FPLG: BLOG

ERTC Refund Opportunities Still Open

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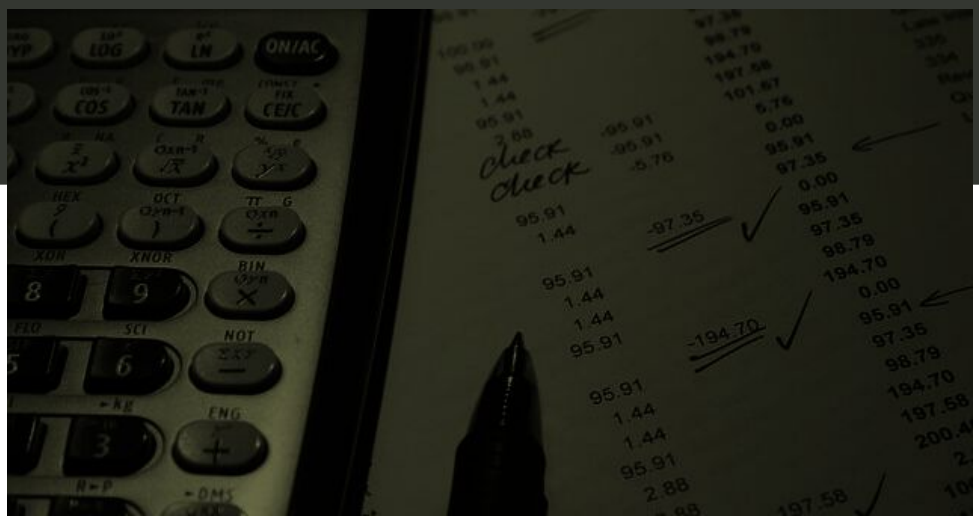

Through the pandemic, amid the darkest days, there were periodic rays of sunshine. The government came through – early and often – with surprisingly generous assistance.

But along with the much-needed and greatly appreciated cash and tax benefits came the familiar baggage: a thick new layer of bureaucracy, a dizzying maze of complex eligibility rules and procedures, and a boatload of strange new acronyms.

And the rules kept changing. "With half a dozen federal COVID relief laws coming out of Washington since the pandemic began – and each new law amending the prior ones – it's hard to keep up with which provisions provide the biggest benefits for the nonprofit bottom line."

That was how, fifteen months ago, Steven M. Woolf of the National Council of Nonprofits (NCN), described this well-intentioned chaos. And the sentiment applied quite clearly to one of the earliest special-relief measures, the Employee Retention Tax Credit or ERTC. See *Nonprofits, Don't Overlook Your Potential Refund Under the Employee Retention Tax Credit* (March 12, 2021) *NCN Blog*.

The ERTC, enacted as an incentive to keep workers on the job, was cleverly written as a tax *credit*, which is more valuable than a deduction, and also aimed at one of the few taxes that nonprofits actually pay; namely payroll taxes.

But this nicely wrapped federal gift has had a rough go of it. Widely misunderstood from the beginning and unfairly overshadowed by the more popular Paycheck Protection Program (PPP), it's been left for dead – repeatedly.

However, the Employee Retention Tax Credit is still alive and kicking, in a manner of speaking.

Mr. Woolf explains the situation in a new and urgent message: *Attention Nonprofit Employers: Did You Forget to Claim Refundable Tax Credits from the IRS?* (May 11, 2022), *NCN Blog*. Certain nonprofits may happily discover there's additional cash for them, possibly to the tune of hundreds of thousands of dollars.

And snatching it up may boil it down to filing the necessary claims for certain payroll-tax refunds before a deadline coming up in just a few months.

What Happened to ERTC?

Thanks to Steven Woolf's ably written blog posts in plain English, there's little need to rehash it all here. He explains what it's all about, and why – well into 2022 – we're still discussing a program that's already ended.

In a nutshell: It doesn't matter that the opportunity to *use* the ERTC on an active basis has closed. That end-date doesn't affect the right of eligible employers, including nonprofits, "to claim this refundable tax credit that can offset employment taxes and generate a refund." There is still time left on the clock.

Mr. Woolf's explanation helpfully includes the legislative and administrative twists and turns of how we got from A (spring 2020: enactment of this emergency-relief measure) to B (now: call your accountant or other professional advisor asap to see you're unnecessarily leaving any money on the table).

The critical fact is B, and that we're here at it. But it's also satisfying for our mental health to know that, in the midst of all of the pandemic uncertainty, there was some modicum of rational thought and planning in getting from us from A to B.

So even if your nonprofit never considered the possibility of using the ERTC, check it out now anyway. The eligibility requirements were significantly expanded in late 2020; most notably, to modify the general rule that participation in the Paycheck Protection Program (PPP) automatically precluded eligibility for the ERTC.

In conclusion, NCN's Steven Woolf explains: "The PPP had an enormous impact in helping to sustain nonprofits through the pandemic – but the PPP program has ended. The ERTC is still available. There are two ways to qualify, and the credit can be claimed retroactively for parts of 2020 and 2021."

Proposed Reinstatement Legislation

We may not have seen the last of the Employee Retention Tax Credit in any event. There's a strong push by the nonprofit community, based on data-driven evidence, in support of a renewed ERTC going forward.

Long story short: The premature sunsetting of the ERTC last year was based on incorrect data to the effect that nonprofits didn't like the ERTC and weren't using it. So the money was redirected into the pending infrastructure legislation at that time. See *ERTC Usage Rate Higher Than Expected* (June 13, 2022), *NCN Advocacy Updates.*

Later, the first set of conclusions was debunked; the true information shows that the program was quite popular and effective, and its early sunset created huge problems for the many organizations who had planned (and budgeted) to use it until the end of 2021.

So the nonprofit community is joining small-business-sector advocates in corralling support for new legislation to reinstate the ERTC. See *Ramping Up Advocacy for ERTC* (May 31, 2022), NCN Advocacy Updates (May 31, 2022); see also *RE: Employee Retention Tax Credit Reinstatement Act (ERTCRA) Best Viable Option for Relief* (May 26, 2022), group letter to Congressional leaders.

Conclusion

The Employee Retention Tax Credit Reinstatement Act (H.R. 6161/S. 3625) has bipartisan as well as cross-sector support. We'll follow its progress.

– Linda J. Rosenthal, J.D., FPLG Information & Research Director