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ERTC Master Class Video Transcript

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Andy Bertke:

All right. Hey Ryan, we're going to talk about the Employee Retention Tax Credit today. A little bit about the genesis, how long this thing has evolved. It's been changed by no less than four acts of Congress to today where we're left with 2020 and 2021 credits.

Ryan Lauer:

That's right. So the Employee Retention Credit came about in the CARES Act that was passed in March of 2020. Now at the time you could only go after one of two programs, either the Payroll Protection Program or the Employee Retention Credit program and generally, Andy, would you agree everyone went after the PPP program?

Andy Bertke:

Oh, sure. Way easier to understand. You accumulated expenses for two and a half months, and then you sent the application into the bank and most of the time they got their money. Whereas the Employee Retention Tax Credit was one not very well understood, not very well laid out by Congress to help us understand it and it was a much, much more difficult calculation.

Ryan Lauer:

So for much of 2020, while the Employee Retention Credit program was in place, it kind of laid dormant as everyone went after the PPP program. Then at the end of 2020, the Consolidated Appropriations Act changed the game and said, even if you applied for a PPP loan, you could go back and apply for the Employee Retention Credit.

Andy Bertke:

That's correct. That was huge. Couple of nuances when you have the PPP loan and the ERTC credit with regard to wages, we'll talk about that in a little while, but yeah, what a door opener, and it was needed. Companies were still suffering from COVID and they needed another stimulus and it came in the form of the Employee Retention Tax Credit.

Ryan Lauer:

And then further tax acts extended the Employee Retention Credit initially all the way through 2021, but one further tax act cut off the fourth quarter.

Andy Bertke:

It did, that was unfortunate. The Infrastructure Investment Act came out actually in the middle of the fourth quarter and they cut off the fourth quarter. So if you found yourself during a tax credit for the fourth quarter of 2021, you probably had some finagling to do to back out of it or whatever you had to do to get out of it. But Congress didn't pass that until November 15, 2021. So kind of a sticky situation for employers.

Ryan Lauer:

To qualify for the Employee Retention Credit, there's two main tests and you only have to pass one of the two tests in order to qualify. Can you tell us a little bit more about the gross receipts test?

Andy Bertke:

Gross receipts test has changed over the past two years, 2020 and 2021, for which the credit applies. The first year that it applied in 2020, you had to have a greater than 50% reduction in your gross receipts. That's pretty steep, even though we went through COVID, a very, very arduous time in business life, so to speak.

Andy Bertke:

But then in 2021, they came down to a greater than 20% reduction in gross receipts and we're finding that a lot of companies are qualifying because in 2020, a lot of companies had a backlog. They had business still going on, although it was trickling off fast, it really felt the crunch in the first quarter of 2021.

Ryan Lauer:

Yeah and when you talk about that 20% decline, it's still comparing the gross receipts in a quarter in 2021 back to that same quarter in 2019, not 2020, like some people think.

Andy Bertke:

Right, right. 2019 was our last normal year and I think even halfway through 2022, I think it still was our last normal year.

Ryan Lauer:

The second way to qualify for the credit is under the government shutdown or a partial shutdown. Andy, you would agree some people, I think if they're an essential business, it means they're automatically excluded from qualifying for the credit.

Andy Bertke:

That's true. I mean, a lot of people did think that. And frankly, when I first read the rules, I was thinking that hospitals and doctors' offices should be booming with business, right? I mean, we're in the middle of a pandemic.

Andy Bertke:

Well, hospitals were really hurting during this period because routine procedures were cut out, doctor's offices, routine exams, they were cut out. It was only emergencies that they could see and same with all other types of companies. Construction companies were in the same niche as far as what I was talking about before with that first quarter of 2021 is where we saw a lot of construction companies qualify because owners got scared in 2020 and quit, stopped the project.

Ryan Lauer:

Sure, and the way to measure, if you qualify or the government shutdown, it's a bit of a gritty acid test, you probably would agree.

Andy Bertke:

It is. The guidance that we have for the Employee Retention Tax Credit is lacking. We're used to, as tax accountants, seeing what Congress says and then waiting for what the IRS interprets the Congress' laws and those are called regulations. We've got like one regulation, that's it. Everything else is on frequently asked questions, FAQs, notices, which don't carry the full weight of a law and that's what we're relying on.

