

Tax Notes

Employee Retention Credit to End Earlier Than Expected

By Christopher Migliaccio, JD, Senior Manager

The House of Representatives passed the Infrastructure Investment and Jobs Act (Act) on November 5, 2021. It had previously been passed by the Senate in August. The bipartisan legislation is now expected to be signed by President Biden. Notably, this Act contains minimal tax legislation – many of those much-discussed proposals are part of the [Build Back Better Act](#), which is still being debated. The key tax takeaway from the Act is the early end to the Employee Retention Credit (ERC).

The ERC, a [refundable payroll tax credit for employers](#) that have experienced a shut down via government order or a decline in gross receipts related to COVID-19, has been a potent benefit for businesses. As part of the [American Rescue Plan Act](#), the ERC had been scheduled to run through the end of 2021. However, it will now be retroactively ended on September 30 (the close of the 3rd quarter of 2021). There is only a limited exception for recovery startup businesses (which can only apply if the business began operations in 2020).

What Should I Do If I've Been Taking the Credit?

Businesses that believe they qualify in the fourth quarter may have been taking the credit proactively by reducing withholdings on payroll deposits. While taking the credit proactively avoids waiting for a check for the full amount from the IRS after the filing of a payroll tax return – given the Senate had already passed this legislation in August – it certainly came with risk in the fourth quarter. Our recommendation has been to set aside any reduced withholdings in case of this scenario.

If your business has reduced payroll deposits in anticipation of receiving the ERC, those payroll deposits will need to be made up. While no details on repayment requirements have been released, it seems fair to assume that deposits will at least need to be made before the end of the year.

Can I Still Apply for Prior Quarters?

Yes, absolutely. The ERC can be claimed on an amended payroll tax return, and a business has three years from the date of the original filing of a payroll tax to amend. Thus, there is still plenty of time to apply for the ERC if your business qualified in a prior quarter. The new legislation did not change the ability of businesses to claim ERC amounts to which they are entitled.

Contact Us

PKF O'Connor Davies has a team of experts ready to assist if you're considering whether you are eligible for the ERC.

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