

# EMPLOYEE RETENTION CREDIT (ERC) ELIGIBILITY DEVELOPMENT

*By Mike Batts, CPA*

NONPROFIT SPECIAL ALERT™



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## Employee Retention Credit (ERC) Eligibility Development

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Our firm continues, on behalf of our clients, to probe with special legal counsel the eligibility requirement of partially suspending operations due to government orders. Recently, nationally prominent special legal counsel engaged by some of our clients has concluded that Executive Orders issued by Governor Ron DeSantis form the basis for concluding that government orders applied to churches throughout Florida from March 24, 2020 through September 24, 2020, restricting them from having large gatherings and applying capacity and social distancing restrictions. Counsel has concluded that the restrictions had the effect of causing these clients, all well-attended churches, to partially suspend operations and qualify for the ERC. The Orders might not have had the same effect on churches that were sparsely attended (those for which the capacity and social distancing restrictions did not impact attendance at church gatherings).

For Florida churches that had an average of fewer than 100 full-time employees in 2019, the potential impact of this conclusion could be very significant. The ERC for 2020 (for employers with fewer than 100 full-time employees in 2019) is generally 50% of the first \$10,000 of FICA wages and certain healthcare costs, so long as such costs were not used as a basis for PPP loan forgiveness. That is a maximum of \$5,000 per employee. As an example, for a church with 50 employees, the credit amount could be up to **\$250,000** for 2020. It is possible that a careful legal analysis of the executive orders and decrees in other states could yield similar conclusions.

This development is also an example of how and why our firm continues to assist and encourage our clients in carefully probing ERC eligibility criteria. It is possible that careful analysis of government orders and other facts could reveal eligibility for many nonprofit organizations of various types that have assumed they don't qualify for the ERC.

We consider every ERC case to be unique, and each organization's facts must be analyzed to determine eligibility.

*We continue to strongly recommend that clients obtain guidance from legal counsel regarding whether "government orders" applied to the suspension of any of their activities, and we defer to legal counsel in reaching such conclusions.*

We also continue to be amazed at the extremely small number of tax, accounting, and legal professionals who are knowledgeable about and who are thoroughly analyzing the eligibility criteria for nonprofit organizations.

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