Ryan Lauer:

Exactly. Another key consideration and you touched on this a little bit before, was talking about the impact of PPP wages when we're looking at the Employee Retention Credit.

Andy Bertke:

Right. You can't double dip. So if you have gone through your forgiveness process for the PPP loan, you noticed that you used wages. Well, those same wages that you use to get forgiveness on your PPP loan, you can't use them for the ERTC credit.

Ryan Lauer:

Exactly. Another key consideration that has to be kept in mind is the Employee Retention Credit is taxable. So there is a tax impact that goes on your income tax return.

Andy Bertke:

Yes. Unlike the PPP, it is taxable and it's taxable by virtue of you have to reduce your payroll expense. Unfortunate, yeah, but I don't know about you Ryan, but I'll take 60 cents on a dollar every day.

Ryan Lauer:

Absolutely. I think the slight complication, which I don't think is crazy complicated is the credit is taxable in the year the wages were earned or spent.

Andy Bertke:

So one of the unfortunate things is that if your credit was generated out of 2020, you're going to have to amend your 2020 return, even if you didn't get the check until 2021, 2022, and we're seeing these checks are about six to eight months after you file your amended return.

Andy Bertke:

But that is the rule. Doesn't matter what accounting method you're on. If the credit was generated in 2020, it's a 2020 amended return which, you know what happens with partnerships and S-corps?

Ryan Lauer:

It gets nasty very quick with returns.

Andy Bertke:

Yes, yes, indeed.

Ryan Lauer:

Non-profits, do they need to be concerned about tax impact or no, if they're non-profit?

Andy Bertke:

They can be in certain instances. I think the way that we're looking at it now that if they have other income that's not part of their charitable purpose, then yes, it can be taxable to them.

Ryan Lauer:

And another consideration on the tax front when you're talking about the credit being taxable in the year the wages were earned, mechanically how that works is if your credit was $100,000 for the Employee Retention Credit, it's going to be a reduction in your payroll expense, and that ultimately will increase your taxable income and that's how the tax is pushed through on your tax return.

Andy Bertke:

That's correct and as I alluded to earlier about the partnerships and S-corps, well, if you have 15, 20, 25 partners or shareholders, that's an additional 15, 20, 25 individual returns that have to be amended.

Ryan Lauer:

Exactly. So it's a consideration you have to keep in mind.

Andy Bertke:

Exactly, exactly.

Ryan Lauer:

In terms of the filing, filing that quarterly 941. What can you tell us about that?

Andy Bertke:

First, it's a lot of work as you know. We have built an elaborate program, if you will, not only do we have to bifurcate the wages into PPP wages, into ERTC wages, we have to also watch work opportunity tax credits. We have to watch any kind of credit that's generated by payroll because you can't double dip on those either.

Andy Bertke:

So once you take all this mass amount of information, you boil it down, then it looks easy, right? We do a 941-X and we change three or four lines on the return looks pretty benign, but the work behind that is immense.

Ryan Lauer:

Expansive, yes. And filing that 941-X, and that's the amended return for Form 941, your quarterly employer payroll tax return, which is the form that pays in federal income tax withholding, Social Security and Medicare, it's amending that quarterly form for each quarter that you qualify for the credit.

Andy Bertke:

Right. So you're probably thinking by now, well I'm amending a return for 2020, gosh, that's two years ago. What about penalties?

Ryan Lauer:

Sure, and the IRS has started to come out with a little bit of guidance on that front because that's a big concern. The IRS wants their interest. For a 2020 tax return, they're going to expect you to be paying interest on that amount, but there is some good news.

Andy Bertke:

There's some good news that has come out that the IRS is, it's not really bright line, it's not really definite language, but they, they are alluding to that they will not assess penalties if your amended return is due to Employee Retention Tax Credit.

Ryan Lauer:

And you would agree, we've got plenty of smaller companies or smaller businesses that if their credit's $200,000, they don't have the $30-40,000 that they may need to pay tax on that today until that cash is received.

Andy Bertke:

Oh, exactly. Yeah. It's very, very difficult on the small business. Although I always go back to, I'll still take 60 cents on a dollar and figure out a way to make ends meet until then. But yeah, there's a cash flow problem with this, the way that it is set up is you have to pay your taxes up front before you get to cash. You have to pay someone to do the ERTC, the 941-Xs. So yeah, it's difficult.

