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EMPLOYEE RETENTION TAX CREDIT (ERTC)

The Employee Retention Tax Credit (ERTC)* is a tax policy that provides a vehicle designed to deliver cash relief to eligible employers, including many nonprofits. A provision in the Infrastructure Investment and Jobs Act cancelled the ERTC for the fourth quarter of 2021. Ys across the country gained significant relief from the ERTC. Many Ys could gain much-needed further relief from the fourth quarter ERTC retroactively under H.R.6161, the bipartisan Employee Retention Tax Credit Reinstatement Act.

**Also commonly referred to as the Employee Retention Credit (ERC).*

WHAT IS THE ERTC?

The ERTC, which was initially included in the 2020 CARES Act and overwhelmingly supported by both parties, delivers cash relief to eligible employers. The mechanism to deliver the funds is done through a credit that can be claimed against a Y's "qualified wages" when filing quarterly payroll taxes. The credit is both "advanceable" (employers may request an advance in a given quarter) and "refundable" (any amount in excess of payroll taxes owed will be refunded).

BACKGROUND

Congress created the ERTC as part of the CARES Act to encourage businesses and nonprofits to keep employees on the payroll through 2020. This program was expanded under the Taxpayer Certainty and Disaster Tax Relief Act of 2020 by providing a refundable tax credit of up to $7,000 per employee per quarter, as well as extended through June 2021. Subsequently, the American Rescue Plan Act again extended the ERTC to the third and fourth quarters of 2021. On November 15, 2021, the Infrastructure Investment and Jobs Act (P.L. 117-58) became law and it contained a provision that cancelled the ERTC for the fourth quarter of 2021, further worsening the impact of the pandemic on nonprofits like the Y.

Over the last two years, Congress enacted several support programs for struggling businesses and nonprofits, but as we enter the third year of the coronavirus pandemic, certain industries' revenues remain at mere fraction of their pre-pandemic levels. Each new coronavirus variant brings new restrictions affecting Ys, nonprofits and small businesses throughout the country.

With most recipients having long since expended their Paycheck Protection Program (PPP) loans, many Ys, other nonprofits and small businesses were counting on ERTC support as it was one of the few financial support programs during the pandemic that enabled America's employers to keep employees on the payroll. Many small businesses and charitable nonprofits planned for and counted on the ERTC tax credit continuing into the fourth quarter, which started six weeks before the infrastructure bill was signed into law. These employers now face a retroactive tax increase and a complex, disruptive process of reconciling the credit that they were promised by Congress in law and now have to forfeit.

Just as many nonprofits and small businesses began resuming operations, new COVID-19 variants caused an increase in cases throughout the nation, compounding business disruptions and prolonging recovery. Ending the ERTC early—amid an extraordinarily challenging environment—froze the process of rehiring some employees, caused employers to consider additional layoffs and made it impossible for small employers to forecast financial solvency into the new year.

ASK

On behalf of the affected Ys, other nonprofits and small businesses, the employees who rely on them for their livelihoods, and the communities we serve, we urge Congress to restore the ERTC retroactively for the fourth quarter of 2021, as laid out in the recently introduced *Employee Retention Tax Credit Reinstatement Act* (H.R.6161/S.3625). Please consider supporting and cosponsoring this important legislation.

H.R.6161 was introduced in the House by Rep. Carol D. Miller (R-WV), along with three of her Ways and Means Committee colleagues, Reps. Stephanie Murphy (D-FL), Kevin Hern (R-OK), Terri Sewell (D-AL). This bipartisan piece of legislation currently boasts nearly 54 cosponsors from both parties and over 50 endorsing organizations.

On Feb. 10, U.S. Senators Maggie Hassan (D-NH) and Tim Scott (R-SC) introduced S. 3625, the Senate Companion Bill to H.R.6161, with the same title, the *Employee Retention Tax Credit Reinstatement Act*. Senators Hassan and Scott were joined in introducing S.3625/H.R.6161 by Senators Mark Warner (D-VA), Shelley Moore Capito (R-WV), and Ben Cardin (D-MD).

Thank you for your consideration on this important matter. To co-sponsor or for questions directed to congressional staff, please contact Max Pedrotti (Max.Pedrotti@Mail.House.Gov) with Rep. Miller's office or John Laufer (John.Laufer@Mail.House.Gov) with Rep. Murphy's office. In the Senate, please contact Adam Farris with Senator Scott's office (adam_farris@scott.senate.gov) or Jay Weismuller with Senator Hassan's office (Jay_Weismuller@hassan.senate.gov).

ADDITIONAL RESOURCES

Every Y should talk to their account/auditor/CFO/etc. about the potentially significant positive financial impact of the ERTC on their Y. For any eligible quarter, Ys can apply retroactively for the ERTC using Form 941-X (see details below). For a more detailed summary of information, please see the ERTC Resource Brief and other information on the ERTC page on LINK.

Find an overview of the ERTC program from the Y's perspective here!

If you have any questions or would like to discuss this further, please contact Joel Larson at the YMCA of the USA Government Relations and Policy Office, joel.larson@ymca.net or 612-210-2758.