the CARES Act. The credit initially provided a 50% tax credit, which is refundable and easily monetized, for companies that continue paying their employees, even though the business might be closed due to a COVID-19 lockdown, or suffering a significant decline in gross receipts due to loss of business. This GT Alert provides highlights of the changes.

Period of Credit Availability

Original Law: For qualified wages paid after March 12, 2020, and before Jan. 1, 2021.

New Law: For qualified wages paid after March 12, 2020, and before July 1, 2021, extending availability of the credit to the first two quarters of 2021.

Amount of Credit

Original Law: 50% of the qualified wages paid to the employee, plus the cost to continue providing health benefits to the employee.

New Law: Effective Jan. 1, 2021, the credit amount is increased to 70% of qualified wages, which is amended to include the cost to continue providing health benefits.

Maximum Credit Amount

Original Law: The credit was capped at $5,000 for all qualified wages paid during 2020 (the credit for $10,000 in qualified wages X 50% tax credit rate).

New Law: Effective Jan. 1, 2021, the credit cap is increased to $7,000 for each of the first two quarters of 2021 ($10,000 in qualified wages X 70% tax credit rate), so that the maximum credit for 2021 will be $14,000. This aggregate $14,000 per employee maximum credit for the first two quarters of 2021 is available even if the employer received the $5,000 maximum credit for wages paid to such employee in 2020.

Eligibility Requirements for the Credit

Original Law: Business operations that are either fully or partially suspended by a COVID-19 lockdown order; or, for any quarter in 2020, if gross receipts are less than 50% of gross receipts for the same quarter in 2019.

New Law: Effective Jan. 1, 2021, business operations that are either fully or partially suspended by a COVID-19 lockdown order, or for a quarter in 2021, if gross receipts are less than 80% of gross receipts for the same quarter in 2019. **Many additional businesses will be eligible for this credit due to the lowering of the bar on reduction in gross receipts (from a 50% reduction in gross receipts to a 20% reduction) compared to the same quarter in 2019, before the pandemic**.

Credit Eligibility Whether an Employee is Working or Not

Original Law: For a company with more than 100 employees, no credit was available for wages paid to an employee performing services for the employer (either teleworking, or working at the workplace, even though at reduced capacity due to reduction in business). Conversely, a company with 100 employees or less was eligible for the credit, even if the employee was working.

New Law: Effective Jan. 1, 2021, this threshold will be raised to 500 employees, so that for the first two quarters of 2021, a company with 500 or fewer employees will be eligible for the credit, even if employees are working. Note that in calculating this 500-employee threshold, the employees of all affiliated companies sharing more the 50% common ownership are aggregated.

PPP Loan Eligibility

Original law: A company that received a Paycheck Protection Program (PPP) loan was not eligible for the employee retention credit. This disallowance rule extended to all affiliated companies that shared common ownership, so that if one company received a PPP loan, any other company with more than 50% common ownership was ineligible to claim the credit.

New Law: A company that receives a PPP loan is no longer prohibited from claiming the employee retention tax credit; however, a credit may not be claimed for wages paid with the proceeds of a PPP loan that have been forgiven (no double dipping). This change is retroactive to the effective date under the original law (for wages paid after March 12, 2020). As a result, a company that received a PPP loan in 2020 and paid qualified wages in excess of the amount of the forgiven PPP loan used to pay wages, and is otherwise eligible to claim the credit, should be able to file amended employment tax returns to claim the credit. Furthermore, companies related to a PPP borrower that did not claim the credit because an affiliated company that shares common ownership received a PPP loan should also be able to file amended employment tax returns to claim the credit, if they were otherwise eligible to do so. Companies that did not claim the credit due to a PPP loan should review the credit requirements to determine if they might be eligible to claim the credit for qualified wages paid after March 12, 2020.

Advance Payments

Original Law: No provision to monetize the credit before qualified wages were paid.

New Law: The Treasury Department will draft guidance to allow an advance payment of the credit for companies with 500 or fewer employees, based on 70% of average quarterly payroll for the same quarter in 2019. In other words, such companies may monetize the credit before the wages are paid. If the amount of the actual credit determined at the end of the quarter is less than the amount of the advance payment, the company will need to repay the excess to the government.

Disallowance of Credit for Governmental Entities

Original Law: The employee retention credit was not available to any federal, state, or local governmental entity.

New Law: Effective Jan. 1, 2021, an exception will allow the credit for state or local run colleges, universities, organizations providing medical or hospital care, and certain organizations chartered by Congress (which includes organizations such as Fannie Mae, FDIC, Federal Home Loan Banks and Federal Credit Unions).

Limitation on Increase in Pay Rate

Original Law: No credit for pay rate increases.

New Law: This disallowance of the credit for pay rate increases is repealed, now allowing the credit for hazardous duty pay increases, among others.

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.

Author

This GT Alert was prepared by:

- Marvin A. Kirsner | +1 954.768.8224 | kirsnerm@gtlaw.com