

TYPES NOT MAPPED YET April 08, 2021 | TTR not mapped yet | Edward J. Buchholz, David J. Kaufman

# IRS clarifies employee retention tax credit rules for Q1 and Q2 of 2021

The Internal Revenue Service ("IRS") issued Notice 2021-23 on April 2, 2021, for employers claiming the employee retention tax credit (the "ERTC") under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), as modified by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (the "Relief Act"). Specifically, Notice 2021-23 clarifies rules for employers claiming ERTCs for wages paid after December 31, 2020 through June 30, 2021, and expands on prior guidance provided by the IRS in Notice 2021-20.

### Background

[As we have previously discussed](#), Notice 2021-20 formalized much of the informal guidance on the application of ERTCs that was issued by the IRS via FAQs over the course of 2020. However, Notice 2021-20 only applied to ERTCs claimed for wages paid in 2020 despite extension of the ERTC program through June 30, 2021, under the Relief Act. Notice 2021-23 amplifies Notice 2021-20 and explains the changes to the ERTC for the first two calendar quarters of 2021 pursuant to the Relief Act.

### Clarification in Notice 2021-23

Notice 2021-23 provides the following key rules for the ERTC program for wages paid after December 31, 2020 through June 30, 2021:

- Eligible employers may now claim ERTCs equal to 70% of qualified wages paid to an employee.
- Qualified wages are capped at \$10,000 per employee per calendar quarter in 2021, meaning the maximum ERTC available per employee is \$7,000 per quarter, and \$14,000 in the aggregate for the first two calendar quarters of 2021.
- Employers claiming ERTCs may reduce their required employment tax deposits for the first two calendar quarters of 2021 to access ERTCs for which they are eligible.
- Small employers—those with 500 or fewer full-time employees—may claim advance payment of ERTCs to which they are entitled by filing Form 7200, Advance of Employer Credits Due to COVID-19, but such advances are not available to large employers (i.e., those with greater than 500 full-time employees) in the first two calendar quarters of 2021 like they were in 2020.
- The rules for determining qualified wages provided in Section III.G. of Notice 2021-20 are generally applicable to ERTCs for the first two calendar quarters of 2021. The key exception to this is the hours lookback rule applicable to large employers set forth in Notice 2021-20.
- A governmental entity that is a college or university, or the principal purpose or function of which is providing medical or hospital care, is an eligible employer for purposes of ERTCs for wages paid in the first two calendar quarters of 2021.
- The gross receipts test is modified such that employers whose gross receipts in either the first or second calendar quarter of 2020 are less than 80% (up from 50% for ERTCs claimed in 2020) of their gross receipts for the same calendar quarter in 2019 are eligible for the ERTC.

In addition to the specific issues discussed above, Notice 2021-23 includes further discussion of the rules for ERTCs claimed for the first two calendar quarters of 2021.



Despite the extension of the ERTC through the third and fourth quarters of 2021 under the American Rescue Plan Act of 2021 (the "Rescue Plan Act"), Notice 2021-23 does not apply to ERTCs for wages paid during the third and fourth quarters of 2021, and the IRS will issue further guidance for such periods.

Thompson Coburn LLP continues to monitor these important developments in the CARES Act and other Federal relief efforts.

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