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Employee Retention Tax Credit for Employers

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On December 20, 2019 President Trump signed the Taxpayer Certainty and Disaster Relief Act of 2019 (HR 1865) which includes the Employee Retention Credit to encourage employers affected by qualified major disasters in 2018 and 2019 to retain employees on their payroll while they wait for business operations to return to normal.

- **What is the Employee Retention Credit?**

An eligible employer may claim a tax credit equal to 40 percent of qualified wages of up to $6,000 (a maximum credit of $2,400 per employee) paid to each eligible employee during the affected time period.

- **How does the Employee Retention Credit work?**

    - Employee Eligibility

An eligible employee is an employee, employed by the qualified employer (determined immediately before the qualified disaster), whose principal place of employment was in the qualified disaster zone during the approved specific incident period.

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- **How does the Employee Retention Credit work?**

    - Employer Eligibility

An eligible employer is any business or trade which conducted an active trade or business in a qualified disaster zone at any time during the incident period of the qualified disaster and became inoperable or affected immediately upon impact of the qualified major disaster but continued to pay employees during their recovery efforts.

    - Qualified wages

Qualified wages are wages (as defined in IRC sec. 51(c)(1)) and sec. 3306(b)) paid or incurred by an eligible employer with respect to an eligible employee which occur during the period of inoperability and the resumption of significant operations. Qualified wages also apply if: (1) the employee performs no services; (2) performs services at a different place of employment than their normal principal place of employment; or (3) performs services at the affected site prior to the resumption of significant operations.

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- **An eligible employer cannot claim the Employee Retention Credit with respect to any employee if such employee is claimed on the Work Opportunity Tax Credit under Section 51. IRC of 1986.**

- **Coverage area – Declared Designated Di**saster Zones by Federal Emergency Management Agency (FEMA) includes:

- Alaska
- Alabama
- Arkansas
- American Samoa
- Arizona
- California
- Connecticut
- Florida
- Georgia
- Hawaii
- Iowa
- Idaho
- Illinois
- Indiana
- Kansas
- Kentucky
- Louisiana
- Massachusetts
- Maryland
- Maine
- Michigan
- Minnesota
- Missouri
- Mississippi
- Montana
- North Carolina
- North Dakota
- Nebraska
- New Hampshire
- New Jersey
- New York
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Texas
- Virginia
- Vermont
- Washington
- Wisconsin
- West Virginia

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The requirements for the new credit are nearly identical to the hurricane Harvey, Irma and Maria credits created by the Disaster Tax Relief and Airport and Airway Extension Act of 2017.

- **The Bill also incorporates the rules of IRC Section 280C(a) such that employers who would receive the credit must reduce their deduction for salaries and wages by the amount of the credit.**

Finally, many tax preparers will not automatically advise you on this credit when the tax return is prepared or not be aware that this opportunity is available. You will need to be proactive or you will not be able to claim the credit.

Please feel free to contact me directly for more information regarding the employee retention credit or with any other matter at jonathan.carris@carrislegal.com or (713) 345-1081.

Questions?

Your Team

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Jon is an attorney with over 15 years of tax experience—in legal, public accounting and within industry, focused on state and local taxation. Jon is mainly focused on credits and incentives, compliance and consulting in income/franchise, sales and use, premium taxes, and tax controversy support.

Prior to founding his own law firm, Jon served as the Houston State and Local Tax Practice Leader for Moss Adams LLP and also served as part of PricewaterhouseCoopers ("PwC") National Credits and Incentives Network. He also spent over seven years managing all areas of taxation for a multi-billion-dollar financial services holding company.

He is a member of the Texas State Bar, the Connecticut State Bar, the United States Tax Court, the US Northern District Court of Texas, and the US 5th Circuit Court of Appeals.

Jon has served as a board of director for Texas Taxpayers and Research Association (TTARA).

Jon received his bachelor's degree from Brigham Young University, and his JD from Western New England University School of Law.

THANK YOU

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