SFBBG
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SENSIBLE SOLUTIONS

fall 2022

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About Our Law Firm

We are comprised of seasoned and dedicated professionals who familiarize themselves with our clients' industries as well as their legal issues. We strive to maintain long-term client relationships by keeping our clients fully informed and respecting their time and business resources.

Legal Practice Areas

- Banking and Creditors' Rights
- Condo-Community Association Representation
- Corporate and Other Business Transactions
- Defamation, Privacy and First Amendment
- Employee Benefits
- Employment Law
- Estate Planning, Probate and Trust Administration
- Health and Fitness Industry
- Independent Sales Representatives
- Intellectual Property Law
- Litigation and Alternative Dispute Resolution
- Mergers, Acquisitions and Business Sales
- Real Estate and Finance
- Real Estate Tax Reduction
- Securities, Futures and Derivatives
- Trade Associations

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Employee Retention Credit: What Business Owners Need to Know

While many business owners have taken advantage of government programs that were implemented under the federal CARES Act for pandemic relief, such as the Economic Injury Disaster Loan program ("EIDL") and Paycheck Protection Program ("PPP"), a lesser-known tax credit called the Employee Retention Credit ("ERC") can allow a business to request up to $26,000 per employee. The ERC is a tax credit that was implemented to incentivize owners of small and medium sized businesses to retain their employees during the COVID-19 pandemic. Business owners are eligible to receive the ERC even if they have applied for and/or have obtained relief through EIDL and PPP in the past. This credit is available to businesses that have up to 500 W-2 employees. The three-year period to submit an amended payroll quarterly report to claim the credit has not yet expired.

<u>Eligibility Requirements</u>

Like most programs implemented by the CARES Act, the ERC has changed significantly over the course of the pandemic. As of September 2022, there are three distinct ways to qualify for the credit.

<u>Full or Partial Suspension of Business Operations</u>

If your company experienced a full or partial suspension of business due to a COVID-19 government order, your business would automatically qualify for the ERC. Your business must have been suspended because a government authority imposed a restriction on your business operations by limiting commerce, travel, or group meetings due to COVID-19 such that your business could continue, but not engage in all of its typical operations.

<u>Significant Decrease in Gross Receipts</u>

Even if your business did not experience a full or partial suspension in business operations due to a government order, you may still qualify if your business experienced a "significant decrease in gross receipts" when compared to your gross receipts in 2019. For 2020, a "significant decrease" is considered to be at least a 50% decrease in the second through fourth quarters of 2020 when compared to the same quarter in 2019. For example, if your business made $200,000 in revenue in the third quarter of 2020 but made $500,000 in the third quarter of 2019, your business would be eligible for the ERC.

For the year 2021, a "significant decrease" in gross receipts is considered to be a decrease of 20% in the first through third quarters when compared to gross receipts in 2019. For example, if your business had gross receipts totaling $200,000 in the third quarter of 2019, and $150,000 of gross receipts for the third quarter of 2021, your business would be eligible for the credit for that particular quarter. Eligibility requirements are evaluated separately on a quarterly basis. That is, a business could be eligible for the credit for the first and third quarters of 2021, but not the second quarter if revenues did not experience a gross decline in receipts. Each quarter is compared to the corresponding quarter in 2019.

<u>Supply Chain Disruption Qualification</u>

Your business may also qualify if it experienced a nominal supply chain disruption. To qualify under this newly implemented qualification, your business must have been unable to source critical goods, materials, or services, and this inability must have had a "nominal" effect on your business. "Nominal" is defined as an impact of 10% of your business.

<u>Credit Amount</u>

The rules governing credit amount eligibility differ for 2020 and 2021. For 2020, the ERC offers a credit amount equal to 50% of the "qualified wages" an eligible employer paid to its employees from March 13, 2020 through the end of 2020. This is limited to $10,000 for any one employee. As such, the maximum credit amount a business can request is $5,000 per employee from March 13, 2020 to December 31, 2020.

In 2021, the credit amount increased significantly by redefining the limitation on "qualified wages." In 2021, 70% of "qualified wages" are considered in the calculation, and the limit was increased to $10,000 per employee per quarter, or $21,000 per employee per year. Thus, the maximum amount of credit a business could receive from the ERC for 2020 and 2021 is $26,000 per employee.

