

## Insights

# Six Things to Know about the New CARES Act Employee Retention Credit

Article

*Lowndes*

03.30.2020

The Coronavirus Aid, Relief, and Economic Security Act (CARES) Act was signed into law by President Trump last week. This \$2.2 trillion stimulus bill contains an important, limited time tax credit for employers that are forced to suspend or limit operations due to COVID-19 while continuing to pay their employees. Unlike the tax credits provided for under the Families First Coronavirus Act, this tax credit is not limited to companies with less than 500 employees.

### 1. Who Qualifies For the Credit?

An employer if either:

1. The operation of the business was fully or partially suspended during any calendar quarter during 2020 due to orders from an appropriate governmental authority limiting commerce, travel or group meetings due to COVID-19; or
2. The operation of the business incurred a significant decline in gross receipts. A significant decline in gross receipts occurs if, during any quarter in 2020, gross receipts for that quarter were less than 50% of what the gross receipts were for the same quarter in 2019. Any business that falls under this provision will be entitled to a credit for each quarter until the business has a quarter where gross receipts exceed 80% of the same quarter in the prior year.

If the employer is a non-profit organization, it can qualify for the tax credit if it has a full or partial shutdown described (i).

### 2. How Much Is The Credit?

For each quarter that is described within clause (i) or (ii) above in 2020, an employer will receive a credit applied against its 6.2% employer share of payroll taxes equal to 50% of qualified wages paid to each employee for that quarter.

### 3. What Are Qualified Wages?

The amount of qualified wages will depend on how many employees the business had in 2019. If the average number of full time employees for 2019 exceeded 100, the qualified wages are only those wages (including health benefits) paid by the employer to employees that are furloughed. By contrast, smaller businesses who had less than 100 average full time employees for 2019 will receive a larger credit, as qualified wages will include all the wages (including health benefits) paid for each eligible quarter.

#### 4. Is the Credit Refundable?

Yes.

#### 5. What is the Effective Date?

Wages paid between March 12 and December 31.

#### 6. What Limitations Should I Be Concerned About?

The biggest limitation is that the credit is not available if the employer takes out a Small Business Interruption Loan offered under Section 1102 of the CARES Act. If you are considering taking out one of these SBA loans, consider whether the benefit of the loan is worth the loss of the credit.

Furthermore, not all wages qualify. The amount of qualified wages per employee for all quarters is capped at \$10,000, which means that the maximum credit per employee is \$5,000. In addition, wages do not include amounts taken into account (i) for purposes of the payroll credits, (ii) for required paid sick leave or required paid family leave in the Families First Coronavirus Act, (iii) the Section 21 work opportunity credit, or (iv) the Section 45S employer credit for paid family and medical leave.