

## NYSRA Presents:

# The New Batch of Regulation Updates: Serving Up the Latest in Tax and Finance for Restaurant Owners

Presented by

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## TODAY'S PRESENTERS



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# WHAT WE WILL BE DISCUSSING:

- Employee Retention Tax Credits (dos and don'ts)
- Economic Injury Disaster Loan Increase
- New York Pass-through Entity Tax Election Considerations
- Restaurant Return to Work Credit
- 2021 and 2022 Tax Updates

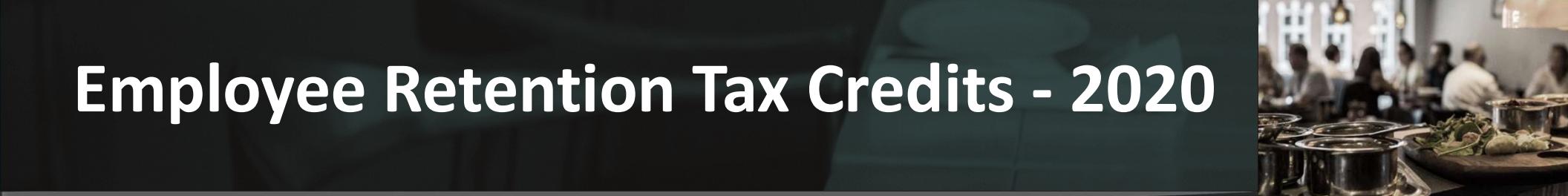
# Employee Retention Tax Credits - 2020



## Refresher on ERTC computation for 2020 periods

- Based on wages paid between 3/12/20 – 12/31/20 when either:
  - Fully or partially shut down by government order
    - *The 2020 restrictions should qualify most NY restaurants as “partially shutdown” going back to Mid-March 2020*
  - Experiencing large drop in year-over-year receipts
    - *Gross receipts must be less than 50% of what they were for the same quarter in 2019. Once this happens, every quarter is an “eligible quarter” until there’s the end of a quarter where receipts are 80% when compared to 2019*

# Employee Retention Tax Credits - 2020



## Refresher on ERTC computation for 2020 periods (continued)

- 2020 credits
  - equal to 50% of the qualified wages paid to an employee
  - capped at \$10,000 of wages per employee (\$5,000 credit per employee)
- You can increase the wages paid to an employee by the employer's allocable share of certain healthcare costs
- In situations where you furloughed someone but paid their healthcare, you can claim the credit on the healthcare costs

# Employee Retention Tax Credits - 2020

## Refresher on ERTC computation for 2020 periods (continued)

- If you had MORE than 100 FTEs in 2019, only wages paid to an employee during an eligible quarter to NOT PROVIDE SERVICES are eligible for the credit (credit capped at \$5,000 per employee for 2020)
  - There are examples given by the IRS where employees were working but at such a limited capacity, a portion of their salaries were deemed qualified
- If you had LESS than or equal to 100 FTEs, then all wages paid to an employee during an eligible quarter qualify for the credit (credit capped at \$5,000 per employee for 2020)

# Employee Retention Tax Credits - 2021



## Refresher on ERTC computation for 2021 periods

- Program was extended from 12/31/2020 to 6/30/2021, then to 12/31/2021, then early-expired 9/30/2021 (except for Recovery Start-up Businesses)
- 2021 Credit 70% of qualified wages
- 2021 Credit capped at \$10,000 per wages per employee per quarter (credit of \$7,000 per employee per quarter)

# Employee Retention Tax Credits - 2021



## Refresher on ERTC computation for 2021 periods (continued)

- For 2021, the gross receipts test goes up to 80% (a reduction in 20% of gross receipts when compared to 2019 triggers an eligible quarter)
  - Accommodations in place for businesses that didn't exist during specific quarters of 2019
  - Election to use preceding calendar quarter to meet the gross receipts test. Accordingly, for the Q1 2021, an employer may elect to use its gross receipts for Q4 2020 compared to those for the Q4 of 2019 to determine if the decline in gross receipts test is met
- For 2021, definition of qualified wages changes for employers with +500 FTEs as opposed to 100 FTEs as used for the 2020 credits
  - 500 FTEs or less, working wages are qualified

# ERTC Do's and Don'ts



## Do's

- Make sure you understand your eligibility period
- Include employer-share of health plan expenses which your payroll processor may not be aware of
- Optimize wages between PPP and ERTC at an employee level
- When over 100 or 500 FTEs, consider employees that were retained but worked at a reduced capacity
- Include nonpayroll costs of at least 40% of your PPP Loan on your PPP Loan Forgiveness Application (reduces wages deemed used for PPP)
- Understand the tax implications

# ERTC Do's and Don'ts



## Don'ts

- Don't forget about the preceding calendar quarter election
- Don't forget about affiliation rules when determining eligibility
- Don't leave nonpayroll costs off your PPP Loan Forgiveness Application
- Don't think that you'll receive the credits in cash for quite a while
- Don't forget to account for state and local employer taxes on your PPP Loan Forgiveness Application
- Don't give up if your FTE count is very close to the 100/500 threshold. There are a few different ways to calculate this.

