

# Tax Incentives to Bring Money Back into Your Restaurant



Tri-Merit, LLC 2021©



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# Presenter – Randy Crabtree, CPA

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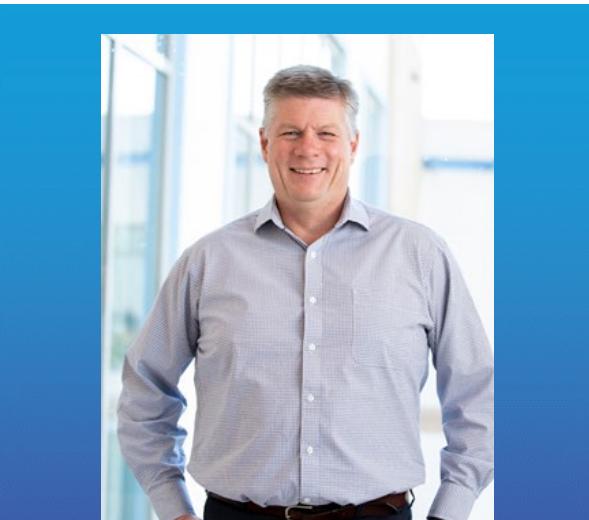
**Randy Crabtree** , co-founder and partner of Tri-Merit Specialty Tax Professionals.

He is a widely followed author, lecturer and podcast host for the accounting profession.

Listed in Accounting Today as Someone to Watch in the 2021 Most Influential People in Public Accounting list.

Since 2019, he has hosted the bi-weekly The Unique CPA podcast, which ranks among the world's 5% most popular programs (Source: Listen Score).

A frequent contributor to Accounting Today's Voices and the AICPA Tax Adviser, he is a regular presenter at accounting conferences and virtual training events hosted by CPA associations, state CPA societies, industry associations and top 400 CPA firms across the country.



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# About Tri -Merit



- ▶ Tri-Merit supports CPAs and their clients by serving as an extension of their advisory team to lessen the tax burden and increase cash flow for their clients .
- ▶ We work with companies to uncover the engineering, manufacturing and product development data needed to support claiming tax incentives and planning strategies including:  
**R&D tax credit , cost segregation , WOTC – The Work Opportunity tax Credit, 179D – the energy efficient commercial building deduction and 45L – a credit for developers of energy efficient residential property and ERC.**
- ▶ We are comprised of **engineers , scientists , CPAs and attorneys .**
- ▶ We have offices in **14 states** and serve clients in every state.

# Agenda

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## Tax Incentives for the Restaurant Industry:

- ▶ Employee Retention Credit (ERC)
- ▶ 179D – Energy Efficient Commercial Building Deduction
- ▶ Cost Segregation
- ▶ Work Opportunity Tax Credit (WOTC)
- ▶ R&D Tax Credit



# Employee Retention Credit



# The Employee Retention Credit

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## ▶ ERC Guidance

- Coronavirus Aid, Relief, and Economic Security (CARES)
- Consolidated Appropriations Act (CAA)
- American Rescue Plan Act of 2021 (ARP)
- FAQs ERC Under The CARES Act (FAQs)
- IRS Notice 2021-20 (21-20)
- IRS Notice 2021-23 (21-23)
- IRS Notice 2021-49 (21-49)
- Revenue Procedure 2021-33 (21-33)
- Infrastructure Investment and Jobs Act
- IRS Notice 2021-65

# The Employee Retention Credit

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- ▶ **CARES - March 27, 2020**
  - Defined ERC.
  - Could take either PPP or ERC not both
  - Set to expire 12/31/2020
- ▶ **CAA - December 27, 2020**
  - Remove the exclusion with PPP
  - Extended and enhanced the ERC until 6/30/21
  - Enhanced the benefit

# The Employee Retention Credit

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- ▶ **ARP - March 11, 2021**
  - Extended the ERC until 12/31/21
  - Defined to new ways to qualify beginning 7/1/21
    - » Severely Financially Distressed Employers
    - » Recovery Startup Businesses
  - Extended the audit period from 3 to 5 years
- ▶ **Infrastructure Investment and Jobs Act – Nov 15, 2021**
  - Eliminates the 4<sup>th</sup> quarter 2021 ERC
    - » Except for RSB

# The Employee Retention Credit

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## Qualifying Business

Any private-sector business or tax-exempt organization that carries on a trade or business and that meets EITHER of the following:

**The business had a significant decline in gross receipts during any quarter.**  
50% in 2020  
20% in 2021  
Compared to 2019

**The business was fully or partially suspended due to orders from the federal, state or local government limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID -19.**

