Season 2 | Episode 42

How the American Rescue Plan Act of 2021 Handles Tax Credits Like ERTC and FFCRA and What They Mean for Your Business

PAYCHEX Business Series

Coronavirus

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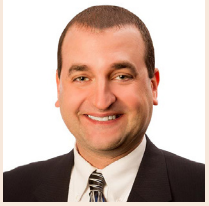

Andy Gargana

Senior Federal Compliance Analyst, Paychex

Full transcript

Gene Marks:
Hey everybody, this is Gene Marks. The new stimulus bill has finally passed. We've got a lot of stimulus that small businesses have access to. Today, I'm going to talk to Andy Gargana, who's a compliance analyst at Paychex. Andy specializes in the tax credits around the stimulus. And this conversation is basically, this is a cumulative catch-up as we speak. This is everything that's available to you by way of tax credits, and in many cases, refundable tax credits for your business.

Gene Marks:
We're going to talk about the Employee Retention Tax Credit. We're going to be talking about the Families First Coronavirus Response Act tax credit for your business, and also a new credit related to COBRA insurance payments as well. This is money that you can put into the bank because these tax credits are very, very valuable and they will be expiring sometime this year.

Gene Marks:
Andy, let me turn to you first and let's talk about the Employee Retention Tax Credit. Tell us what we need to know. What is this?

Andy Gargana:
Sure. Thanks for having me on again, Gene. It seems like we're talking quite frequently with all these stimulus packages.

Gene Marks:
I don't know, that's probably not a good thing, but I'm happy to speak with you.

Andy Gargana:
Well, I'm hopeful this will be the last one and we'll recover sufficiently so another one won't be necessary, but I guess we'll see.

Andy Gargana:
Yeah, so retention credit, we've seen quite a lot of changes to this since it was first enacted back in April of 2020 with the CARES Act. Most recently in December when the Consolidated Appropriations Act passed, it not only extended the credit through June 30th of 2021, it was originally supposed to expire December 31st of 2020. So it extended it out another six months.

Andy Gargana:
It also changed some of the percentages as far as how much of employees' wages were eligible for the credit. It was 50% in 2020. They changed that in 2021 to be 70%. And also in 2020, the amount of wages per employee that were subject was $10,000 for the whole entire year. With the Consolidated Appropriations Act, they changed that to be $10,000 for the first two quarters of 2021. So essentially for 2021, now an employer could get up to $14,000 in credit for their employees over the first two quarters of 2021.

Andy Gargana:
The one other major change was the employee limit for delineating how much of your wages were eligible. What it was before is if you had a hundred or fewer employees, all of your wages could be eligible for the credit that you paid to your employees. Whereas anyone over a hundred, it was only those employees who were not providing services at the time. With the Consolidated Appropriations Act, they upped that number to 500 so more employers would get more credit for 2021.

Andy Gargana:
Now, we're going to change it again. The American Rescue Plan, we'll call it ARP for short, that seems to be the acronym I'm seeing out there, what everyone's calling it, which is I believe being voted on as we're speaking so it should be signed in the law very shortly. This extends the retention credit even further. So now it's going to be extended from, it was supposed to expire June 30th, now it's extended all the way through the end of the year, expiring on 12/31 of 2021.

Andy Gargana:
They didn't change, as I've seen so far, they have not changed the credit percentage as far as how much wages are eligible. It's still the 70% of the employee's wages are eligible for the credit, so they haven't changed that. The one thing that it looks like they changed is now the credit is going to be applicable against Medicare tax. It was previously applicable against the Social Security for the employer and it looks like now they change it to be Medicare.

Gene Marks:
Only Medicare or Social Security and Medicaid?

Andy Gargana:
It looks like only Medicare, but we're still waiting for more information to get a clarification. The problem's going to be, and as we've seen with the past bills, the bill say one thing and then it's up to IRS to interpret that and come out with guidance, and who knows what they're going to do when they come out with that guidance. They've done some funny things in the past year. So we're still waiting for more information on that, but it is something to be aware of. So it looks like it'll change.