Andy Bertke:

And when you mention $200,000, $200,000 to $500,000 seems to be the norm for the size of these credits and just drifting back for a moment to penalties at 10-12% a year, that becomes a real number as well. So hopefully they come up with a solution and bright line solution that the penalties will not apply.

Ryan Lauer:

And another good thing that we've seen too, is the IRS is paying interest.

Andy Bertke:

That's true.

Ryan Lauer:

On the refunds.

Andy Bertke:

That's true.

Ryan Lauer:

So in terms of, generally the refund that you receive is even greater than what you apply for.

Andy Bertke:

Exactly. Which confuses some people, right? They're expecting a check for which, by the way, you do get a check from the IRS, a paper check. So if you see a letter from the IRS, an envelope from the IRS, don't throw it away, don't rip it up. It could have a check in it if you applied for this credit.

Andy Bertke:

But yes, the interest rate and the interest rate's going up, it went up to 4%. Now it's up to 5%. So yeah, it's almost like an investment.

Ryan Lauer:

That's right. Generally we've seen clients and taxpayers get a warning letter from the IRS a few weeks before the check is received. So that's some extra relief, at least they know when to be looking out for it.

Andy Bertke:

Exactly, and like we discussed earlier, the checks are taking about six to eight weeks to come in and they will come in per 941-X was filed. Once you get the first check though, the other quarters come in pretty quickly, within a month.

Ryan Lauer:

There's a common misconception that the Employee Retention Credit program is already over and I think Andy, you would agree while the qualifying quarters may be done overall, the program is still free and clear to go after.

Andy Bertke:

Exactly. we have a three-year statute of limitations in order to go back and amend these returns. So, next year we start dropping off some 2020 quarters. But yeah, there is time. It still applies. There is time to amend your return still.

Andy Bertke:

But the three-year statute of limitation is only for amending your return. There's another statute of limitations, so it was the only thing that came out in an IRS regulation.

Ryan Lauer:

That's right. So the IRS has given themselves five years to audit these amended 941-Xs, which is huge. That's a step up from the three years they originally have.

Andy Bertke:

That's right. Almost doubled. So they know that this program may be, and probably is being abused in some cases and they want time to look at it. So there's no other five-year statute of limitations on your personal income tax return if you filed a return.

Ryan Lauer:

And that's why having audit documentation or support built up front is key. Just having all that payroll, having all those PPP wages laid out, anything else you can think of?

Andy Bertke:

Oh yeah. So I mean, what we prepare, I mean, our package, our deliverable is the 941 signed by a CPA. They are all the documentation that standalone to support the 941 itself because let's face it, I don't know about you Ryan, but maybe even two years, I'm not going to remember a whole lot that if I just scribbled it down. So documentation, point being his documentation is critical in this point.

Ryan Lauer:

Yeah. Especially if you qualify under the government shutdown side. Having all of those government regulations that supported how you were closed, your story on how these restrictions limited your ability to carry on business in a comparable matter is key.

Andy Bertke:

Right.

Ryan Lauer:

Andy, one thing that I think when we start having calls with clients or talking with clients about this is considering if the owner of the business owns other businesses that need to be considered as well.

Andy Bertke:

Right. Gross receipts is difficult to determine. It's not just your sales. So a lot of people think, oh, it's just my sales. Well, no, it's other sources of income as well.

Andy Bertke:

Per your question, it's not just the one company that you own, but if you own multiple companies and you have control of those companies either by ownership or through an affiliated service group, you've got to combine all of those other companies into your gross receipts calculations.

Ryan Lauer:

That's exactly right. I can think of an example where I had a client, no doubt hit all the tests to qualify for the Employee Retention Credit, and then in discovery and probing and asking further questions, found out that the owner owned a car dealership that was going gangbusters, right. So that knocked him out from qualifying for the credit. But if you miss over that fact and apply, that could be a huge issue.

Andy Bertke:

Right. That's exactly right and then also with qualified wages with family members, boy, we went through 2020 doing these without a lot of guidance by the IRS and then low and behold, the IRS came out with some guidance that really cut out family members.