<u>ERC Application Process</u>

One of the main reasons the ERC is lesser known than the PPP or EIDL is the nature of the application process. Form 941 is a quarterly tax form that all businesses are required to file, which is typically handled by the business's payroll department. Since a business's accounting department would typically handle applying for programs like these, there is sometimes a lapse in communication between the payroll and accounting departments that could lead to overlooking the ERC application. Simply put, in order to apply, a business must file an amended 941 form or a 941X for each quarter that the business is eligible to receive the credit.

The ERC can be claimed retroactively on an amended 941-X payroll tax return for three years after the subject quarter has ended. For example, if your business qualifies for the credit during the first quarter of 2021, you have until March 31, 2024 to amend your tax forms and apply for the credit. It is important to note that the IRS is experiencing significant backlogs. Consequently, some businesses have experienced delays of six months to one year from the date of application to the time the funds are received. Accordingly, it is important to apply as soon as possible if you intend on taking advantage of the ERC.

For more information, please contact Jordan Melvin at Jordan.melvin@sfbbg.com or by calling 312-648-2300.

2022 Cook County Property Assessments Arrive as Prior-Year Process Continues

Cook County property taxes and assessments have been best summarized by one word in the last two years: delayed. Nevertheless, publication of assessments, appeal results, and tax bills has continued, albeit slowly.

Cook County North Suburbs Reassessed for Real Estate Taxes

As part of a three-year cycle, the north suburbs of Cook County are scheduled for reassessment in 2022. The majority of townships within this group have been issued new valuations, and we now have a picture of the types of valuation changes the Assessor has implemented.

In summary, there are some substantial valuation increases in store for north suburban properties at this stage of the process.

New Trier Township, which includes the villages of Wilmette, Kenilworth, Winnetka, Glencoe, and part of Glenview, has seen the average assessment of a single-family home increase approximately 42% from 2021 to 2022.

Evanston single family residences have been hit with a smaller, but nevertheless substantial, 31% average assessment increase. That increase is overshadowed by larger apartment buildings in Evanston, which have been reassessed this year an average of 52% higher than their 2021 valuations.

Elk Grove Township, which includes a substantial number of industrial and commercial properties, has seen industrial assessments climb 41% and commercial assessments increase 44% from 2021 to 2022.

Leyden Township, which includes the villages of Franklin Park, Rosemont, and Schiller Park, will see even larger assessment jumps. Commercial properties there have seen assessments increase by an average of 72% while industrial assessments have climbed 85%.

Although these assessment increases are significant, the figures pertain only to pre-appeal valuations. Final tax bills are calculated only once appeal decisions have been issued by both the Assessor's Office and Board of Review. Even then, assessments are just one component of the tax bill equation, which also includes the Cook County multiplier and local tax rates.

Delayed Cook County Second Installment Tax Bills Update

As we projected in our last update in early April, second installment 2021 property tax bills in Cook County have been significantly delayed. In April we estimated that in a likely scenario, second installment bills may not be issued until November with payment due in December. Cook County has subsequently confirmed that timeline with bills potentially issued in late November and payment due by late December. Recently, a spokesman for Cook County Board president Toni Preckwinkle again confirmed a December target for bill collection. However, final 2021 certified assessments have still not been issued for a handful of townships, which leaves little time for the county to meet its target.

Both the Assessor's Office and the Board of Review have laid blame on each other for the delays, but as we previously noted, the Assessor's Office's publication and certification of 2021 assessments was far behind the typical schedule. Without certified assessments from the Assessor, the Board of Review could not open for appeals and was therefore bound to be delayed. These delays are atypical and contravene Preckwinkle's priority of issuing bills in a timely fashion. Second installment tax bills arrived by August 1st from 2011 until 2020, when bills were delayed two months due to the pandemic.

Despite the delayed second installment 2021 tax bills, there has been no word from Cook County that first installment 2022 bills will also be pushed back. First installment bills typically are issued by February with payment due by the start of March. Taxpayers should expect to receive two tax bills within three months this winter.

We know that many Cook County residents are anxious to receive their 2021 second installment tax bill within the 2022 calendar year for income tax purposes. Unlike recent first installment bills, second installments cannot be prepaid.

Assessments Delayed Again

On the topic of delayed Cook County assessments and tax bills, it is likely that the 2022 process will look similar to the 2021 process. The ongoing delays to 2021 assessment certification have in turn delayed publication of 2022 assessments. At this point, assessments in approximately 60 percent of the 38 townships in Cook County have been published. Moreover, the Assessor has not issued decisions for any appeals of 2022 assessments.