# Economic Injury Disaster Loan Increase



## Economic Injury Disaster Loan (EIDL)

- Maximum COVID EIDL Loans went from \$500,000 to \$2,000,000
  - Still goes through an underwriting process so even though you're the maximum loan calculated is \$2 mil, you may receive less.
- Terms are still 3.75% over 30 years
- 24-month deferment period
- Use of funds expanded to include payment and pre-payment of non-federal debt (can use to refinance)
- Certain NAICS codes (including those beginning in 72) are given certain size accommodations

# NYS Pass Through Entity Tax

## New York State Pass Through Entity Tax

### a) When to make the election?

- The election needs to be made on the New York State website. There is a portal section that allows you to make this irrevocable (for the year) election. The election needs to be done by March 15, 20xx, to be effective for the tax year. This election needs to be made on a yearly basis.

### b) What it means to make the election?

- The election allows you to pay the NYS tax at the company level.

### c) How do you calculate the potential tax due?

- For NYS residents you simply take all the income allocated to you by the company and multiply it by the tax rate (assuming 9%). For Non-NYS residents you simply take the New York State allocated income and multiply that by the tax rate.

# NYS Pass Through Entity Tax

## New York State Pass Through Entity Tax con.

	<u>No PTE Election</u>	<u>PTE Election</u>	
Taxable Income	1,000,000	1,000,000	
PTE Deduction	-	(90,000)	Individual will get credit
Total K1 Income	1,000,000	910,000	
Income	1,000,000	910,000	
Projected Federal Tax	(370,000)	(336,700)	
Projected New York State Tax	9.00%	(90,000)	paid by company
Net Cash	540,000	573,300	
Potential Cash Flow Savings		33,300	

# Restaurant Return to Work Credit



## Restaurant Return to Work Credit

- Business are eligible for a NYS tax credit of \$5,000 per each net new employee hired at its qualifying restaurant location(s) up to a max of \$50,000 per business
- Program is open to a restaurant locations in NYC or other areas designated as an Orange or Red Zone for at least thirty consecutive days. Outside of New York City qualifying locations include certain areas of Chemung, Erie, Monroe, Onondaga, Orange, Rockland and Westchester Counties.
- Fast Track Option has expired but businesses can now claim the credit on their 2021 NYS tax return for FTE increases from 4/1/21 – 12/31/21

# Tax Hot Topics



## Depreciation:

- Bonus Depreciation allows you to write off 100% of fixed asset purchases with a tax life of 20 years or less.
- Some items to consider as you are upgrading your restaurants are:
  - Furniture and Fixtures, Equipment, Computers, Leasehold improvements

## Scheduled Changes

- 100% for property placed in service for tax years 2022
- 80% for property placed in service for tax years 2023
- 60% for property placed in service for tax years 2024
- 40% for property placed in service for tax years 2025
- 20% for property placed in service for tax years 2026

# Tax Hot Topics cont.



## Deductibility of Business Meals

- Notice 2021-25
  - This applies for tax years 2021 and 2022
  - A taxpayer will benefit from a 100% deduction for meals and beverages provided by a restaurant. The meals should be business related and should be documented as support.
  - Under the old rules a taxpayer was only eligible to deduct 50% of business meals.

# Federal Tax Updates – Build Back Better Act



## Pass-Through Provisions

- Expand the base of the 3.8% Net Investment Income Tax (NIIT) to apply to active business income for pass-through entities
- Make permanent the active pass-through loss limitation

# Federal Tax Updates – Build Back Better Act



## Individual Provisions

- Raise the cap on the state and local tax (SALT) deduction from \$10,000 to \$80,000 and extend this cap through 2030. The \$80,000 SALT cap amount would also apply to the 2021 tax year. For 2031, the SALT deduction cap would be set at \$10,000

# Federal Tax Updates – Build Back Better Act



## Individual Tax Provisions – cont.

- Create a new surcharge on income in excess of \$10 million plus 3% on MAGI above \$25 million
- Repeal the 100% gain exclusion for qualified small business stock when AGI exceeds \$400,000
- Extend Child Tax Credit (CTC) expansion through 2022 (aka stimulus checks)

# Federal Tax Updates – Build Back Better Act



## Estate and gift tax exemption

- 2021 amounts
  - a) Estate and gift tax exclusion of \$11,700,000
  - b) Gift tax annual exclusion of \$15,000
- Proposed legislation would reduce the estate and gift tax exclusion to approximately \$6 million in 2022. Very much up in the air.

# QUESTIONS?



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