Ryan Lauer:

Correct, yeah. So being very mindful of these family relationships, because yeah, if it's a small family business and half the employees are family members, that could eliminate a good chunk of the employees from having these qualifications.

Andy Bertke:

Exactly. So Ryan, we talked in beginning about how the 2020 and the 2021 credits were different. I hear a $5,000 credit for 2020 and a $7,000 credit for 2021. What's that mean? What's that mean per employee?

Ryan Lauer:

Sure. So in 2020, the maximum credit per employee is up to five grand in credit per each employee. But 2021, the rules are much more favorable. You mentioned 7,000, but it's actually $7,000 per employee per quarter in 2021, and there's three qualifying quarters, Q1, Q2, and Q3 in calendar year.

Ryan Lauer:

So much larger potential in 2021 versus 2020, and further because the gross receipts decline only needs to be 20% in 2021 versus 202, it's a lot easier threshold to qualify in 2021 and the value is so much greater.

Andy Bertke:

So that's $5,000 per employee in 2020 for the whole year, right?

Ryan Lauer:

Correct. Whole year.

Andy Bertke:

$7,000 per employee per quarter for three quarters. So that's $21,000?

Ryan Lauer:

Exactly.

Andy Bertke:

Huge.

Ryan Lauer:

Correct. So across, if you qualified for all quarters and can max an employee out, it's up to $26,000.

Andy Bertke:

So a lot of the companies that we talked to on the beginning, the initial phone call, if you will, they don't know that they qualify and then all of a sudden we tell them that they qualify and we think they qualify. We do a little more due diligence and eventually we tell them they qualify or not.

Andy Bertke:

We talked about earlier, I mean, $200,000 to $500,000 credit is I'm not going to say run the mill, but they're pretty common, and even two or three times that. We've helped a lot of clients in our time here with the ERTC. Any numbers on that? How much?

Ryan Lauer:

Sure. I mean, even the credit is driven off of headcount and the more your head count is, and the more quarters you qualify for, the potential's just massive. I think collectively for our group, we've helped clients apply for greater than 60 million in Employee Retention Credits to date.

Ryan Lauer:

And I even think, small businesses, we've had some clients that had two employees qualify for multiple quarters in 2021, that was worth it just in and of itself to go after if the dollar amount was large enough.

Andy Bertke:

Exactly and we filed, I imagine, hundreds of 941-Xs.

Ryan Lauer:

Correct. I think oftentimes when we talk with clients and just start talking about the Employee Retention Credit, they don't think there's going to be any potential in this thing. They think it's just some random tax credit that's going to generate $1,000 and then they have no familiarity with it, but that's completely opposite of what ends up happening.

Andy Bertke:

Right, and the five-year audit statute of limitations obviously should be weighing on people's minds. But when you have a CPA firm, a great reputation, doing the amount of work that we do, we're signing the returns, it's a lot different than some boutique firm that's caught on to this and now is a mill starting to crank these out.

Ryan Lauer:

Exactly right. The Employee Retention Credit did not remotely get the media attention that the Payroll Protection Program did. I think at least at the onset, because everyone generally applied for the PPP program, I think that's why no one talked about the Employee Retention program, but it's just as alive and well now as at any point in the last few years.

Andy Bertke:

I agree. I agree. It's a much-needed program. I mean, I have seen this literally save companies.

Ryan Lauer:

Correct. I've heard the same thing. I've heard a lot of non-profits even say, hey, this is going to transform the business. And when they were on the brink, on the edge, hey, they've got a lot more cash to continue to their operations and expand operations. I think the one main takeaway from this, Andy, is that it's not too late to apply for the Employee Retention Credit program.

Andy Bertke:

No, it's not. As we discussed earlier, the statute of limitations for amending the 941s is three years. So even the first quarters or second quarter of 2020, we still have another year to get that amended.

Ryan Lauer:

Sure, and it is taking the IRS a period of time to send the cash. So that's no reason to sit around and wait to apply for the credit though.

Andy Bertke:

No, it just takes longer, just takes longer that way.

Ryan Lauer:

But yeah, in terms of the refunds that we're seeing for clients, even small organizations, it's really adding up and it's an impactful number to their bottom line.

Andy Bertke:

Absolutely. Like I said before, it's literally saved companies.