Season 2 | Episode 54

Employee Retention Tax Credit (ERTC): Answers to Your Most Asked Questions

PAYCHEX Business Series

Coronavirus

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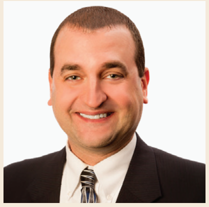

Andy Gargana

Senior Federal Compliance Analyst at Paychex

Full transcript

Gene Marks:
Hey everybody and welcome to the Paychex Business Series podcast. My name is Gene Marks and we are talking today with Employee Retention Tax Credit (ERTC), who is a payroll tax compliance analyst at Paychex. Before you go to sleep, I don't want to hear it, we're talking about a giant tax credit that if you're running a business, you need to be aware of. This is a refundable tax credit that can give you cashback from the government, the employee retention tax credit. And because it is the IRS, it is a complicated, bureaucratic mess, but you need to know what you got to know, so you can try and claim for this if you're eligible and maybe you are. Andy is going to fill us in on all that, that is what his job is. Get a pen and paper, start taking some notes, listen in closely. This will be all the information you need about the employee retention tax credit, to make sure that you get back what is owed to you. Thank you very much for joining us, Andy.

Andy Gargana:
Sure.

Gene Marks:
You are the analyst expert for the employee retention tax credit, and I am continuing to get a lot of questions about it. It is such a giant, potential benefits for so many businesses that we wanted to revisit this issue and really kind of dig into some of the details. You're the best person to give us this information. Let me start, most companies I talked to, they're still not aware of the employee retention tax credit, Andy. Give us a recap. What is it and why should they be taking advantage of it?

Andy Gargana:
Yeah Gene, we're hearing that here at Paychex, too. A lot of questions. "Hey, what is this? How do I take advantage of it?" Quite simply, it is a credit that the IRS provides to employers. They can get a tax credit against their payroll taxes for continuing to pay their employees during this pandemic.

Gene Marks:
So Andy tell me, who exactly is eligible for the employee retention tax credit?

Andy Gargana:
It's going to be any employers. There's two conditions. One is that you are forced to close due to a government order- state local, federal. For example, here in New York state, we have a lot of restaurant businesses were particularly hit hard because of a stay order, they were forced to close, couldn't have any seating capacity. As a result of that, if they continue to pay their employees, then they would be able to claim those wages for the credit. Now, the other condition is, if you saw a substantial decline in your gross receipts to a comparable quarter in 2019. Important to note, 2019 is the benchmark year you use because 2020 was a little weird with the pandemic. Some people might've had lower gross receipts anyways, due to the pandemic, so they use 2019 as the comparison.

Andy Gargana:
For any quarters in 2020, if you're trying to determine if you had a decline in gross receipts, you'd look at, we'll say second quarter of 2020 for example. You would look at your gross receipts, compare those to second quarter of 2019, if you had a 50% more decline in gross receipts, then you would be eligible for the credit. Now for 2021, that decline number was changed with legislation. For 2021, you only have to have a 20% decline in gross receipts. So second quarter 2021, if I compare my gross receipts and again, we're using 2019, so we'd look at second quarter 2019. If you only have a 20% decline in gross receipts compared to the 2019 quarter, then you would be eligible for the credit.

Gene Marks:
Got it. Okay. That explains it perfectly. Just in recap, you're either partially or fully shut down, basically in any quarter in 2020 and 2021, or you either had a 50% decline in your revenue in any quarter of 2020, compared to the corresponding quarter in 2019 or, a 20% decline in revenue in any quarter of 2021, compared to the corresponding quarter in 2019.

Andy Gargana:
That is correct.

Gene Marks:
All right. I think I got that. And this expires at the end of this year, it goes all the way through 12/31/21, correct?

Andy Gargana:
Correct.

Gene Marks:
Okay.

Andy Gargana:
Initially, when it was first passed back in 2020, it was supposed to expire 12/31/2020.

Gene Marks:
Right.

Andy Gargana:
Then the legislation passed at the end of the year, the Consolidated Appropriations Act, extended it out to June 30th.

Gene Marks:
Got it.

Andy Gargana:
And the American Rescue Plan that was just passed in March, extended it for the entire year. So yes, you have until 12/31/2021 to claim the credit.

Gene Marks:
Perfect. Okay. In 2020, a lot of my clients could not get the employee retention tax credit because they also got a Paycheck Protection Program (PPP) loan. And the rules changed, which now allow us to go back to 2020 and claim that credit. Can you expand on that?