# The Employee Retention Credit

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	2020	2021
Credit Calculation	50% of up to \$10,000 of <b>eligible</b> wages per employee per year. (3/13-12/31)	70% of up to \$10,000 of <b>eligible</b> wages per employee per quarter (1/1/21-9/30/21)
Wages/Health Costs Capped	Annually	Quarterly
Maximum Credit Per Employee	\$5,000	\$21,000

# The Employee Retention Credit

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Qualified Period	Number of Employees	Wages and Health Insurance per Employee	Total Eligible Wages	Credit
2020	10	\$10,000	\$100,000	\$50,000
Q1 2021	10	\$10,000	\$100,000	\$70,000
Q2 2021	10	\$10,000	\$100,000	\$70,000
Q3 2021	10	\$10,000	\$100,000	\$70,000
Totals		\$10,000		\$260,000

# The Employee Retention Credit

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- ▶ **Significant Decline in Gross Receipts**
  - 2020
    - » Gross receipts declined by at least 50% (safe harbor) of what they were for the same calendar quarter in 2019.
    - » Once a company qualifies, it automatically qualifies for the next quarter and continues to qualify until the first quarter *after* the quarter in which the 2020 quarterly gross receipts are greater than 80 percent of its gross receipts for the same calendar quarter in 2019.

# The Employee Retention Credit

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- ▶ Significant Decline in Gross Receipts
  - 2021
    - » Gross receipts declined by at least 20% (safe harbor) of what they were for the same calendar quarter in **2019**. Or you can use the previous quarter's gross receipts compared to the same quarter in 2019.

# The Employee Retention Credit

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- ▶ Items not included in gross receipts for ERC purposes:
  - Forgiveness of PPP loans
  - Shuttered Venue Operator Grant
  - Restaurant Revitalization Grant
  - Prior ERC Refunds
- ▶ Basis of accounting used for income tax purposes will be used in determining gross receipts.

# The Employee Retention Credit

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- ▶ **Fully or Partially Suspended**
  - Orders, proclamations, or decrees from the federal, state or local government if they limit commerce, travel, or group meetings due to COVID-19 and have “more than a nominal” impact.
    - » The business must cease all operations **OR**
    - » A portion of its normal operations are suspended or affected by a government order.
  - The credit can be calculated during the term of the suspension.
  - CDC Recommendations are not a government order.

- ▶ **Partial Suspension Secondary Safe Harbor**
  - Business operations will be deemed to constitute more than a nominal portion if either:
    - » The gross receipts from that portion of the business affected is at least 10 percent of the total gross receipts in 2019 or
    - » The hours of service performed by employees in that portion of the business is at least 10 percent of the total number of hours of service performed by all employees in 2019.
    - » Nominal - Insignificant

# The Employee Retention Credit

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## ▶ FAQ # 34

- ▶ a restaurant business, must close its restaurant to on-site dining due to a governmental order closing all restaurants, bars, and similar establishments for sit-down service. The restaurant is allowed to continue food or beverage sales to the public on a carry-out, drive-through, or delivery basis. The business operations are considered to be partially suspended because a portion of its business operations – its indoor and outdoor dining service – is closed due to the governmental order.

- ▶ **FAQ # 34 (continued)**
  - Same facts , except that two months later, the restaurant is permitted to offer sit-down service in its outdoor space, but its indoor dining service continues to be closed. During the period in which Employer F is allowed to operate only its outdoor sit-down and carry-out service in accordance with the order, Employer F's business operations are considered to be partially suspended because, under the facts and circumstances, a more than nominal portion of its business operations – its indoor dining service -- is closed due to a governmental order.

# The Employee Retention Credit

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- ▶ **FAQ # 34 (continued)**
  - The following month the restaurant is permitted to offer indoor dining service, in addition to outdoor sit-down and carry-out service, provided that all tables in the indoor dining room must be spaced at least six feet apart. Under the facts and circumstances, the governmental order restricting the spacing of tables limits Employer F's indoor dining service capacity and has more than a nominal effect on its business operations. The business operations continue to be considered to be partially suspended because the governmental order restricting its indoor dining service has more than a nominal effect on its operations.

- ▶ **Supply Chain Qualifying Factor (IRS Notice 2021 -20)**
  - If the facts and circumstances indicate that the business's operations are fully or partially suspended as a result of the inability to obtain critical goods or materials from its suppliers because they were required to suspend operations, then the business would be considered an eligible employer for calendar quarters during which its operations are fully or partially suspended and may be eligible to receive the employee retention credit.

- ▶ **Supply Chain Non -Qualifying Factors**
  - Suppliers that have self-limit production, reduced hours, reduced employees.
  - Inability of suppliers to find employees.
  - Suppliers inability to produce and/or delivery materials due to something other than a COVID-19 government mandate. As an example, the Texas freeze of 2021.

