Season 2 | Episode 32

Everything You Need To Know About The Employee Retention Tax Credit (ERTC)

PAYCHEX
Business Series
Coronavirus

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Full transcript

Gene Marks:
Hey, everybody and welcome to the Paychex Business Series podcast. My name is Gene Marks. I'm sure you guys know me from all the different places that I write, like The Hill and The Washington Times and The Philly Inquirer. Today, we're going to be talking about one specific tax credit that is super important for your business. It's called the Employee Retention Tax Credit. I've got Steve Dombroski joining me. He's a Senior Payroll Tax Compliance Manager at Paychex, and he knows everything about the Employee Retention Tax Credit.

Gene Marks:
This is a credit where you can get up to $7,000 per employee per quarter for the next two quarters of 2021 as a credit back. If your credit is over what you paid in payroll taxes, you can actually get the cash back from the government. It's a big time tax credit, a great benefit that's offered to you, and something that Steve's got a lot more information on. Steve Dombroski, Thank you so much for joining me. I'm glad that you're here.

Gene Marks:
And we've got a very complicated topic of discussion today, which is the Employee Retention Tax Credit, but it's super important for our audience, people that are still up and running and running their businesses and have been paying their employees. It's a giant tax credit that's available to them. Steve, tell us everything we need to know about the ERTC.

Stephen Dombroski:
Well, we could spend an hour on that easily. I mean, this really is a tremendous credit for employers to take advantage of. The big thing now that we saw pass with the new stimulus bill, Gene, is that change for those businesses that had taken a PPP loan last year in tax year 2020. First overall, that Employee Retention Tax Credit, what it does is for those eligible employers, they do have the opportunity to receive a credit for the wages that they've paid to their employees. Certainly there are limits on that.

Stephen Dombroski:
But if their business has been impacted, either had to close or have been partially suspended, or they experienced a revenue loss and that does vary based on if it was in tax year 2020 or tax year 2021, they are an eligible employer for the credit. And really at a high level, for tax year 2020, you can look at eligible wages, which cap at $10,000 for the year for their employees, and they can get a 50% credit on that. So up to a $5,000 credit for those $10,000 in wages paid to the employee for the year end 2020.

Stephen Dombroski:
And then now that they've expanded it with the bill, in 2021, that credit is even more generous because that $10,000 wage cap isn't for the year, it's now per quarter and it's up to 70% of the wages paid, so up to $7,000 out of $10,000 in wages paid to the employees per quarter. That is for the first two quarters of tax year 2021, up through the wages paid through June 30th of 2021.

Stephen Dombroski:
I think a key important thing here is we knew previously, if you were a business that did take advantage of the PPP loan program last year, you were not eligible to participate in the credit program. Now you are eligible to participate in that retroactively. That's a big deal. And I think a lot of employers are going to want to consider how they can take advantage of that as long as they aren't using it for the wages that were forgiven through their PPP loan forgiveness.

Stephen Dombroski:
There's no double dipping there, but they really can build up on the value that they have here in the credits they can receive.

Gene Marks:
Let me backtrack just a little bit. This is great stuff. First of all, let's talk about eligibility. Because these are all based on questions that I've got, so I'm going to test you. Hopefully you know the answer. If you don't know the answer, feel free to just make it up because no one knows where you live. Just kidding. First part of eligibility is, if your business was shut down or partially shut down, that would allow you to be eligible for the ERTC. Is that correct?

Stephen Dombroski:
Yup, that is correct.

Gene Marks:
Does it have to be in that specific quarter? So say we're in the first quarter of this year. Let's say we weren't shut down this quarter, but we were shut down back in 2020. Are we still eligible to take the ERTC this quarter? Or does the shutdown have to occur in the quarter where you're taking the credit?

Stephen Dombroski:
Well, the shutdown does apply for the quarter that you're taking the credit in. So let's just say if that shutdown isn't applying right now in first quarter of 2021, but it did apply back in 2020 during a certain period, then you could be eligible for that retroactive credit. But keep in mind too, that's not the only disqualifier, even though you may not be shut down. And I'm sure we'll get into this. We can get into the revenue loss. Yeah.

Gene Marks:
Well, before we leave shut down, one other question. Again, because people ask me, "It's a shutdown or partial shutdown?" Here's a specific case when trying to define a partial shutdown. If a restaurant is not allowed to have indoor dining, but can only serve its customers by delivery or outdoor dining, is that considered to be a partial shutdown?

