



Employee Retention Credit Interest: It's What Makes the Waiting Worth It

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Congress created the Employee Retention Credit (“ERC” or “Credit”) to aid businesses through the COVID-19 pandemic and encourage businesses to keep employees on payroll. While the initial purpose of the Credit may have been to assist businesses during the heat of the pandemic, many businesses did not claim the Credit until years after the end of the pandemic. Businesses that filed an original employment tax return and later claimed ERC on an amended tax return are due interest dating back to the original filing date.

Interest is generally a recognition that there is a time value to money. In other words, had businesses claimed and received the Credit at the time of the original filing, the business could have used the funds to invest generally or back into the business. Businesses that claimed the Credit later should not miss out on the entire investment opportunity. Therefore, businesses are paid interest on top of the Credit to approximate at least some of that investment opportunity.

The Internal Revenue Code (“I.R.C.” or “Code”) provides for interest to be paid by the government on an overpayment of taxes. Specifically, I.R.C. § 6611(a) states that interest is to be allowed and paid upon any overpayment in respect of any tax under the Code. The rate of interest is announced quarterly by the Internal Revenue Service (“IRS”) and is calculated using the provisions of I.R.C. § 6621.

Under I.R.C. § 6611(e)(1) the government can generally avoid paying interest on a refund if the refund is processed within 45 days of the date the return was received in a processable form. I.R.C. § 6611(e)(1) refers to “the return,” this is, however, understood to be referring to the original tax return. In the ERC context, however, most claims for the Credit have been claimed on an amended employment tax return (Form 941X). Typically, when a return is amended interest will be paid on the refund amount from the date of “overpayment availability,” which is generally the date the original return was due, until either the date when



the return was received, if paid within 45 days of receipt, or until a date not to exceed 30 days before the refund was issued, if paid after 45 days of receipt.

In the years since the pandemic, the nation has been gripped by inflation, rising prices, and a period of increasing interest rates. While those can be negative to consumers and businesses alike, it can be a boon for those receiving interest payments. However, when it comes to interest and the IRS, partnership, individuals, and corporations are not treated alike. As a general matter, the overpayment interest for partnerships and individuals is higher than that for corporations. Currently, interest rates for ERC refunds for corporations are approximately 15-16 percent of the value of the Credit. For partnerships and individuals this rate swells to nearly an additional 25 percent on top of the value of the initial Credit. These rates represent the total accumulated interest throughout the period since the original filing was due.

Below is a table showing the current overpayment interest rates for the Second Quarter of

Interest Rate	Application
7%	Overpayments (by individuals and partnerships)
6%	Overpayments by corporations
4.5%	Overpayments by corporations exceeding the first \$10,000

Businesses have been waiting for, in many cases, years for their ERC refunds. Some businesses have had to close their doors or file for bankruptcy because of not receiving the funds due to them. Businesses, therefore, should guarantee they are receiving every cent of the Credit they are rightfully owed. To date, there have been many instances of businesses not receiving the proper amount of interest because the starting date was incorrectly calculated. Additionally, entities that should have received a partnership/individual rate for interest have been receiving the much lower corporate interest rate. Furthermore, businesses that utilized a Professional Employer Organization (“PEO”) to file and receive ERC refunds should pay close attention to the amount they ultimately receive. The amount of money a PEO receives for ERC claims is likely an amalgamation of many client’s refunds and therefore interest calculations can become muddled.

If your business claimed ERC and you feel that you have not received the proper amount of interest, please seek professional advice. Frost Law is happy to review ERC claims and determine if the amount of interest paid to your business appears correct. Businesses have waited far too long to receive this necessary financial reprieve. As such, every business should receive the full amount of interest they are rightfully entitled to receive. If you would like to discuss your ERC claims in greater detail, don't hesitate to reach out to us at (410) 498-6135 or schedule a confidential consultation with our team of tax attorneys.