



DIOCESE OF FALL RIVER
CHANCERY FINANCE OFFICE

To: Pastors, Principals, and Diocesan Leaders
From: Joe Harrington Vice Chancellor for Administration
Date: April 2023
Re: The CARES Act **Employee Retention Credit**

[Please review the information below and share as necessary with your business manager or appropriate support. The Chancery will also be hosting a webinar in the next few weeks to assist you with working through what we understand is a complicated subject (specific information on the webinar will be provided in the next week.)]

The Chancery Office has received numerous inquiries from parish and school leaders about the tax refund program they heard about on the television, radio, and internet. Many of you have also received solicitations from consultants offering to assist you with applying for this refund. The program they are referring to is called the **Employee Retention Credit** (“ERC”). The ERC is a fully refundable federal payroll tax credit originally included in the CARES Act signed into law in March 2020, and which has been amended several times.

The purpose of this memo is to provide information about the program and to assist eligible locations with accessing the refund. Please read the entire memo carefully to learn about the program. Highlights include:

1. Each entity within Roman Catholic Bishop of Fall River (AKA “Diocese of Fall River”) with a separate tax identification number should be treated as a separate employer for purposes of the ERC. If you have a parish (or parishes) and school with separate tax identification numbers, you will need to apply separately for each.
2. Each location will need to work directly with a third-party consultant to determine specific periods of eligibility, calculate the refund, and enter a claim with the IRS.
3. Wages covered by the Payroll Protection Program (PPP) cannot be included in the calculation of the ERC.
4. The Chancery can assist parishes and schools on the Paylocity platform with running payroll reports.
5. It may take several months from the time you enter a claim to when you receive the credit from the IRS (expect 6 months or more).

We strongly encourage you to consider this program (especially if you are a school where we believe there are strong cases for eligibility and where the credit can be very significant).

I. What exactly is the Employee Retention Credit (ERC)?

The ERC was designed to assist companies impacted by the COVID-19 pandemic. Eligible businesses may receive a credit on employer payroll taxes paid to the IRS. As a fully refundable credit, the credit received may exceed your payroll tax liability (in which case the IRS would send the entity a cash refund for the difference).

Eligible employers may receive a credit of up to \$5,000 per employee for the period March 13, 2020, to December 31, 2020, plus a credit of up to \$7,000 per quarter for Q1, Q2, and Q3 of 2021 (for a total possible credit of \$26,000 per employee).

II. Does the fact that my parish or school is part of Roman Catholic Bishop of Fall River impact my ERC application?

The Diocese of Fall River is organized as a corporation sole, with all parishes and most schools included in the corporation sole called **Roman Catholic Bishop of Fall River (“RCB”)**. The ERC for 2020 would be *significantly* reduced for employers with more than 100 employees. For the 2021 credit the threshold was increased to 500 employees. In either case, if the Diocese had to aggregate employees at all locations, the credit would have been substantially reduced. This has been a subject of considerable discussion among dioceses structured like RCB. After a lengthy and detailed review of our structure and the rules related to ERC, including consultation with outside legal and accounting support, it is our position that each Diocesan entity with a separate tax identification number should be treated as a separate employer for ERC purposes.

(Reference attached file: *RCB Analysis of Aggregation Rules*)

III. Is my parish or school eligible?

The short answer is – maybe. As noted above, there are 4 time periods that the program is related to:

1. March 13, 2020 – December 31, 2020 [2020]
2. January 1, 2021 – March 31, 2021 [Q1]
3. April 1, 2021 – June 30, 2021 [Q2]
4. July 1, 2021 – September 30, 2021 [Q3]

An eligible employer may be eligible for all 4 time periods or may only be eligible for 1, 2, or 3 of the time periods, or for a period within one or more of the 4 time periods. In short, eligibility is evaluated on a periodic basis.

IV. How do I determine which periods my parish or school is eligible for?

There are 2 tests for eligibility. You need to satisfy only 1 of these 2 tests:

1. **Gross Receipts Test:** To pass the gross receipts test a business must experience a significant decline in revenue. For 2020, the significant decline in gross receipts test is satisfied if the business had a > 50% decline in gross receipts for the 2nd, 3rd, or 4th quarter compared to the comparable quarters in 2019. For Q1, Q2, and Q3 2021 the gross receipts test is satisfied if the business had a > 20% decline in gross receipts for the comparable quarters in 2019, or in the prior quarter.

We believe most parishes or schools will not qualify under the “Gross Receipts Test”. Some might qualify, so we encourage you to gather this information (described below).

2. **Government Shut-Down Test:** Under the CARES Act, an employer is eligible for the ERC if operations were “fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings”. Further guidance notes that an employer is eligible if the government order effects more than a *nominal portion* of the employer’s operations, which is further defined as operations that account for at least 10% of the business’ gross receipts or service hours.

We believe that many locations will satisfy this test for at least some of the 4 time periods. To qualify a business does not need to show that they were incapable of providing a service, rather it requires they show that operations were more than nominally impacted in response to a government order. For example, if a school had to transition to remote learning (or hybrid learning), the way they provided a service (educating children), was more than nominally impacted. The fact that they were still able to provide this service is not relevant. The school needed to more than nominally modify how they provided this service.

V. **What if we received funds from the Paycheck Protection Program (PPP)?**

Originally, employers that received PPP funds were excluded from the ERC; however, subsequent legislation retroactively eliminated this restriction. Please do note that wages covered by the PPP are not “qualified wages” for ERC (you can’t “double dip” – the wages you covered with PPP funds are excluded from the calculation for ERC).