- ▶ **Customer Base**

- An employer that suspends some or all of its operations because its customers are subject to a government order requiring them to stay at home or otherwise causing a reduction in demand for its products or services is not considered to have a full or partial suspension of its operations due to a governmental order.

- » **Examples**

- Valet
- Caterer

# The Employee Retention Credit

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- ▶ **IRS Notice 2021 -49 - Wages**
  - Wages paid to a majority owner will not be included in the ERC calculation, if they have any living siblings, ancestors or lineal descendants.
  - Tips are included in wages for ERC.
  - Wages and be used for both the Tip Credit and ERC

# The Employee Retention Credit

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- ▶ **IRS Notice 2021-49 – SVOG and RRF Wages**
  - Double dipping allowed on these wages until the third and fourth quarters of 2021.
    - » The first RRF money was distributed in May 2021
    - » The first SVOG money was distributed in May 2021
  - Employers receiving a SVOG or RRF may not treat any amounts reported to the SBA or otherwise taken into account as payroll costs in connection with either program as qualified wages for purposes of the employee retention credit in the third and fourth quarters of 2021.

- ▶ **IRS Notice 21-49 - Timing of Qualified Wages Deduction Disallowance**
  - The deduction for qualified wages, including qualified health plan expenses, is reduced by the amount of the ERC.
  - A taxpayer should file an amended federal income tax return or administrative adjustment request (AAR), if applicable, for the taxable year in which the qualified wages were paid or incurred.

- ▶ **Recovery Startup Businesses**
  - Began operations after February 15, 2020 and has an average annual gross receipt amount up to \$1,000,000 (as determined under rules similar to the rules under section 448(c)(3)).
    - » Eligible for a \$50,000 credit per calendar quarter.
    - » Do not need to meet the reduction in gross receipts test or have been subject to a government shutdown in order to claim the credit.
    - » Available for the 3rd and 4th quarters of 2021

# §179D Energy Efficient Commercial Building Tax Deduction



# 179D–Energy Efficient Commercial Building Deduction

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- ▶ Potential restaurant users of the deduction:
  - Restaurant building owners
  - Lessees of restaurant property
  - Typically, best for properties in excess of 10,000 sq/ft
  - Can be taken for qualified activities all the back to 2006
- ▶ Energy Policy Act of 2005
  - Created under the Energy Policy Act of 2005. Was set to Expire at the end of 2020.
- ▶ Consolidated Appropriations Act, December 27<sup>th</sup>, 2021
  - The deduction was made permanent

# 179D–Energy Efficient Commercial Building Deduction

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- ▶ 179D
  - Was created to allow for an accelerated depreciation for qualified energy efficient commercial buildings.
  - A 50% reduction in energy or more results in a \$1.80/SF deduction.
  - Partial Deductions
    - » HVAC | requires a 15% reduction\* in energy for 60¢/SF
    - » Lighting | requires a 25% reduction\* in energy for 60¢/SF
    - » Building Envelope | requires a 10% reduction\* in energy for 60¢/SF

# 179D–Energy Efficient Commercial Building Deduction

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- ▶ Interim Lighting Rule
  - Allows for a partial deduction for the lighting category only between 30-60¢ per SF
  - Requirements
    - » Lighting power density reduction between 20 and 40%.
    - » Bi-level switching is required for qualification.
  - Easier to qualify and reduced cost of certification.

# 179D–Energy Efficient Commercial Building Deduction

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- ▶ Types of improvements
  - Completed new construction
  - Interior remodel.
  - Additions
  - Enlargements
  - Retrofits
  - Improvements

# 179D–Energy Efficient Commercial Building Deduction

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- ▶ 179D Example -
  - 20,000 square banquet hall
  - HVAC all qualified @ \$0.60 for \$60,000 deduction.
  - Lighting all qualified @ \$0.60 for \$60,000 deduction.
  - Envelope all qualified @ \$0.60 for \$60,000 deduction.
  - Total deduction of \$36,000 at 37% created a tax savings of \$13,320

# Cost Segregation



- ▶ Commercial (restaurant, bar, theater, conference/convention center, banquet hall, etc.) or residential rental property owners.
- ▶ Breaking down depreciable real estate into individual components and identifying which components can be depreciated quicker.
  - Accelerating depreciation, deferring income taxes.
    - » Taking assets otherwise depreciated at 27.5 or 39 years and reclassify them to 5, 7 or 15 years.
    - » Certain assets can be bonus or 179 eligible.
  - New construction, purchases, remodels, additions, improvements.
  - Restaurants on average can accelerate 20-40% of the assets (excluding bonus depreciation)

- ▶ Qualified Improvement Property (QIP)
  - Defined in the PATH act
  - Mistake on asset life in the TCJA
  - CARES Act fixes the mistake and now allows bonus on QIP.
  - Improvement to the interior of a nonresidential building.
    - » Must be made after the building was placed in service.
    - » Excludes enlargements, elevators, escalators and internal structural framework of the building.
    - » Improvements must be made by the entity claiming the deduction.

