

Stimulus Legislation Provides Tax Credit for Businesses Affected by 2020 California Wildfires

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PRACTICE AREAS

State & Local Tax

On Dec 27, 2020, President Trump signed into law the Consolidated Appropriations Act (Senate Amendment to H.R. 133) which provided funding for the government and stimulus relief. Among other things, the Act provides an extension to the federal Employee Retention tax credit for employers affected by FEMA-declared natural disasters.

Overview

The Employee Retention Credit provides an income tax credit of 40% of up to \$6,000 in qualified wages per employee (maximum credit of \$2,400 per employee). The credit is available when a business continues to pay employees when the business has been made inoperable because of a natural disaster that is declared eligible for individual Federal Emergency Management Agency assistance (FEMA) by the president.

Prior to the Consolidated Appropriations Act, the Employee Retention Credit did not include credit for any wages paid at businesses affected by a FEMA disaster declaration after December 20, 2019. The Act extended the Employee Retention Credit through sixty days after its enactment, which means the credit is extended to include employers affected by FEMA-declared disasters through February 27, 2021. This means it includes the 2020 California wildfires, as well as hurricanes and flooding in other parts of the country during 2020.

An eligible employer is one who conducted an active trade or business in a qualified disaster zone during the period covered by the specific disaster declaration. Qualified wages are wages paid to eligible employees when the business location becomes inoperable within the disaster declaration period and ends before the earlier of –

1. The date the business resumed significant operations at the business location affected by the disaster, or
2. 150 days after the last day of the federally declared incident period.

Credit applies to wages paid whether or not any services were performed by the employee. Credit also applies to wages paid when the employee is working from home or a different business location, or wages paid when the employee is able to work from the location affected by the disaster before significant operations have resumed. Wages used in the calculation of the Work Opportunity tax credit (WOTC) cannot be included in computation of the credit.

A place of employment may be considered inoperable for reasons other than damage from the natural disaster. Inoperability may also include things like:

- Reduced sales or customer visits
- Supply chain delays
- Inability of customers or employees to arrive at the business location
- Increased employee absence
- Reduced production

Two periods of California wildfires are covered by this credit. Affected counties during each period are listed below --

For Wildfires occurring between August 14, 2020 and September 26, 2020

Butte

Napa

Santa Cruz

Trinity

Lake

Plumas

Solano

Tulare

Lassen

San Mateo

Sonoma

Yolo

Monterey

Santa Clara

Stanislaus

For Wildfires occurring between September 4, 2020 and November 17, 2020

Fresno

Mendocino

San Diego

Sonoma

Los Angeles

Napa

Shasta

Madera

San Bernardino

Siskiyou

Application to Business Owners

The Employee Retention credit is intended to assist employers that have been impacted by natural disasters like the wildfires that were so devastating to many California counties in 2020. If you believe that the credit applies to your business, please contact one of the following HCVT state and local tax team members for assistance to evaluate if the credit could help your business and to assist in preparing any necessary forms.

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