

Annual Payroll Newsletter September 2023

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I'd Bet You Are Still Getting Calls on the Employee Retention Credit

This will be the third year we've led off with the ERC. Last year, I told you it was partly correct and partly a scam. The folks calling you now lean heavily toward the scam side.

First, a reminder of **Eligible Businesses for ERC** – any one of these:

- **Reduced Gross Receipts Test:** For 2020, a significant decline in gross receipts is down 50% or more for a calendar quarter vs. the same quarter of 2019. For 2021, the test is down 20% from the same quarter of 2019 (not 2020). In 2021, as an alternative, you can also use the prior quarter vs. the same prior quarter of 2019 for the test.
- **Government Order Test:** “The trade or business is fully or partially suspended due to an order from an appropriate governmental authority...” In Tennessee, for a very limited number of businesses, that's generally late March 2020 through late April or early May ... longer in the metro areas. If you were able to fully operate and work remotely (most offices), you weren't affected.
- **Supply Chain Test:** In limited cases, if your business operations were significantly impacted by supply chain issues due to Covid, wages could be eligible for ERC. Lack of employees is not a supply chain issue. **However, see the update below.**
- **“Recovery Startup Businesses”** are businesses that began after 2/15/20 and aren't affiliated with any other business. Maximum benefit is \$50,000/quarter, only in Q3 and Q4 of 2021.

Rules for ERC changed several times. When the scammers called you and said “the rules have changed,” they were correct – but no recent changes (the last 24 months) are to your benefit.

UPDATE: The most recent change tightens up the rules. On the supply chain test, we previously thought it would count if you couldn't get supplies at all (because China stopped shipping, for example). IRS put out info late July 2023 that said to qualify under that test, your supplier had to have been affected by a government shut down AND you had to suspend operations. That drastically reduces those qualifying.

THE IRS IS GOING TO HEAVILY AUDIT THIS. Quite frankly, I'd bet an entry-level IRS auditor could fully audit one of these refund applications in a day. I talked to a 20+ year IRS agent who said he could spend under 15 minutes to decide who's worth **auditing** and **do** most full ERC audits in a day. Compare that to a full-blown audit which would take weeks or months. Where is the best return for the IRS on their time invested? The time for the IRS to audit these was extended by statute to five years instead of the normal three. If you really do qualify, please don't fear a potential audit. If it's a grey area, think about it.

Secure Act 2.0

An update to the Secure Act of 2019: The goal is to encourage retirement savings and urge small employers to offer retirement plans. Provisions come into effect over the next few years.

- Required Minimum Distributions (RMD) from retirement plans are delayed to age 73.
- Many of you have a Section 529-College Savings Plan for your kids (or grandkids). Beginning in 2024, beneficiaries of a 529 plan may transfer up to \$35,000 of unused funds to a Roth IRA. This makes the 529 an even better savings vehicle for many of you.

- Enhancements to Qualified Charitable Distributions. At age 70½, you can send money DIRECTLY from your IRA to your church/charity with some real tax advantages.
- SIMPLEs and SEPs can accept Roth pay-ins, and in some cases can have Roth-based employer matches.
- Starting in 2024, limits for SIMPLEs rise, and employers can make some extra contributions.
- JUST CHANGED, now effective 2026: For 401k (but not SIMPLE), the extra deposit to the 401k when over age 50 must be an after-tax Roth if annual compensation is over \$145,000.
- 2025: Any NEW plans will have auto enrollment for new employees (opt-out available). Existing plans and small employers won't have this requirement.
- 2027: Larger savers credit goes into effect. (This is a tax credit for lower income people putting money in retirement.)

Corporate Transparency Act

This is not directly related to payroll, but it affects nearly everyone reading this. Beginning in January 2024, the U.S. Treasury requires all corporations, LPs and LLCs to disclose their “real” individual owners and most senior officers of the company. It's unclear whether this affects general partnerships or business trusts. This is NOT the same as the annual report you file with the Secretary of State. **There are substantial fines for non-compliance.** Your bank will likely require compliance if you have an account there.

Exempt are publicly traded companies and those that meet ALL these criteria: They have more than 20 employees AND report more than \$5 mil in gross receipts AND have a physical office in the U.S.

We'll need to send Treasury a copy of your driver's license or passport, among other requirements. There are provisions for the individual to have a FinCEN account with Treasury so your company doesn't have that personal information.

The forms and final rules aren't out yet, so some of this may change. Any entity formed after 1/1/24 must comply within 30 days; any existing entity must comply before 12/31/24. Updates are required when there are changes in ownership or senior officers.

Quick Hits

- Through 2025, employers can offer up to \$5,250 in student loan repayment benefits – fully deductible to the employer and non-taxable to the employee. The “catch” is that it must be offered to all and can't reduce their pay.
- According to a court ruling, time spent booting up the computer is to be compensated.
- The IRS says they're going to do more employment audits, but we expect ERC would be the priority. Our TN unemployment audits are much more common, and are a pain for not much tax.
- Soon, the IRS will be requiring all payroll tax returns be e-filed. This may be an issue for our clients where we log onto YOUR computer to prepare the payroll tax returns.

SMJC Updates

- We're offering a second payroll processing platform to our clients. You'll be able to download your info directly to this software if available. This may be a less-expensive option for those who use direct deposit.
- We're opening an office on the Court Square in Trenton this fall. We look forward to serving even more clients from there.

SMJC PAYROLL HOURS: Our payrolls generally come in midday Monday to Thursday afternoon. As such, the payroll staff works extra hours mid-week, and they are gone by noon Friday. Please remember to check your payrolls before noon, as we likely won't have staff available to help.

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