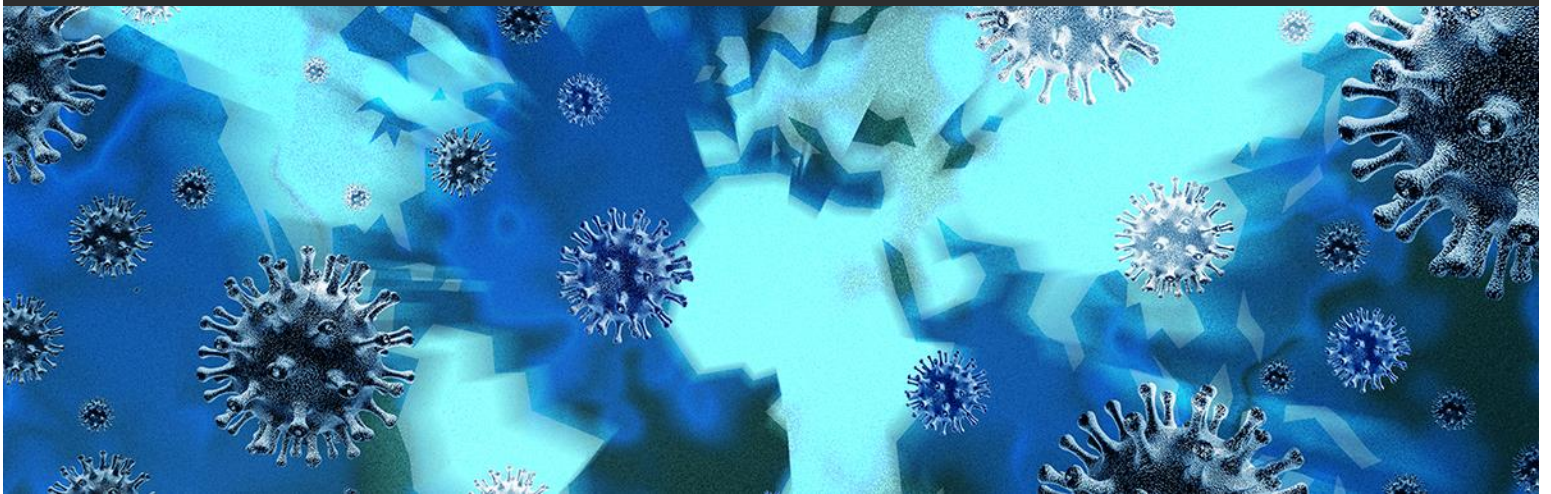


**Alert | Health Emergency Preparedness Task Force:
COVID-19 Economic Stimulus**



May 11, 2020

PPP Loan Will Cause Related Company to Be Ineligible for CARES Act Employee Retention Tax Credit

The IRS has released a set of [Frequently Asked Questions](#) (FAQ) regarding the employee retention tax credit under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). One of the surprises contained in the FAQ is that if a company receives a Paycheck Protection Program (PPP) loan, then all companies that share common ownership will not be eligible for the employee retention credit.

The employee retention credit allows a 50% tax credit to a company for wages paid to employees during the period its operations have been fully or partially suspended due to a COVID-19 governmental order, or during a calendar quarter there has been a significant decrease in gross receipts (a 50% decrease in gross receipts from the same 2019 calendar quarter until gross receipts recover to more than 80% from the prior year calendar quarter). If the company has more than 100 employees, the credit is only allowed for wages paid for the time an employee is not performing services. The maximum credit is capped at \$5,000 per employee.

This credit is available to any company paying wages to employees in the U.S. (and U.S. territories), regardless of size, **except for a company that has received a loan under the PPP**. Because there is no limit on the size of a company eligible for this credit, the employee retention credit is the primary COVID-19 tax incentive for a company with more than 500 employees to continue paying its workers while business operations are suspended due to a governmental order, or a company that has suffered a

significant decline in gross receipts (because a company with more than 500 employees is not eligible for a PPP loan).

In [FAQ #80](#), the IRS declares that in a case where two or more companies are aggregated and treated as a single employer because they are under common ownership, and one company in such receives a PPP loan, then all companies within the aggregated group are prohibited from claiming the retention credit. The aggregation rule ([FAQ #25](#)) is broad, and treats all companies under common ownership as a single employer for purposes of the credit, so that if one company receives a PPP loan, no other member of the aggregated group is eligible for the employee retention credit.

Under this IRS interpretation, if a private equity company owns more than 50% of multiple portfolio companies, and one of the portfolio companies receives a PPP loan, then none of the other portfolio companies would be eligible to claim the employee retention tax credit.

The Treasury Department states in [FAQ #45](#) that if a company has already received a PPP loan, but pays it back by the May 14 deadline, (see [GT Alert, Update: PPP Loans - Safe Harbor Deadline Extended](#)), it will be treated as though it had not received a covered loan under the PPP for purposes of the employee retention tax credit. As a result, the company would be eligible for the credit (assuming it otherwise satisfies the credit requirements), and other companies related to it would likewise regain eligibility to claim the credit (assuming they otherwise satisfy the requirements).

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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