Andy Gargana:
Yep. Yeah, that was in the Consolidated Appropriations Act that was passed at the end of December last year. That was a big change. Initially, as you mentioned, when the CARES Act was passed last year, anyone who took a PPP loan, you could not take the employee retention credit. With the new legislation, now you can. The one huge caveat that everyone needs to understand, is you cannot take the retention credit on the same wages that were taken for the PPP. The IRS does not want you to quote unquote, double dip on the credits. You can take both of them, but they have to be on different wages.

Andy Gargana:
The way that you go about doing that now, unfortunately there's only one way to do that, and that is to file a form 941-X and amend. You have to do that for every quarter you want to claim a credit. If you have credit second, third, and fourth quarter, you have to file a 941-X for each of those quarters. Right now, there is no electronic process so it's all done on paper. It's all filed with IRS and they are getting bombarded as you can imagine. They still had a backlog from when they had to close, due to COVID. They're still trying to dig out from that, and now they're going to get bombarded with amended returns. It's going to take a substantial time to actually get the refund back in an employer's hand. I would definitely say if you know you're going to be doing this, get it filed as soon as possible, so that you can get it processed as quickly as IRS can get to it.

Gene Marks:
Yeah, that's great advice. I can't emphasize enough, I mean, this is a refund that you can get back on the payroll taxes that you paid in last year. It's cash coming back to you. Even if the IRS doesn't get to it in another five or 10 years or however long their backlog is, at some point you're going to get the cash back and it's really worthwhile going through that exercise. Okay, Andy, next question, which wages are eligible for this credit? Can you walk us through the wage calculation that we need to know?

Andy Gargana:
Yep. There's actually a two-part answer for you.

Gene Marks:
Okay.

Andy Gargana:
The first is the wages themselves. Quite simply, they are FICA taxable wages. I could give you the IRC code number, which defines what that is, but…

Gene Marks:
Please don't.

Andy Gargana:
I like reading it and I'm sure no one else is going to want to read it…

Gene Marks:
Okay. FICA taxable wages.

Andy Gargana:
Yeah.

Gene Marks:
Okay.

Andy Gargana:
Important to know, included in the way in with that, because we've gotten a lot of questions on this too, tips are included in that as long as they're considered FICA taxable.

Gene Marks:
Okay.

Andy Gargana:
That would mean any cash tips over $20. That is a question that at Paychex, we've gotten multiple times. I think it's important to note that. IRS did come out and say finally, "Yep. If they're considered FICA taxable, you can include them." That's important to know. That's the wages themselves. Now, which wages can you actually include in the credit? Well, that's going to depend on how many employees you have. The IRS stipulates, they use full-time employees as a gauge. We'll focus on 2021.

Gene Marks:
Okay.

Andy Gargana:
If you have 500 or less employees, than any wages paid to any of your employees, can be included in when factoring in the credit. Now, if you have more than 500 employees, then only the wages paid to those employees who are not providing services, can be factored into the credit. Very important distinction to note when you're trying to figure out, "Hey, how much credit do I get?" First thing you got to do, is look at how many employees you have. Then you can determine from there, which wages you can include when you're calculating the credit.

Gene Marks:
So when they're not providing services, that means that if like in my company, I've got people that are doing work for clients and I've got people that just do admin, for example. Are you saying that the people that are doing the work for my clients, if I had more than 500 employees, their wages would not be included?

Andy Gargana:
Correct. If they're still working, then no, you cannot include those wages.

Gene Marks:
Got it.

Andy Gargana:
I'm trying to think of a good example, but due to a forced closure, maybe your office had to close and those full-time employees don't have any work from home capability, so basically they're just sitting at home. They can't do anything for you. But as an employer, you still want to pay them. They're valuable employees, you want to keep them. You're going to go ahead and keep paying their wages, even though they're not providing services, all of those wages that you paid to those employees, you can count that toward the credit.

Gene Marks:
Got it. All right I got you. Yeah. A little bit off script here, but I just want to make sure I heard you clear. You mentioned employers of more than 500 employees, what is the limitations as far as the size of the businesses that are eligible for this tax credit?

Andy Gargana:
There isn't one. It's based on the employee count.

Gene Marks:
Got it. Okay. Can you have a thousand employees and still take advantage of this credit?

