5 Common ERC Mistakes - Are you leaving money on the table?

Leyton specializes in the Employee Retention Credit and Sales/Use Tax Audits – both are ways to offset daily operating expenses and payroll costs. In our conversations with hotel owners, we have found that there are many misconceptions about who can qualify for the ERC credit, and we have found that many hoteliers are leaving money on the table – we're here to help.

Here are 5 common ERC mistakes we are seeing with hoteliers:

1. I can’t claim ERC if I’ve already claimed PPP (or gotten my PPP loans forgiven).
You can claim both! Congress, in the Consolidated Appropriations Act (CAA) of 2021, removed the limitation on only claiming one or the other. PPP will only account for 2.5 times your monthly payroll expenses and is meant to be spread out over 6 months. This leaves plenty of uncovered wage expenses for claiming ERC.

2. We were not profitable or didn’t have any tax liability.
This is a refundable credit. In practice, this means that any credit overage above tax liability is sent to the taxpayer/business owner as a refund.

3. My business did not have a drop in gross receipts of 50% or more.
The CAA has changed the qualifications so that a reduction of 20% now qualifies. BUT remember there is also another way to qualify for the ERC – if your business has been subject to a partial or full suspension due to a government order – see the next point

4. My business was not shut down during the pandemic.
Even if your business was partially suspended by order of the government (federal, state or local) you could potentially qualify. For instance, having limited capacity, shutdowns of your supply chain, vendors, locations, reduction in services offered and reduction of hours to accommodate sanitation are all scenarios that still potentially qualify for the ERC.

The key considerations are – due to the government ordered suspension is/was your business *not* able to continue its activities in a comparable manner, and/or did that result in a ‘more than nominal impact on business operations’.

Remember, the partial or full suspension is an alternative way to qualify for the ERC — separate from the reduction in gross receipts test.

5. I do not want to get audited.

While the ERC is certainly a business-friendly relief provision – the IRS is not just giving dollars away. The statute of limitations on audits for the Employee Retention Credit has been extended to 5 years.

The best practice for businesses to mitigate risk is to use a specialist firm that can help them fully document and properly navigate the complexities of the credit. At Leyton, we have a team of experts that stay current on all legislation changes and in the case of an audit, will fully support you through the process.

Book a Free Consultation to ensure you receive your maximum refund.
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