



# A WIN FOR THE RESTAURANT INDUSTRY: The IRS Allows Double-Dipping



By May Sung, MSA | *Senior - Tax*

On August 4, 2021, the IRS released additional guidance regarding the employee retention tax credit. Notice 2021-49 provides guidance for employers that pay qualified wages after June 30, 2021 and before January 1, 2022.

## THE EMPLOYEE RETENTION CREDIT

The Employee Retention Tax Credit (ERTC), as part of the Coronavirus Aid Relief and Economic Security Act (CARES Act) and modified and extended under the American Rescue Plan Act (ARPA), was enacted to provide tax relief for small businesses during the COVID-19 pandemic. As restaurants struggled to keep open and retain their employees, the ERTC allowed restaurants to receive a refundable tax credit of up to \$5,000 per employee in the 2020 tax year and updated Notice 2021-23 to \$7,000 per employee per calendar quarter in 2021.

## TIPPING

One of the major items that differentiate restaurants from other small businesses is tips. Many restaurants rely on tips as wages to their employees. However, when the ERTC was first enacted, there was no clear guidance regarding whether tips were considered qualified wages to be claimed as part of the ERTC. This meant that many restaurant owners did not claim tips as part of qualified wages on their tax returns. However, the IRS released Notice 2021-49 on August 4, 2021, and clarifies that cash tips (which include credit card tips) that are reportable for payroll tax purposes are now treated as eligible wages for 2020 and 2021 ERTCs, assuming that all other requirements are met. This means that double-dipping is permitted on 45B (Federal Insurance Contributions Act) FICA tax tip credit income



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for federal tax purposes. The tips earned by employees from food and beverage establishments can now claim both the FICA tip credit and, if eligible, also the ERTC. While this is allowed for federal purposes, California does not conform to the federal tax rules and does not allow tips to be considered qualified wages.

Taxpayers should review their 2019 tax return and 2020 tax return (if already filed) with a qualified CPA to determine whether additional refunds can be received from amending or making an administrative adjustment (AAR) to their previously filed tax returns which did not include FICA tip as ERTC credits.

Contact Jean Hagan at [jean.hagan@krostcpas.com](mailto:jean.hagan@krostcpas.com) for assistance or any questions. ■

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