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The Employee Retention Credit: Small- And Medium-Sized Businesses, And Tax Exempts Are Missing Out On Billions

[Dean Zerbe]

I've finally been able to travel and have had the opportunity to hear from CPA firms, small and medium business owners, and tax-exempt organization managers around the country about their outlook for jobs and growth.

Most of the news has been heartening as businesses and tax-exempts look to weather the economic storm caused by the pandemic. However, it has been jaw-dropping to see how many business firms (and often CPAs) as well as tax-exempt organizations are failing to take advantage of the Employee Retention Credit ("ERC") – meant to help businesses and tax-exempt organizations keep the doors open and maintain jobs, or, even better, grow and expand (and create more jobs) during these tough economic times.

The failure of business owners and tax-exempt managers to take advantage of the ERC is due to fundamental misunderstandings and confusion about the credit. Congress' Joint Committee on Taxation (JCT) scored the ERC as an approximately $80 billion-dollar temporary tax benefit for small and medium businesses and tax-exempt organizations. Given what I'm hearing, I fear that business owners and tax-exempt managers are leaving billions of dollars on the table by failing to consider whether they qualify for the ERC.

I've written previously about the [Top Ten Mistakes Of Business Owners And Their Advisors] make on the ERC – but I realize now that the core problem is that business owners and tax exempt managers (as well as many CPAs) do not understand the goal Congress was intending to accomplish with this $80 billion dollar tax credit.

ERC Is About Jobs

The ERC is about jobs. The incentive was put in place to help businesses and tax-exempts retain jobs, keep jobs, but more importantly, GROW AND EXPAND jobs. Congress – in passing the ERC – wanted to help not only the businesses and tax-exempts that were set back by the pandemic. However, Congress also wanted to support and assist those businesses and tax-exempts that found ways to thrive in the pandemic – and were maintaining or creating new jobs. When Congress wrote the $80 billion dollar check for the ERC – it was to help job creation across the board – job creation by struggling businesses; job creation by businesses treading water, and job creation by businesses that are fortunate to move forward. For Congress. it is all about the jobs.

ERC Has Been Expanded

A source of confusion or uncertainty as to the ERC is that people have an outdated understanding of the law from when it was first put in place in Spring 2020. The ERC has been significantly expanded and extended since it was first included as part of the 2020 COVID-19 relief bill in Spring 2020 – and the same legislation included the Paycheck Protection Program ("PPP") loan program (with the PPP loan program getting the vast majority of the attention and being viewed as an either/or with ERC). Since Spring 2020, the ERC has been extended and expanded twice and made much more generous (and easier) for businesses and tax exempts to qualify. It is not your grandmother's ERC – with a credit now of up to $7,000 per quarter per employee for all of 2021 and friendly rules for interaction with PPP loans.

ERC – The Second Way to Qualify

I repeatedly find that business owners, tax-exempt managers and CPAs incorrectly believe that a business must see a 50% reduction in revenues to qualify – not true. There are ***two different ways to qualify*** – a revenue test; and, alternatively a test as to whether your business or tax-exempt was impacted by government orders (which include being subject to a partial or full shutdown due to a government order at the federal, state, city, county, or other local level) that led to a more than nominal impact on the operations of your business or tax-exempt entity. (NOTE: There have been over 10,000 federal, state, city, county, or other local government orders impacting business in response to the pandemic).

Thus, while a reduction in revenues is one way to qualify for the ERC – in our own work we are seeing hundreds of businesses and tax-exempt organizations qualify for the ERC because they meet the alternative test – of a more than nominal impact on operations due to being impacted by government orders (including partial or full government shut down). The IRS has helpfully put out a 102-page notice about how to qualify). The Key: documenting today in detail how your company or tax-exempt organization qualifies for the ERC.

Which Businesses/Tax Exempts Are Good Candidates For The ERC?

All of them. We have found across-the-board companies and tax-exempts from all walks that qualify for the ERC – including manufacturers; construction; engineering; architecture; dental; medical; hotels, restaurants; churches; schools; hair salons; agriculture; food and beverage; hospitals; charities. Even for a very small business or tax-exempt the savings can be meaningful.

Just to give you a flavor – I've seen: 1) Food and Beverage company with 317 employees received a credit for 1st quarter of 2021 of $1.03 million; 2) Dental Lab with 17 employees receive a credit for $60,000 for 1st quarter of 2021; 3) Construction business with 425 employees receive a credit of $1.61 million for 1st quarter of 2021; and, 4) Agriculture Feed Company, 33 employees, $123,000 credit for 1st quarter of 2021. For all these businesses the credit has been extremely important to keep jobs, retain jobs and, yes, create new jobs – great news for workers. Just as Congress intended.

Privacy

I understand that many businesses have shied away from the PPP loan program because of the publicity surrounding the program. For those concerned about the spotlight, they should be aware that the ERC is part of your business tax returns and is confidential information.

Bottom Line

The ERC is an $80 billion dollar tax program that hundreds of thousands of small and medium businesses and tax-exempt entities – that are good candidates for the ERC – are failing to consider. Business owners and tax-exempt managers are losing out on significant tax benefits – benefits that can help retain jobs and create new jobs. Unfortunately, the biggest losers are the workers who would benefit from a business or tax-exempt maintaining a job or the creation of a new job. The ERC: it's worth a hard look.