Andy Gargana:
Yep, as long as, again, because they're over 500, you're only going to take credit on the wages paid to those employees who aren't providing services.

Gene Marks:
Got it. Okay. That's great. Okay. There were some questions around the wording, let's get back to the revenue. You talked about in 2021, if we had a decline in revenue of 20% compared to the same quarter in 2019, there's gross receipts, there's revenue, there's what does the decline mean? Can you just clarify what we mean by revenue and gross receipts and what is defined as a decline?

Andy Gargana:
Yeah. They don't make it easy on us, do they?

Gene Marks:
No, they do not. They do not.

Andy Gargana:
It's very difficult, all the wording and every time they put out guidance, it seems that some...

Gene Marks:
It makes it worse.

Andy Gargana:
Of the wording we use, is a little bit different from the previous guidance. Then you have to interpret, "Okay, well, what do they really mean?"

Gene Marks:
You know what it is. It's like when you have an IT person come out to fix something in your computer and then three other things break because of it. You know what I mean?

Andy Gargana:
Exactly.

Gene Marks:
It's the same thing.

Andy Gargana:
Exactly. Okay. To go to your example, as we discussed earlier, the decline in gross receipts, where it said if you have a 20% decline as compared to the quarter in 2019, then you would qualify for the credit. Well in the way they had it and some of the wording I've seen in some of the FAQ's and guidance that IRS has put out, they said, "If you 80% of gross reciepts." Basically that means the same thing, 80% of your gross receipts means that you're seeing a 20% decline in your gross receipts. They just don't word it easily for people to understand. But yeah, it means the same thing. If it says, "Hey, if your gross receipts are 80% of what they were in 2019," i.e. that means you had a 20% decline, so you will be eligible for the credit. It was a lot easier in 2020, because it was only a 50% decline. Either way you worded it, you...

Gene Marks:
Yeah.

Andy Gargana:
Had no confusion there, So it was a lot easier to figure out. But yeah, they do make it a little confusing the way they word some of these things sometimes.

Gene Marks:
I got it. I got it. And again, I'm going to ask you this, if you don't know, it's completely fine. When we define gross reciepts, I have some clients that are cash basis and some that are accrual basis, when they say gross reciepts, does that mean just cash that came into the business? Or can this be based on billings?

Andy Gargana:
It's going to depend. What I would advise in that situation, refer to the IRS website (www.irs.gov), The Get Coronavirus Relief Page (https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments)

Gene Marks:
Yep.

Andy Gargana:
There are a million FAQ's out there for retention credits. Actually there's two (https://www.irs.gov/coronavirus/employer-tax-credits). When you go to that page on the top, there's two notices listed 2021-20 and 2021-23, which are the latest guidance IRS has put out.

Gene Marks:
Okay.

Andy Gargana:
One of them is, I believe a hundred page document. It's quite long. But in that document, they spell out all of the FAQ's and they give some really good examples saying, "Okay, if you're this business, how do you define gross receipts for this business?" I would refer to that, because it's going to be different for every different business...

Gene Marks:
Great answer.

Andy Gargana:
They're going to need something a little bit different. They have some really good examples and they have it spelled out and saying, "Okay, here's what gross reciepts is. Here's an example of how you can figure it out, whether you do have the decline and whether or not you'll qualify for the credit."

Gene Marks:
Okay. That's great. And again, I'm going to re stipulate what I said earlier. I know everybody, this sounds like a pain in the you know what, but it's cash that you can get back if you just go through the necessary steps to do it. It's worthwhile doing it. Andy, what is a Form 7200 and how does it work?

Andy Gargana:
Form 7200 is an advance of credit form. Basically what this is, IRS developed a new process, along with a million other processes they developed due to COVID. This form allows an employer, they can complete it. It's not just for retention credit. You can also use it for the FFCRA (Families First Coronavirus Response Act) paid and family leave credits. Also, you're going to be able to use it for the upcoming COBRA tax credit, which, hey, maybe we'll do a podcast on that...

Gene Marks:
Yeah.

Andy Gargana:
When we get more guidance down the road.

Gene Marks:
Right.

Andy Gargana:
I'm still waiting for more information on that one, but you can use it, any of the COVID related credits. If an employer wants to get a refund back quicker than either reducing their deposits or waiting until the end of the quarter, when they filed their 941, they can complete this form. The only way to submit it to IRS is via fax. They will complete the form. There's a number of the instructions at IRS that they have to fax it to.

Gene Marks:
You have to literally send this via fax, not an...

