



TaxNewsFlash

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Notice 2021-49: Guidance for employers claiming employee retention credit, for third and fourth quarters 2021

The IRS today released an advance version of Notice 2021-49 providing additional guidance regarding the employee retention credit.

[Notice 2021-49](#) [PDF 189 KB] (34 pages) includes guidance for employers that pay qualified wages after June 30, 2021, and before January 1, 2022, and provides additional guidance on miscellaneous issues that apply to the employee retention credit in both 2020 and 2021.

Today's notice amplifies guidance about the employee retention credit as previously provided by the IRS in Notice 2021-20 and Notice 2021-23 (read [TaxNewsFlash](#) and [TaxNewsFlash](#), respectively).

Background

As originally enacted by the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), the employee retention credit provides a refundable payroll credit for eligible employers, including tax-exempt organizations, whose business has been affected by the coronavirus (COVID-19) pandemic for qualified wages paid after March 12, 2020, and before January 1, 2021.

Retroactive changes were made to the employee retention credit by a provision of the *Taxpayer Certainty and Disaster Tax Relief Act of 2020* (a division of the Consolidated Appropriations Act, 2021). The changes generally have an effective date of January 1, 2021.

The IRS in early March 2021 issued Notice 2021-20 to formalize and clarify previously issued information contained in a set of "frequently asked questions" (FAQs) available on the IRS website with respect to the employee retention credit for the 2020 calendar year.

Notice 2021-23 was subsequently issued with guidance concerning the employee retention credit for qualified wages paid for the first two quarters of 2021.

When read together, Notice 2021-20 and Notice 2021-23 provided employers with information to assist in evaluating eligibility for the employee retention credit, in determining qualified wages, and for claiming the employee retention credit for 2020 and for the first two quarters of 2021.

Notice 2021-49 and guidance for the third and fourth quarters of 2021

A related IRS release—[IR-2021-165 \(August 4, 2021\)](#)—briefly explains that Notice 2021-49 addresses changes made by the *American Rescue Plan Act of 2021* to the employee retention credit. These changes—applicable to the third and fourth quarters of 2021—include provisions:

- Making the employee retention credit available to eligible employers that pay qualified wages after June 30, 2021, and before January 1, 2022
- Expanding the definition of eligible employer to include “recovery startup businesses”
- Modifying the definition of qualified wages for “severely financially distressed employers”
- Providing that the employee retention credit does not apply to qualified wages taken into account as payroll costs in connection with a shuttered venue grant or a restaurant revitalization grant

Notice 2021-49 also provides guidance on several miscellaneous issues with respect to the employee retention credit for both 2020 and 2021. According to today’s IRS release, this guidance is in response to questions that the IRS and Treasury Department received about the employee retention credit about topics such as:

- The definition of full-time employee and whether that definition includes full-time equivalents
- The treatment of tips as qualified wages and the interaction with the section 45B credit
- The timing of the qualified wages deduction disallowance and whether taxpayers that already filed an income tax return must amend that return after claiming the credit on an adjusted employment tax return
- Whether wages paid to majority owners and their spouses may be treated as qualified wages

The IRS release explains that eligible employers are to report their total qualified wages and the related health insurance costs for each quarter on their employment tax returns (e.g., Form 941) for the applicable period. If a reduction in the employer’s employment tax deposits is not sufficient to cover the credit, certain employers may receive an advance payment from the IRS by submitting a Form 7200, *Advance Payment of Employer Credits Due to COVID-19*.

The purpose of this report is to provide text of Notice 2021-49.

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