Andy Gargana:
Definitely I'm thinking we're going to have a change to the 941. The good news with that is that's not going to be effective until July 1st because the current model they had in place, which was put in place by the Consolidated Appropriations Act, that doesn't end until June 30th. So all of these changes are going to be effective beginning July 1st through the end of the year.

Gene Marks:
Got it. What about if you want the Employee Retention Tax Credit and you also are getting a Paycheck Protection Program loan?

Andy Gargana:
Yeah, that was one of the big things with the Consolidated Appropriations Act. If you'll note back in the CARES Act, that was an eye opener. If you got a PPP loan, you were not able to get the retention credit. That changed with the Consolidated Appropriations Act. Important to note is you can't take both of them on the same wages. You can take both of them now, but you cannot use the same wages for PPP and Employee Retention Credit. It has to be different wages in order to qualify for the credit. That's still going to be in place for the extension we're talking about in the American Rescue Plan.

Andy Gargana:
And just as a side note, IRS did finally come out with guidance, I believe it was early last week, on how to claim those credits retroactive. If you remember the Consolidated Appropriations Act made it so that anyone who did receive a PPP loan in 2020 could now go back and claim the retention. Whereas, obviously due to the CARES Act, they weren't able to do that. Now that they can, they have to go back. And actually the only way to do that is to file 941-X and go back and retroactively claim the credit for each quarter on which they qualify for it. A lot of paperwork to go back and get those, but you're talking about probably some pretty good sums of money for businesses who really need it. Definitely would be worth it.

Gene Marks:
Yeah, I agree. And obviously, it's a refundable credit. If you're listening to this, that means that whatever your credit calculation is, you're taking it against your employer's portion of FICA for now. We'll determine if it's just Medicare for the second half of the year. More information on that to come. But if your credit is bigger than what your taxes are that's owed, you get the money back as a refund.

Gene Marks:
Thinking about it, Andy, if they change it to just be Medicare tax which is a lot lower than FICA, that would be a benefit because the calculation would be well in excess of… because Medicare is a smaller percentage, so it would be more cash back to employers. It could be a big deal, but I bet you it's not. I bet you, when the IRS clarifies it, it's going to be FICA and Medicare. I guess we'll see, right?

Andy Gargana:
Yeah. Yeah, that's an interesting point. Yeah, I mean the other point that go along with that is with the way those credits work, you can take them against your payroll taxes, so you could reduce your deposits throughout the quarter. Whereas if it's Medicare, it's going to be a smaller amount to reduce and it's going to take you longer to actually claim that full credit throughout the quarter.

Gene Marks:
Interesting.

Andy Gargana:
It will be very interesting to see what IRS comes back with and how they want to handle it.

Gene Marks:
One final, big thing before we leave for the Employee Retention Tax Credit, and I will sum this up, but just to make sure that this is not available to all businesses, right? You have to show that you've been impacted by COVID, correct?

Andy Gargana:
Correct. Yeah, there's two criteria. And I believe I said this in past podcasts when we've talked, I encourage everyone to go out to the IRS website and do the FAQ pages. They have a lot of good information. We can give you general information here, but there's a lot of specifics they dive into and they have examples out there. Anyone who still has questions after this, I would definitely encourage you to go out there, check it out. You should be able to find what you're looking for there.

Andy Gargana:
But yeah, it's not all businesses. There's two criteria you have to have, either a forced shutdown due to a government order or you see a decline in receipts from previous years, like the same quarter in a previous year on. If you hit one of those two milestones, then yes, you would for the retention credit.

Gene Marks:
Got it. Okay, so let me recap before we just move on. The Employee Retention Tax Credit, it's been extended now for all the quarters through the end of 2021. This is going to go on for the year. Not all businesses are qualified. You really have to show that you've been either partially or fully shut down by the government or suffered, I think it's a 20% decline in receipts compared to the same quarter in the prior year. The credit itself can be up to $7,000 per employee per quarter. You take it against your 941 return. You take it against the payroll taxes that you're paying in.

