

## Tax Notes

### Tax Tips for Claiming the Employee Retention Credit

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The Employee Retention Credit (ERC) has been in existence for just about two years now. If the ERC has been around for so long, why are we still talking about it? Because it is a HUGE benefit for businesses if they qualify. Credits earned in 2020 and 2021 can still be claimed today and provide a cash boost for businesses.

As discussed in a previous article, [Have Your Cake and Eat it Too](#), businesses can follow a few strategies to maximize both the ERC and their Payroll Protection Program (PPP) loan forgiveness. Once a business has determined they qualify and calculates their ERC, then the fun part begins – claiming the credit (and getting their refund!).

#### How do businesses claim the ERC?

Eligible employers report their ERC eligible wages and claim the related tax credits on their federal payroll tax returns (Form 941). Since the ERC no longer applies after the 3<sup>rd</sup> quarter of 2021 ([Employee Retention Credit to End Earlier Than Expected](#)) – and 3<sup>rd</sup> quarter payroll tax returns were due at the end of October – the sole means of claiming the credit now is an amended payroll tax return (Form 941-X).

Employers used to be able to file Form 7200 (Advance Payment of Employer Credits due to COVID-19) to request advance payment from the IRS before the end of a quarter, but that option is no longer available.

Amended payroll tax returns can be filed three years after the original return filing date; that means there's plenty of time to do so.

#### Can I just claim the ERC on an Income Tax Return?

No, unfortunately not. The credit will need to be claimed on a payroll tax return.

#### So does the ERC impact my Income Tax Return?

Yes. While the ERC is not considered taxable income, under IRC Section 280C, employer tax credits create a reduction in wages in the amount of the credit. This reduction occurs in the year the wages were paid – so, a 2021 credit must be reflected on the 2021 tax return, even if the refund has not yet been received. Many states follow the federal treatment, although New York is an exception and allows the deduction.

IRS delays in processing amended returns can create a quandary for taxpayers – they might need to reflect an ERC on a return, and thus increase taxable income, before they receive a check. That means that moving quickly to determine ERC eligibility could be advantageous for businesses.

#### If a business claims in 2021 the ERC for 2020 Quarters, can the business adjust their 2021 Income Tax Return?

No. If the ERC was claimed in 2021 for 2020 quarters (highly likely, since many PPP borrowers were not eligible until the end of 2020) and the 2020 income tax return was already filed, then an amended business income tax return or administrative adjustment request (AAR) for partnerships must be filed showing the reduction in wages. The credit cannot be reflected on the 2021 income tax return.

## Next Steps

Now that the 2021 tax filing season is upon us, it is imperative that businesses determine whether they may have ERC qualification. If the business qualifies, they can claim the credit as quickly as possible to begin the refund process.

While a Form 941-X can be filed by a business' payroll tax provider, it does not necessarily need to be. Some payroll companies are currently taking an extended period of time to draft Form 941-X, even if the business has given them detailed information for the amendment. This is unfortunately lost time for a business already subject to IRS delays in processing refunds. We here at PKF O'Connor Davies are able to assist, not just in determining eligibility and calculating the credit, but also in filing Form 941-X if necessary.

## Contact Us

If you have any questions about the employee retention credit, contact your client service partner or:

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