

IRS Clarifies Federal Credit Unions May Claim Employee Retention Credit For 2021

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In a memorandum released on August 18, 2023 (CCM 202333001), the IRS Office of Chief Counsel clarified the eligibility of federal credit unions to claim Employee Retention Credits under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) and the Internal Revenue Code. The new guidance confirms that, provided that other requirements of the law are met, federal credit unions are eligible to claim the credit for qualifying wages paid after December 31, 2020 and before October 1, 2021 (or in the case of wages paid by a federal credit union which is a recovery startup business, January 1, 2022).

The CARES Act, as originally enacted on March 27, 2020, prohibited instrumentalities of the United States government from claiming the credit. However, later revisions to the law provided that this limitation “shall not apply to any organization described in section 501(c)(1) and exempt from tax under section 501(a).” In its memorandum, the IRS explained that federal credit unions are both instrumentalities of the federal government and also organizations exempt from tax under section 501(a). The IRS further explained that the revised eligibility language did not apply retroactively to wages paid during 2020. As a result, federal credit unions are eligible to claim the credit, but only with respect to wages paid during 2021.

The memorandum will reduce uncertainty for federal credit unions that have already claimed the credit and may encourage others to file claims to the extent that they otherwise qualify. Generally, for 2021 tax periods, the deadline for such claims is April 15, 2025.

For more information or to discuss further, please contact the authors or your Winston relationship attorney.

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