Gene Marks:
We still have a question as to whether or not that includes both FICA and Medicare or just Medicare in the second half of the year. And you can also go back and adjust 2020 if you think you were owed this credit back then. You can adjust your 941 returns and go back and get it. It is a complicated calculation, but I'm telling you, right, Andy, I mean, it could be big cash for a business so it is worth the time to do this. Talk to your accountant or to your payroll company. I know Paychex is offering special services to help calculate the Employee Retention Tax Credit. It's something that every business owner should be looking into. Is that a fair statement?

Andy Gargana:
Yep. Yeah, we can handle that for them. So if they need assistance, yep, definitely.

Gene Marks:
The next credit that we'll talk about is a little less complicated and it has to do with the Families First Coronavirus Response Act. Andy, tell us what we need to know about that tax credit.

Andy Gargana:
Yep. That one's been around too since 2020. It was originally set to expire December 31st and the Consolidated Appropriations Act extended that out through March 31st. Now the American Rescue Plan is going to extend that further, so now you're going to be able to take the credits until September 30, 2021.

Andy Gargana:
A few items to note with that one. When it was extended by the Consolidated Appropriations Act... Actually let me back up just a little bit. With the way that the paid sick leave works, employees are eligible for 10 days and they can have up to, I believe it was 5110. Don't quote me on that number because I'm trying to remember it off the top of my head, but that was their total amount of leave that they could be paid and the employer could get a credit for.

Andy Gargana:
Once they used those 10 days, that's it. You don't get any more. And that was extended through 3/31. So if they didn't use all 10 by the December 31st deadline, they still had a couple left. They could conceivably use them in first quarter up to 3/31. And then once you hit your 10 day limit, then that was it. You didn't get any more credit.

Andy Gargana:
Well, with this extension, which is in effect from April 1st on to September 30, 2021, the IRS basically reset that. So beginning April 1st, you have a fresh 10 days, for example, that you can use for leave. If you already used all of your 10 days, you used all of your paid sick leave in 2020, well now they're giving you an opportunity if... I mean, hopefully you don't need it, you don't get sick again. But if for some reason your employee's out again, they got sick again after April 1st and they needed to take another 10 days of leave, they would be able to. The IRS basically reset the counter on that, so you can start over as of April 1st.

Gene Marks:
Let me jump in here and just say so that this relief act right now I don't believe it's required for employers in 2021. Is that correct? I know it's voluntary, correct?

Andy Gargana:
That's correct. We haven't seen anything in the new legislation yet that would reinstate the mandate for that, if you will. It was in the Consolidated Appropriations Act. Wow, these are all a mouthful to say.

Gene Marks:
These are a lot of words that we're talking here. Because I call it the December stimulus.

Andy Gargana:
Yeah, I like that even better. We'll call it that from now on. But yeah, when they extended that out through March 31st, they extended the credit but not the mandate. An employer is not mandated to provide it, but if they did, they would be eligible to take the credits on it. From what we've seen so far, it looks like that's going to be the case from April 1st through September 30th.

Gene Marks:
Right. The bottom line is, if you're an employer, you can voluntarily continue to abide by the Families First Coronavirus Response Act, which means you can give employees time off if they need to take because they or their family members have been impacted by COVID. And by the way, that includes kids learning from home and a parent has to stay home.

Gene Marks:
And I'm pretty sure, and you can check on this, but I'm advising my clients.... So this is Gene Marks talking not Paychex, that if you give your employees time off to get even a vaccination shot, that's time off that's related to COVID. And that may very well be included in the calculation that you do to calculate this credit. And the credit, Andy, is designed to really reimburse you for the employee's wages, correct?

Andy Gargana:
Correct. And just to back up to what you just said with the vaccination, that's actually included in the legislation as another valid reason that you could provide leave. If one of the boys goes to get vaccinated, and I mean we've all seen the story of some people have reactions to it, so say they got vaccinated and they didn't feel well for a couple of days after, that would actually qualify as paid sick leave now.

