

Garden State CLE Presents:

Cashing in:

The I.R.S. Employee Retention Credit

Instructors:

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Lesson Plan

CASHING IN: EMPLOYEE RETENTION CREDITS LESSON PLAN

I. Presenters

A. Marc Sheridan, Financial Advisor

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2. General contact information for Sheridan Wealth Advisors
 - A. Main telephone number: (305) 772-6564
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B. Robert Ramsey, Esquire, Garden State CLE Senior Instructor

II. CARES Acts

A. The Coronavirus Aid, Relief, and Economic Security (CARES) Act 2020 and the Coronavirus Response and Consolidated Appropriations Act (2021) provide economic assistance for American workers, families, small businesses, and industries.

1. The CARES Act implemented a variety of programs to address issues related to the onset of the Covid-19 pandemic. It was passed by Congress on March 25, 2020 and signed into law on March 27, 2020.
2. The Consolidated Appropriations Act continued many of the CARES programs by adding new phases, new allocations, and new guidance to address issues related to the continuation of the Covid-19 pandemic. It was passed by Congress on December 21, 2020 and signed into law on December 27, 2020.

B. Paycheck Protection Program (PPP)- In most cases, this benefit was a forgivable loan. The intent was to keep employees on the payroll during the beginning months of the pandemic, as opposed to slashing positions and causing bigger problems. The CARES Act made employers choose between the PPP and the Employee Retention Credit (ERC). The Consolidated Appropriations Act enabled employers to take advantage of both options; however, both loans cannot be used for the same employee.

A. Employee Retention Credit

1. Employee Eligibility- Any full- or part-time W-2 employee can generate ERC benefits for the business. Company owners are excluded. The cap is \$7,000 per quarter, per full-time employee.
2. Time Limitations- Starting point is January 1, 2020; ending point is September 30, 2021.
3. Three-year statute of limitations for each quarter. Technically speaking, it is three years and one month after each quarter ends because you have one month to file your quarterly 941 payroll taxes.
4. Former employees are also eligible. Just look at who is on your payroll for that quarter.

B. Example

1. Assume that a company wants the ERC benefit for last quarter of 2021.
2. Eligible Employer Analysis
 - A. Must not be a governmental entity (Nonprofits, Not-for-Profits, and For-Profits all qualify)
 - B. The business must have no more than 500 full-time employees.
 - C. Revenue Test- Was gross revenue down at least 20% in Q1-3 of 2021 compared to Q1-3 of 2019? (PPP does not count as revenue.) For 2020, the revenue test percentage is 50%.
 - D. If the company cannot meet the revenue test, use the government order test.
 - E. Government Order Test- Was there a government order in place that caused your business to be nominally impacted. (*E.g.*, restaurants that were only allowed 25% capacity.) Nominally impacted, in an economic sense, means a 10% impact. An example of a nominal impact in a non-economic sense would be requiring customers to socially distance themselves.
 - F. If your gross revenue was not down at least 20%, you could still have been nominally impacted.
3. Business entity should document its status as an eligible employer.

III. Basic Questions

- A. If an employer files for the ERC, does that employer get a credit or a check?

The employer gets a check for each qualifying quarter. Accordingly, there is a maximum of seven checks.
- B. Is the money coming in through the ERC taxable income?

Yes, which means that it is not a credit to the entity's tax liability, as the label suggests.
- C. If an employer receives an ERC check in 2022 for Q1 of 2021, must the employer file an amended return or would it be picked up as current income as of the date received?

An amended return (941-X, Adjusted Employer's Quarterly Federal Tax Return) for Q1 of 2021 must be filed.
- D. Are there any tax implications for the employee?

No.
- E. Can employers in bankruptcy still qualify for the ERC?

Yes, but the money will go into the Chapter 7 or 11 estate.

F. What information is needed to calculate the credit?

Payroll per quarter, revenue per quarter, and PPP application and loan forgiveness.

G. Is there a quarterly cap on the amount the employee was paid, beyond which the employer cannot receive any ERC?

Yes, for 2021, wages paid cannot exceed \$10,000 per employee, per quarter. Of that \$10,000, the employer receives a 70% credit, or \$7,000 per employee, for three quarters. For 2020, the employer can receive a maximum of \$5,000 per employee. Accordingly, the maximum per W-2 employee for the years 2020 and 2021 is \$26,000.

IV. Fees

A. The industry generally charges 20-30% of the ERC benefits, with as much as half charged up front. Sheridan Advisors charges 20%, due one week after the receipt of benefits from the IRS.

B. Sheridan Wealth Advisors charges a 20% consultant fee for law firms.

V. Industries likely to have eligible employers:

A. Hotels and Restaurants

B. Law

C. Manufacturers

D. Contractors

E. Travel

F. Spas

G. Catering

H. Healthcare

I. Elective Medical Procedures

J. Private Education

VI. Advice to attendees- Check to see if your firm is eligible for the ERC.

VII. The absolute deadline to file is April 30, 2024.

VIII. Specific Contact Information

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