Stephen Dombroski:
Yeah, yeah, that would count. Another thing that I'll throw in there that also counts is perhaps your business wasn't shut down or partially shut down, but you had no choice but to shut down because your suppliers had to be shut down and they're critical to you being able to operate your business. You're impacted and you are kind of, in essence, an extension of that. The IRS actually specifies all of that as well in their frequently asked questions. Something to keep in mind.

Gene Marks:
There could be an indirect shutdown. Even though your business wasn't shut down, because your business has been impacted because your suppliers are shut down, then you may be eligible. Is that...

Stephen Dombroski:
Yeah. Definitely worth looking into, yes.

Gene Marks:
All right. Very, very good. All right. And then, you're right, second part of the eligibility is the revenue test. Now it's a 20% revenue loss, right? Either this quarter or next quarter compared to the corresponding quarter in the prior year. Is that correct?

Stephen Dombroski:
Let's clarify for our listeners that that 20%, that applies for credit taken in tax year 2021.

Gene Marks:
Right.

Stephen Dombroski:
It does remain at the 50% level if you're going retroactive to 2020. When you look at that 20% revenue loss, you are looking at tax year 2019 compared to your quarters here in 2021, which really could be more advantageous when you think about all the businesses and their loss of revenues during 2020. We wouldn't want to have them compare to that period.

Gene Marks:
That means that just for 2021, either this quarter or next quarter, if in either of these quarters I have suffered a 20% revenue loss compared to the corresponding quarter in 2019, that would make me eligible for the ERTC?

Stephen Dombroski:
Yup. Yup.

Gene Marks:
And then if we're talking retroactive, if I want to go back to the fourth quarter or third quarter of 2020 there, that has to be a 50% revenue loss compared to the corresponding quarter in 2019. Did I say that right?

Stephen Dombroski:
Yup, that is correct. It's a 50% technically they call it a decline in gross receipts.

Gene Marks:
Got it. Okay. That's fine. And one final thing before we get out of eligibility is you just mentioned the word gross receipts. I don't know why... I don't know if people are overthinking this, but the language in really throughout the stimulus bill where they have these like sort of revenue qualifications, sometimes they talk about revenue, sometimes they talk about gross receipts. How do you define... gross receipts, is it revenue? And is there any difference there? What should a customer really be using for their numbers?

Stephen Dombroski:
When they look at the gross receipt piece, I mean, technically the IRS is using gross receipts in their frequently asked questions that they have available. They are very specific in describing what that is and the loss of profits and everything. I mean, we could go on and on about that, but what I would really recommend is it's a quick read in the FAQ section on irs.gov that explains that, because every employer situation may be different. That's what I would really recommend employers do who are questioning that.

Gene Marks:
Got it. All right. That sounds good. When people are asking me about revenue and gross receipts and all that, I've been telling them, my clients, I'm saying, "Listen, however we call revenue on your tax returns is probably the definition to use," which might be right in most of the cases. But you're right, we should be looking at the FAQ's. That's great. Now we talked about eligibility. It's either a partial or full shutdown in that quarter or a revenue loss, which in 2021 is a 20% revenue loss. If you want to go retroactive to 2020, it's still a 50% revenue loss.

Gene Marks:
Now I'm going to ask you to repeat, again, just so we hammer it through, you then calculate it, it's really up to $7,000 per employee per quarter, because it's 70% of their wages up to $10,000 per employee per quarter this year. Is that correct? This year?

Stephen Dombroski:
Yes. Yeah, yeah, that is correct, yup, as long as they're those wages meet the definition of eligible wages, which generally means that those wages weren't covered by other tax credits or PPP loan forgiveness, things like that.

Gene Marks:
No double dipping. You do this calculation on your federal 941 returns? you don't have to apply for anything or have to fill out a separate form. Is that correct?

Stephen Dombroski:
Yeah, that's right. In order to take advantage of the credit right away, what they've allowed is they've allowed an employer to hold on to, if they'd like to, their employment taxes that would normally need to be deposited to the IRS to make up for that difference. And then if there's any overage there where they would be owed some additional money, that is handled through the 941 process. Obviously the big piece that we're really waiting for from the IRS is that retroactive application for tax year 2020.

Stephen Dombroski:
Certainly an employer can go back and amend any of their previously filed 941s. But in some of our discussions with the IRS, we're anticipating perhaps as early as later this week, they may be releasing some alternative methods to how an employer can claim that credit retroactively. And then for this year, that can happen through their 941 process. And we're also waiting to see, because there was the advance option last year through what was called the Form 7200.

Stephen Dombroski:
If an employer didn't want to have to wait for filing their 941, having the IRS process that and then provide the payment back to the employer, we're anticipating they may likely extend that for first two quarters of this year.