VI. **This is a lot to take in – so what do I need to do if I think my parish or school will be eligible?**

Step #1 – Engage with a reputable consultant.

The first step is to engage with a reputable third party to assist you with the application. The ERC is more complicated than PPP. You will need a third party to assist you with the process. There are numerous outfits that have come out of the woodwork to exploit this opportunity. Many will operate on a contingency basis – that is, they are paid a percentage of the credit they calculate for you. We know through our audit partners that the IRS is looking closely at businesses that worked with consultants they feel have abused the program. These businesses may be at a heightened risk of being audited. This is not to say that all consultants operating on a contingency basis are bad –

there are many good firms operating under this structure, but they may be motivated to get you a refund larger than you deserve (and for which you may be audited down the road).

The Chancery has been working with Venable LLP (Christopher Moran Esq, CNMoran@venable.com and Stephanie Loughlin Esq, SMLoughlin@venable.com), on ERC related matters. Venable is a nationally recognized law firm with a long and distinguished history. Venable's fees are based on time and material. There is a risk that you will have to pay Venable even if they determine you are not eligible for any credit; however, the amount you pay is likely to be substantially less than what you would pay on a contingency basis if you are eligible for ERC. Venable has worked with several non-profits, including schools in Massachusetts. Venable is available to support parishes and schools with this process. You may contact Venable directly. If a mass of parishes and schools contact Venable at the same time, they may have to place you into a queue. Please note that claims can be processed into 2024.

We recommend that you get clarity on fees before engaging with a consultant.

Step #2 – Provide information to the consultant to determine eligible periods.

Your consultant will provide you with guidance. Though it is unlikely you will qualify based on the *Gross Receipts Test*, you should be prepared to provide your consultant with a profit and loss report for each quarter in 2019, the 4th quarter of 2020, and 1st, 2nd, and 3rd quarter of 2021. Your consultant can then examine if you qualify based on the gross receipts test.

To assess the *Government Shut-Down Test* they are likely going to ask you to provide information on how your operations were impacted by the pandemic during 2020 and Q1-Q3 of 2021. We are attaching a template that may help you (Reference *ERC Operational Impact* Excel sheet). In this template we have entered mock information for a school called "Saint Bartholomew's". Include everything you can think of to include on this template. Try to be as specific as possible, especially as it pertains to dates. Include financial impact if that is something you can easily estimate. Please note that the examples included in the template are meant to stimulate thought – they are far from comprehensive (schools – consider impacts on busing kids, breakfast or lunch programs, field trips, extracurricular activities, advisory board meetings, fundraising events, etc.; parishes – consider impact on prayer groups or bible study, finance or pastoral council meetings, religious education classes, ability to get vendors onsite to do work, etc.). Note that schools will likely need to provide copies of the re-opening plans submitted to the state during the pandemic.

Your consultant is going to match your input to data they have gathered on when government orders/restrictions were in place. This is another reason we encourage you to work with a law firm (like Venable). This step is perhaps the most critical and complicated piece of the process.

The final piece of information your consultant may require is a copy of your PPP forgiveness application (Form 3508EZ or 3508S), if you received a PPP loan.

Step #3 – Provide payroll data (and possibly employer insurance costs) to your consultant.

Again, your consultant should guide you on this part. Your consultant should analyze the operational impact data you provided, and provide you with a time-frame for when your operational adjustments matched up with government orders (for example, they may say "You made operational adjustments from March 16, 2020 through July 31, 2021, but the government restriction that impacted your operations was officially lifted on April 16, 2021, therefore you are eligible for a credit on total wages from **March 16, 2020 through April 16, 2021**"). You will then

need to provide total wages paid* for the March 16, 2020 – April 16, 2021, pay periods so that they can calculate the claim that is going to be filed.

Your consultant will also require copies of 941s filed when you (or your payroll provider) filed quarterly employer taxes for 2020/2021.

Your consultant may ask for employer contributions to employee health plans on a per employee basis. This is only relevant if you have employees that do not hit the \$10,000 threshold for wages in a particular period. Your consultant should be able to provide you with a list of these employees.

Step #4 – File your claim.

Your consultant will assist you with filling out and submitting the correct forms to the IRS.

Step #5 – Wait for your refund.

Reports suggest it is taking 6+ months to receive a refund.

VII. How can the Chancery (or Catholic Schools Office) continue to support us in this process?

Once you have engaged a consultant, you are going to work directly with them. Any questions related specifically to your claim should be directed to them.

Here is how the Chancery and Catholic Schools Office can provide additional support:

1. Please send a copy of any consulting agreement to Amy Calise (Acalise@dioc-fr.org) for the Chancery Legal Office to review prior to entering into any agreement. We are comfortable with the Venable agreement and approval times will be minimal with a Venable agreement.
2. Chancery has been working with Paylocity on developing payroll reports. If you are a parish or school that is using Paylocity for payroll, please contact Debbie Smith (Dsmith@dioc-fr.org) for assistance with generating reports for your consultant to review.
3. If your consultant asks for health insurance costs and you do not have copies of invoices paid for the particular months (or employees included on bills), please contact Leslie Moujabber (Lmoujabber@dioc-fr.org), for assistance with getting invoice information for specific months.
4. If schools have questions on re-opening plans or operational adjustments, please contact the Assistant Superintendent assigned to your school.

Thank you,



Joe Harrington
Vice Chancellor for Administration