Publication and certification of 2022 assessments is unlikely to speed up any time soon. Over the last decade, assessments for all of Cook County have typically been published by September while Assessor appeal decisions are typically completed by November. The Board of Review would then conclude its own appeal session by late spring of the following year.

Absent any certified 2022 assessments from the Assessor at this point, it is highly unlikely that the Board of Review will be able to begin accepting, much less deciding, 2022 appeals in the short term. As the process stands, a best-case scenario may be completion of the 2022 appeal process in mid-summer 2023. That in turn could result in second installment 2022 tax bills issued, once again, months late in fall 2023 or later.

For more information, please contact Danielle Pearlman at danielle.pearlman@sfbbg.com or Jason Newton at jason.newton@sfbbg.com, or call 312/648-2300.

Case Success Stories

- On August 9, SFBBG attorneys Phil Zisook and Bill Klein prevailed in an Illinois Appellate Court case that affirmed the Circuit Court's grant of the Firm's Motion for Summary Judgment concerning a failed real estate transaction. The proposed transaction involved the transfer of three parcels of real estate consisting of a golf course in Michigan, a Chicago office building, and a River North condominium. The only signed agreement between the parties was a letter of intent which required, as a condition precedent, the execution of a formal agreement by a date certain. The case, *Greenberg v. Angelopoulos*, sought compensatory damages in excess of $1 million for breach of contract, bad faith breach of contract, promissory estoppel, equitable estoppel, unjust enrichment, tortious interference with contract, and fraud, in addition to unspecified punitive damages. The Appellate Court and the trial court both found that the plaintiff's causes of action were barred by the statute of frauds and by the plaintiff's inability to prove reasonable reliance on the defendant's alleged representations.

- A sprawling, multi-jurisdiction dispute that spanned over seven years successfully concluded on September 29, 2022 when Judge John Robert Blakey of the U.S. District Court in Chicago granted summary judgment in favor of SFBBG's client while denying the plaintiff's cross-motion. SFBBG litigators Adam Glazer and Andrew Johnson successfully defended the federal court action and obtained costs in a suit filed by a vengeful company after the same company previously failed to obtain the relief sought in state court. "WOW!!!!!!!! A heartfelt thank you to all you guys," wrote the grateful client.

- After a week-long trial, a federal court jury in downstate Benton, Illinois returned a verdict in favor of SFBBG's independent sales representative clients in late August that included awarding exemplary damages under the Illinois Sales Representative Act. SFBBG partners Adam Glazer and Bill Klein tried the case against an Italian manufacturer of corrugated box machinery. The jury found that the parties' oral contract enabled SFBBG's clients to recover not only commission payments, but also exemplary damages under the Illinois rep statute.

Speaking Engagements

- Danielle Pearlman presented at a JUF Professional Network event on September 14 at the Bryn Mawr Country Club in Lincolnwood. She focused on the good work the JUF organization has done, how its professional network enhances careers, and the effectiveness of carefully considered tax appeal practices.

- Dan Beederman co-presented with Charles Cohon (CEO of Manufacturers' Agents National Association, or MANA) at the Manufacturers' Agents of Cincinnati luncheon on October 7. The topics that were presented included: "Getting Paid for Your Success" and "Putting the Success in Succession Planning."

- On October 13, Dan Beederman presented "For Your Eyes Only, How to Build a Rock Solid Contract" at the 50th Annual Association of Independent Manufacturers' Representatives Annual Conference held at the Gaylord Rockies Resort in Aurora, Colorado.

- Mike Kim co-presented (for a third time) on October 13 a nationally broadcast webinar entitled "Easier Enforcement of your HOA's Rules: Steps to Create Enforceable Rules, Effective Fines, and a Fair Violation Process," sponsored by HOA Leader.

Firm Event: SFBBG's "BYKTWD"

On August 5, the Firm hosted its first "Bring Your Kid To Work Day." Employees were invited to bring their children (aka "SFBBG interns") to the office for a fun-filled day which included: a boardroom breakfast meeting, a get-to-know-everyone scavenger hunt, fun dice games, "pin the gavel on the judge," crafts, and even a mock trial involving the defense of a wolf in pursuit of justice for three little pigs. The day was filled with laughter, giggles, boardroom chair trains and McDonald's for lunch! This surely will become an annual event.