Employers Claiming CARES Act Employee Retention Credit Can Benefit from New Rules

The Department of the Treasury and the Internal Revenue Service have issued guidance on how to calculate gross receipts to determine an employer's eligibility for the Employee Retention Credit (ERC) provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Under the CARES Act, employers are eligible for the ERC if their gross receipts for a calendar quarter decline by a certain percentage. The new guidance permits employers, including tax-exempt employers, to exclude certain stimulus proceeds from gross receipts solely for determining eligibility for the ERC.

Background

The ERC is a refundable payroll tax credit provided under the CARES Act to encourage employers to keep employees on their payroll during the pandemic. It is available to eligible employers who have fully or partially suspend operations due to a COVID-19 shutdown.

Previous IRS guidance clarified that employers who received Paycheck Protection Program (PPP) loan forgiveness, shuttered venue operator grants, or restaurant revitalization grants may also claim the ERC, so long as the same wages were not counted for both the ERC and the other programs. However, it is not clear whether the various incentive payments received would need to be included as gross receipts to determine ERC eligibility in a given quarter.

Safe harbor

The new guidance provides a “safe harbor” permitting employers to exclude the following relief programs from gross receipts in determining ERC eligibility:

- The amount of their PPP loan that was forgiven
- The amount of any shuttered venue operators grants received
- The amount of any restaurant revitalization grants received

The IRS and Treasury Department pointed to existing guidance permitting employers to participate in both the ERC and the relief programs as evidence that Congress intended employers to avail themselves of both types of relief.

Employers are not required to apply this safe harbor, but if they do, they must exclude the amounts from their gross receipts for each calendar quarter in which they are relevant.

The guidance applies to wages paid after March 12, 2020 and before January 1, 2022 and does not permit the amounts to be excluded from gross receipts for any other federal tax purpose.

Pano Constantine

(516) 473-0801
pconstantine@acumenins.com

Acumen Solutions Group
600 Broadhollow Road, Suite 200
Melville, NY 11747