LEGAL UPDATE

IRS Issues Guidance on Employee Retention Credit for 2020

On March 1, 2021, the Internal Revenue Service (IRS) issued Notice 2021-20 to provide guidance for employers claiming the 2020 employer retention tax credit (ERC). The ERC was created by the Coronavirus Aid, Relief and Economic Security Act (CARES Act) to encourage employers to keep employees on their payroll, despite experiencing economic hardships related to COVID-19.

Employer Eligibility

Employers can claim the ERC if they:

- Paid qualified wages between March 12, 2020, and Jan. 1, 2021; and
- Experienced a full or partial suspension of their operations or a significant decline in gross receipts.

Interaction With the PPP

The Taxpayer Certainty and Disaster Tax Relief Act of 2020 allows eligible employers that received a Paycheck Protection Program (PPP) loan to claim the ERC. The PPP was established to help businesses keep their workforces employed during the COVID-19 crisis.

Employers can claim the ERC even if they receive a PPP loan. However, the IRS has stated that any wages that could count toward eligibility for the ERC or PPP loan forgiveness can be applied to either of these two programs, but not both.

The IRS Notice

The notice clarifies employer ERC eligibility and supplements the employee retention credit FAQs. The notice also defines important terms, such as "qualified wages," and describes retroactive changes that apply to 2020. This notice includes only rules for 2020. The IRS announced that additional guidance will be published soon for the 2021 changes.

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Important Information

- ☑ The ERC is equal to 50% of qualified wages paid, including qualified health plan expenses, up to $10,000 per employee in 2020.
- ☑ The maximum credit available for each employee is $5,000 in 2020.
- ☑ Employers will need to report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns.

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