- ▶ Bonus Depreciation
  - Eligible property must have a 20-year useful life or less.
  - Eligible property receives 100% bonus if acquired and placed in service after 9/27/17 and before 1/1/23.
  - Bonus will phase down by 20% each year from 2023-2026
  - Used property now eligible

# Cost Segregation

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- ▶ Example – remodel of restaurant in 2021.
  - Total costs were \$2,000,000 originally classified as 39-year
  - After cost seg – 5/7-year \$700,000, 15-year \$140,000, 15-year QIP \$1,000,000 and 39-year \$160,000.
  - First year accelerated depreciation \$1,840,000 compared to \$51K without a cost seg study.

# Work Opportunity Tax Credit



- ▶ **WOTC**

- New hire credit
- Typically, employers that have at least 50 new hires per year are the best candidates
  - » Restaurants, Theaters, Bars, Concert Venues, Manufacturers, Nonprofit, etc.
- Was set to expire at the end of 2020 but was extended until 2025 in the CAA
- Incentivizes the hiring of individuals from targeted demographic groups who faced barriers to gaining/sustaining employment or with special employment needs

# Work Opportunity Tax Credit (WOTC)

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## ► WOTC

- Credit is between \$2,400 and \$9,600 per eligible employee
- Employees need to work at least 120 hours to qualify
- Need to apply within 28 days of hire
- For profit businesses offset federal income tax
- Nonprofit can qualify for veteran categories and use the credit to offset employer portion of SS taxes

# Work Opportunity Tax Credit (WOTC)

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- ▶ **Employee Target Groups**

- SNAP Recipients - \$2,400
- Long-term Unemployed - \$2,400
- Temporary Assistance for Needy Families (TANF) - \$2,400
- Long-term TANF - \$9,000
- Supplemental Security Income Recipients - \$\$2,400
- Vocational Rehabilitation Recipients - \$2,400
- Ex-felons - \$2,400
- Designated Community Residents - \$2,400
- Summer Youth Program - \$1,200

# Work Opportunity Tax Credit (WOTC)

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- ▶ **Veteran Target Groups**

- Veterans receiving SNAP - \$2,400
- Service-related Disability - \$4,800 - \$9,600
- Temporary Assistance for Needy Families (TANF) - \$2,400
- Long-term Unemployed - \$5,600
- Short-term Unemployed - \$2,400

# R&D Tax Credit



- ▶ R&D tax credit opportunities:
  - Who can qualify:
    - » Manufactures, Software Developers, Architects, Engineers, any taxpayer meeting the 4-part test, including restaurants (examples to follow).
  - ▲ Innovation in restaurants occurring in response to COVID-19.
    - » Creating software for online ordering or modules to communicate for other software.
  - Be aware of the interplay between the ERC and the R&D tax credit

- ▲ R&D Tax Credits
  - How to qualify
    - 4-part test to qualify
      - Permitted purpose.
      - Technological in Nature
      - Technical Uncertainty
      - Process of Experimentation
    - Overriding factor of economic risk

- ▲ R&D Tax Credits
  - Expenses that qualify
    - » Salaries and wages.
    - » Outside services.
    - » Supply costs. (potential increase due to 174 pilot/prototype rules)
    - » Rental of computer time.
  - R&D expense capitalization starting 1/1/22.
    - » BBB would delay this until 2025

- ▲ R&D Tax Credits for Restaurants Examples
  - Breweries
    - Test batches, first runs, seasonal beers, one offs.
  - Restaurants with Test Kitchens
  - Creating online ordering systems and programming modules to communicate with other new or existing programs. POS, inventory, shipping, purchasing etc.
  - Developing new ways of packaging
  - Developing ways to control quality during shipping
  - Developing additive-free formulations

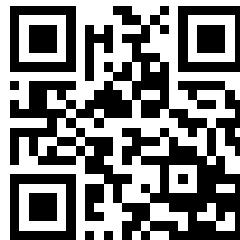
- ▶ R&D Tax Credit Benefit
  - Benefit is about 6-10% of the qualified expenses.
  - Can be claimed on any open tax return.
    - » NOL years could be brought forward to the current year
  - Companies with \$50M or less in average gross receipts for the last 3 years that can claim the credit against AMT.
  - Companies can make an election to claim the credit against payroll taxes if they have:
    - » Less than \$5M in gross receipts in the current year.
    - » No gross receipts further back than the last 5 tax years.

- ▶ New IRS Requirements in 2022
  - Additional information needed to be submitted with amended R&D claims.
  - R&D expenses need to be capitalized.



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