Gene Marks:
Got it. That's a huge help. That really is. And so the calculation then would reimburse you for the time they spent out. And you do this calculation, Andy, on your 941 return as well?

Andy Gargana:
Correct.

Gene Marks:
Okay.

Andy Gargana:
Yeah, it works similar to the Retention Credit, whereas you can apply it against deposits, reduce your liability and then that's all reported on the 941. And then if you have any excess, you can get a refund at the end of the quarter.

Gene Marks:
Beautiful. All right, well that's great. Okay, so we've talked about the Employee Retention Tax Credit, we've talked about the Families First Coronavirus Response Act tax credit. The final credit is actually new, right? This has to do with COBRA. Tell us about that.

Andy Gargana:
This one is brand new. And I've been around long enough and I think you have too. Back in 2009 and I forget the name of the, the law, but there was a COBRA credit enacted back in 2009, which turned out it was reported on the 941. Again, we're still waiting to see how IRS is going to interpret this, but our assumption is that it's going to be handled similarly. What it is just a basic… Because I am in no way, shape or form an expert on COBRA. I know the basics on it. I can tell you what the tax credit piece that we're seeing-

Gene Marks:
I'm not an expert in it either. I saw Cobra Kai on Netflix and it was excellent.

Andy Gargana:
That's a great show. Yes, me too.

Gene Marks:
Yeah, so that pretty much extends my level of expertise to COBRA, but let's at least try to share what we do now.

Andy Gargana:
Sure. What this new credit is going to provide is 100% subsidy for individuals who are receiving COBRA. For example, I'm an employer and one of my employees goes out and receives COBRA coverage. Let me back up just a second. This is only in effect from April 1, 2021 through September 30, 2021, so a six month period here where they're going to offer this credit. My employee goes out and they receive COBRA, say they get $5,000. As an employer eligible to take a tax credit on that money. They're providing 100% subsidy of that, so I can get a tax credit for $5,000 for that COBRA.

Gene Marks:
Let me see if this makes sense to you. So I'm an employee. I guess I'm on leave, I'm on medical leave. My health insurance, I can still receive it under COBRA. If an employer pays for that health insurance, they can get 100% subsidy in the form of a tax credit for paying for the employees Cobra. Does that make sense?

Andy Gargana:
Yep. Yeah, that's correct. That's how we understand it. Yep.

Gene Marks:
Got it. And do you know, is this a tax credit that an employer takes again on their 941s, or if they're going to be taking it at the end of the year? Do you remember how it worked in 2009?

Andy Gargana:
It was on the 941 in 2009, but that's the million dollar question now is what IRS is going to do with this. I mean, like I said, our assumption is they might try and do something similar to what they did back in 2009, which it was reported. There was a special line on the 941 for reporting the COBRA credit. We're going under the assumption right now that they're going to do something similar for this. But again, until IRS releases any guidance on this one, we're kind of shooting in the dark right now.

Gene Marks:
Got it. Okay. No, that's fine. That's completely fine. Okay, so Andy, this is great information. And guys, I know there's a lot of information as well. We're going to do our best to put some links maybe to the key things on the IRS site on our show notes. And obviously, people, if you have questions about the Employee Retention Tax Credit, the Families First Coronavirus Response Act, the tax credit with a COBRA tax credit, first of all, you can email me at gene@marksgroup.net, or you can leave a comment. We check on them and we will respond to your questions because I know that this is really a big thing.

Gene Marks:
Well, Andy, as usual, a fantastic help and great information, and I appreciate the time that you've spent. Everybody, I've been speaking to Andy Gargana. He is a compliance analyst at Paychex, knows everything you need to know about the Employee Retention Tax Credit, the Families First Coronavirus Response Act tax credit, the COBRA tax credit. Great information, Andy, thank you very much for joining us.

Gene Marks:
If you need more information and help and advice in running your small business, by all means, please visit us at paychex.com/worx. That's W-O-R-X. My name is Gene Marks. You've been listening to the Paychex Business Series Podcast. We've got lots more to talk about in future segments, and we look forward to you coming back and joining us. Take care.

Speaker 3:
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