Andy Gargana:
Yes.

Gene Marks:
Email or anything like that. Okay.

Andy Gargana:
Yeah, unfortunately.

Gene Marks:
I've got to dust off the old fax machine. I think I put that away in 1995, but it's around here somewhere.

Andy Gargana:
Yeah. We had the same reaction when IRS released the procedures and said, "Yep, we're going to take this via fax."

Gene Marks:
Okay.

Andy Gargana:
They have an automated hub, well not automated, they have a hub of people, that their sole job is to process the 7200. They pull them in off the fax. They will process the form, provided everything's on it. Then they will issue a refund check. No word on timeframes. I know in the beginning last year, when this first started, it was taking months and months to get refunds.

Gene Marks:
Mm-hmm.

Andy Gargana:
They have refined the process. They've gotten a lot quicker at it. Now it's weeks instead of months, but it's still, a lot of times for most employers, it's going to make more sense to just keep reducing their payroll deposits. I don't know if we mentioned this earlier, or I know we mentioned it on previous podcasts, but when you have the retention credit, you can actually apply that against your payroll liabilities. So say I have 10,000 in credit amount. My payroll deposit is 5,000. I can offset that 5,000 with the credit. I still have 5,000 in credit left. I can carry that to my next payroll. You can keep reducing payrolls until you've used up all of your credit. That way, you keep the money in your pocket if you're an employer. You don't have to make your tax deposits, you just keep it. You get the money right there rather than waiting.

Andy Gargana:
You could, if you wanted to, wait until the end of the quarter and you claim it on you 941 and get a refund back that way. Most employers are going to want this money as fast as possible, so the fastest way to do that is to reduce your payroll deposits. Now the 7200, when it makes sense for that, is if you have an extremely large credit and maybe your payroll deposit amount, it's going to take forever to actually use it up, to keep offsetting every single payroll period. Then it would make sense to file a 7200. For example, say I had 250,000 in credit. I run my week of payroll, it's only 5,000 deposit. That's going to take you 50 payrolls to use up all of that credit. In that case, you're better to file a 7200 for the large credit amounts. You can send that to the IRS. They'll send you a check back a lot quicker, then basically reducing every week. You're still going to have credit left over, that you have to claim at the end of the quarter on the 941.

Gene Marks:
Makes sense. Is it true that the IRS will give you a credit towards the purchase of a fax machine on eBay or is that just a rumor?

Andy Gargana:
You could try that for the business expense deductions. I'm not sure exactly how that works, but you could give it a try.

Gene Marks:
Fair enough. All right. So listen, we've talked a lot about being aware of this tax credit. If you think you're eligible, you want to apply for it. Let's say you're using Paychex or some other fine payroll service or an accountant to do your payroll, whatever, what should you be providing to your payroll service person or provider to make this process easier?

Andy Gargana:
We at Paychex, we actually made it pretty easy for you. All you need to do is tell us which wages qualify, and then we can go ahead and do all the calculations for you. We will apply it to your deposit, if you choose to do so. If not, at the end of the quarter with the 941, we will do all the calculations on the 941 there as well. We've pretty much streamlined it, made it pretty easy. If you're the employer, you just tell us, "Hey, I qualify for this. I want to take it on X number of wages." You tell us the wages, we'll do the rest.

Gene Marks:
That is amazing. Andy, just fantastic stuff. Guys, I've been speaking to Andy Gargana, who has the world's most secure job ever, because he is a payroll tax compliance analyst. I mean right, that's a job for life. Andy, you will never go hungry. I just want you to know.

Andy Gargana:
It seems like it lately.

Gene Marks:
Given all the legislation that we have to know. Great advice. Thank you very much. That was great. And Andy, obviously we're going to have you back on again. You're right, we should dig into the COBRA tax credit sometime in the near future. Look out to have you back then. Thank you.

Andy Gargana:
Sounds good. Thanks Gene.

Gene Marks:
Guys, if you want more advice or help or any type of information to help you run your business, please join us at paychex.com/WORX. That's W-O-R-X, excuse me, where you can get a lot of information to help you run your business. My name is Gene Marks. My head is spinning with all this employee retention tax credit information, but I know it's really good and important information. And actually, it's something that we've been advising a lot of our clients take advantage of. Hopefully, you'll be doing the same. Hope you enjoyed this podcast and found it useful. Please stay tuned and I look forward to seeing you next time. Take care.

Speaker 3:
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