



April 1, 2020

### **Employee Retention Credit:**

#### **Eligibility: one of these two reasons**

1. Subject to closure due to COVID-19: carrying on a trade or business during calendar year 2020; fully or partially suspended due to orders from a gov't authority limiting commerce, travel, or group meetings OR
2. Significant decline in gross receipts (measurement period): **Begins:** 1<sup>st</sup> calendar quarter beginning after 12/31/2019 for which gross receipts are less than 50% of gross receipts for the same calendar quarter in the prior year. **Ends:** Period ending with the calendar quarter for which gross receipts of such employer are greater than 80% of gross receipts for the same calendar quarter in the prior year.

**Planning point** – we emphasize that Governor Wolf's order qualified as a partial suspension due to orders from a governmental authority, particularly when considering the bill's wording on "limiting commerce"; for our PA Lancaster County clients this will include 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2020 so far.

Exclusions: Small Business Interruption Loan: **if receive a covered loan (payroll protection loan) will not be eligible for the credit** (but see planning point below)

#### **Definitions:**

1. Employment taxes: employer portion of social security 6.2%
2. Full time equivalent – 30 hours/week
3. Application Period: March 13, 2020 and before January 1, 2021
4. Qualified Wages:
  - a. If average number of FTE exceeded 100 in 2019 - qualified wages limited to those paid to employees not providing services due to business being closed for one of the two eligibility reasons
  - b. If average number of FTE was less than 100 in 2019 – all qualified wages paid to any employee during eligibility reason #1; all qualified wages paid to any employee during a quarter that eligibility reason #2 applies
  - c. Health insurance/health plan expense counts as wages
  - d. Maximum qualified wages for all quarters cannot exceed \$10,000 per employee, total credit is limited to 50% of wages **(\$5,000 per employee)**
  - e. Wages applied to application of the new sick leave or family medical leave credit cannot be taken into account in determining qualified wages

**Planning point** – a huge difference between employers with 100 FTE or more versus less than 100 FTE

**Note** – this credit deals with FTE, payroll protection loan is # of employees only (500 for most businesses)

**Note** – employee's qualified wage cannot exceed the amount employee would have been paid quarterly for working based on the previous 30 days before the eligible quarter (for most of our clients this quarter is 1<sup>st</sup> quarter of 2020, so December wages times 3)

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### Information on the credit -

1. Excess credit is refundable, not taxable
2. Advance payments permitted (guidance to come)
3. There is an “automatic” waiver of penalty for any failure to make a deposit of any applicable employment taxes if determined that such failure was due to the reasonable anticipation of the credit
4. The bill instructs the Treasury secretary to issue forms that provide for the recapture of the credit if a business interruption loan is taken after the fact

**Planning point** - #3 above permits taking the credit NOW, then “asking for forgiveness” later; do we want to take this step and then deal with the notices? I say yes.

**Planning point** - #4 above also seems to indicate we should take this credit now, and then if we get approved for a payroll protection loan we pay back the credit; at which time we should have the cash to do so if the loan is funded AND we can use these payments to justify loan forgiveness