Gene Marks:
Got it. Now, we're taking this credit against the employer's portion of FICA only, the 6.2% tax, not Medicare. Is that correct?

Stephen Dombroski:
It's not just the employer portion, but they can also use it for their federal income tax withholding as well. Those employment taxes, they can hold onto that. Now, one key thing I do want to mention here is that if you were an employer who chose to defer the payment of your employer portion of the social security tax, that's still a deferred amount that you're going to owe you're not counting that towards the credit. It can definitely get a little bit messy based on if you did take advantage of that program last year.

Stephen Dombroski:
You just have to be cautious with your approach. And certainly we would recommend talking with a CPA such as yourself or a tax advisor to make sure you're doing it the right way.

Gene Marks:
Right. Yeah. I mean, it's complicated because you need to keep what you're doing separate from your PPP forgiveness because you can't double dip, like you said, and you have to keep what you're doing for the ERTC separate from whether or not you deferred any of your employer tax payments. It's really like a lot of accounting exercise that you've got to go through to make sure that you're doing this correctly.

Stephen Dombroski:
You're right. And one key thing I'll just throw in there, Gene, too is also keep in mind, because of the emergency paid sick leave and family leave that was available through the FCRA Bill that passed last year, you also have to take that into account. That if you had paid wages to employees, essentially we refer to them as like COVID sick wages, those are not part of this employee retention tax credit. That comes into the game as well.

Gene Marks:
So that's a fourth thing that you've got to be separately accounting for. You have to keep your wages separate for PPP forgiveness, for ERTC credit, for any deferred taxes that you haven't paid, and for any wages that you're going to use in a credit calculation related to the Families First Coronavirus Response Act. All of these wages have to be separate and the accounted for separately, because you can't use the same wages for any multiple of these benefits that are available. That's really good. Anything else, Steve, that I should think about?

Gene Marks:
This actually went faster than I thought, because you were so good at summarizing all of this up, and I appreciate that, but have we missed anything?

Stephen Dombroski:
I guess there's an additional point that we'll mention. It comes when we look at eligible employers and the wages that are eligible based on their average number of full-time employees, because there was a change there. Let me just briefly explain this. Under the credit for tax year 2020, if you had an average of 100 full-time employees when looking at the same period back in 2019, then your eligible wages are only those wages that were paid to employees for not performing services.

Stephen Dombroski:
Basically if you said, "Hey, you know what? I'm going to be a good Samaritan. My employees aren't working right now, but I'm going to continue to pay them," but if you were a smaller employer with less than 100 full-time employees on average, then that credit can apply to any wages. Maybe you had...

Stephen Dombroski:
For example, your situation you use with a restaurant where you had the wait staff and bar staff that wasn't working, but you still had kitchen staff that was working, but you had less than an average of 100 employees, the credit applies to all of those wages because of your size. And then the big change with the new bill is that in 2021, that applies if you had 500 or fewer or 500 and greater. Same rules, but just increases the employer size. I would certainly mention that change as well.

Gene Marks:
Got it. So more employees are eligible and more wages are eligible.

Stephen Dombroski:
Yes.

Gene Marks:
Steve, and one final question just to make sure we drill this home for our listeners, it is a tax credit, but it's a refundable tax credit, correct?

Stephen Dombroski:
Yes.

Gene Marks:
Can you explain what that means so everyone gets it?

Stephen Dombroski:
Yup. What that really means is, as we were talking, if you had already applied your employment taxes to the credit, but you were still owed some additional amounts. So let's say you do the math. You figure out that the credit that you're owed is $5,000. You had $2,000 that you were going to have to deposit in employment taxes to the IRS. You hold onto that, but you still have that $3,000 difference, and that's where the refundable portion comes in. Because when you file your quarterly Form 941, you're going to provide that information on that 941.

Stephen Dombroski:
And then that's going to indicate to the IRS that, in fact, you are owed still that $3,000 from the government and that will generate a refund or payment back to you as the employer from the IRS.

Gene Marks:
Steve Dombroski is a senior payroll tax compliance manager at Paychex. Steve, that was just great information about the employee retention tax credit. I hope all of you guys listening take advantage of this if you think that you qualify. By all means, talk to your accountants or to your payroll service company or a payroll experts. Go through this calculation. It's real cash money. Steve, thank you. My name is Gene Marks. Thank you for joining me on this podcast.

Gene Marks:
If you need more help running your business, more support, more content, more advice, visit us at paychex.com/worx. That's W-O-R-X. Again, my name is Gene Marks. Thank you and we will see you again next time.

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