**Top 5 errors CPAs make when calculating the ERC**

More CPAs and their clients are aware of the value of the Employee Retention Credit ... Excellent! But many business owners are being promised the full $26,000 per employee credit by “here today, gone tomorrow” providers.

As a result, the IRS recently issued IR-2022-183, warning against third parties that are improperly computing the credit; advising businesses to claim when they may not qualify; not gathering, applying and documenting facts correctly; and not providing business owners the full story about the ERC. Further, the IRS issued a 72-page ERC training guideline for its examiners and now requires its auditors to complete a 56-hour training course.

You may be saying to yourself that CPA’s can’t be responsible if clients engage a third party. Wrong! The AICPA Code of Professional Conduct requires a CPA to do due diligence to determine whether the third party has the appropriate expertise in the area relied upon by the CPA. If you’re signing the tax return, do your due diligence!

**Top 5 ERC Errors

ERROR 1: If you were affected by COVID, you’re qualified for the ERC.**
What an overgeneralization! Two paths can be taken to qualify for the ERC: revenue decline and impact on the business. Many believe they can qualify for “any” complications their business had due to COVID. Not so. Merely adjusting operations in response to COVID is not enough to qualify for the ERC. To be eligible under the business impact test, you must show that a specific COVID-related government order or mandate caused the impact to your business, and you must show the extent and duration of that impact.

**ERROR 2: Any government guideline qualifies you for ERC.**Wrong again! There are varying levels of government orders and guidelines, and not all qualify.
An order must actually be an “order.” There’s a big difference between government orders that say a business **must** or **shall** do something versus a guideline that **recommends** or says a business **should** do something. As the IRS guidance makes clear, it also must be an order that limits commerce, travel or group meetings (for commercial, social, religious or other purposes) due to COVID-19. Finally, it must be a government order that has jurisdiction over the employer’s operations, and has more than nominal impact on operations.

**ERROR 3: A qualifying mandate that caused an impact to your business means you qualify.**Not so fast! Even if a qualifying order affected your business, you still may not qualify. The IRS requires that there be a “more than nominal” impact on the business to be eligible. If you otherwise qualify, but effects of an order on your business were mostly minor inconveniences, you may not be eligible. A suspension of a more than nominal portion of a business’ operations is a very technical calculation for CPAs or their providers based on IRS Notice 2021-20 and it needs to be well documented!

**ERROR 4: You get $26,000 for every employee!**

Nope. Three major factors impact the refund: wages paid, duration of impact and other incentives already claimed. The credit is calculated as 70% of qualified wages paid to an employee in a given quarter, up to $10,000. So, if your client paid an employee $7.25 an hour and they worked an 8-hour day for 60 days in the quarter, their wages would be about $3,480 for the quarter. Multiplying that by 70% gives a maximum credit of $2,436. And not only do wages paid matter, but also the length of time the mandate was in place. Let’s say those same workers qualified due to a social distancing order but that order was only in effect for half of the quarter. You would then only get half of the maximum credit.

**ERROR 5: If you claimed Paycheck Protection Program, you can still qualify for $26,000.**

No double dipping! Interplay with other incentives is where most CPAs or their ERC providers miscalculate the ERC. While you can claim PPP and ERC together, they’ll have interplay between themselves and any other incentives your business may have taken, such as the restaurant revitalization grant. Again, in IRS Notice 2021-20: “...the law now allows employers who received PPP loans to claim the Employee Retention Credit for qualified wages that are not treated as payroll costs in obtaining forgiveness of the PPP loan.” The ERC cannot be calculated using payroll costs that are taken into account for purposes of PPP loan forgiveness.

The ERC is a fantastic tax incentive-let’s just make sure we’re using it the right way.

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