



2022 Year-End Tax and Business Planning



Presented by



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Agenda

- Tax Legislation Update
- Year –End Tax Saving Opportunities: Planning around expired and expiring provisions
- Employee Retention Credit (ERC) Update
- Strategic Business planning: What's in store for 2023 and beyond



Tax Legislation Update

Inflation Reduction Act 2022:

- Signed into law by President Biden August 16, 2022
- Minimal tax changes affecting businesses and individuals. Most notable changes –
 - Return of 15% Corporate AMT
 - 1% Excise Tax on Stock Repurchases for Publicly Traded Companies
 - Budget increase for IRS enforcement
 - Investment in Clean Energy



Tax Legislation Update

SECURE 2.0:

- Passed by House March 29, 2022 with 414 – 5 vote – No Senate vote
- If passage is to happen before year-end, likely will be add-on to a “must-pass” bill
- Most notable tax items currently include:
 - Raising RMD age from 72 to 75
 - Increasing “catch-up” contributions for those over 50
 - Requiring all “catch-up” contributions be Roth-like (after-tax) contributions

Tax Legislation Update

Tax Cuts & Jobs Act of 2017

- Changes to research and development costs effective January 1, 2022
- R&D costs to be capitalized and amortized over 5 years (15 for foreign R&D) rather than expensed
- Strong bipartisan support to repeal this, but will it happen in time?



Tax Legislation Update

Expired / Expiring Provisions:

- Enhanced Child Tax and Dependent and Child Care Credits – 2021
- Charitable donations for non-itemizers – 2021
- Expensing of R&D costs – 2021
- Restaurant Meals deduction – 2022
- Mortgage Insurance Premiums treatment as mortgage interest – 2021

Tax Legislation Update

MA Millionaire's Tax

- Effective January 1, 2023
- Income over \$1M, rate increases from 5% to 9% for ordinary and long-term cap gains
- For short-term cap gains, rate goes from 12% to 16%
- Planning to minimize impact is essential

A blurred background image of a business meeting. In the foreground, a person's hand points at a tablet displaying a colorful bar chart. Another person's hand is visible near a laptop. The scene is set on a wooden table with various documents and devices. The overall tone is professional and collaborative.

Year-End Tax Saving Opportunities



Tax Planning Opportunities and Updates – Individuals

- Max out on 401(k) / SIMPLE IRA contributions before year-end
- Consider Charitable Donation of appreciated stock / Donor Advised Fund donations
- Consider timing of qualifying energy efficient home improvements
- Health Savings Acct contributions
- Cryptocurrency / investment gains and loss harvesting
- RMD – if age 72 by end of 2022
 - Consider QCD
 - Review withholding needs prior to taking RMD, if still possible



Tax Planning Opportunities and Updates- Estate & Gift

- 2022 estate tax exemption - \$12.06M
- 2023 estate tax exemption - \$12.92M
- 2022 annual gift tax exclusion - \$16k
- 2023 annual gift tax exclusion - \$17k
- Gifts of tuition and medical expenses
- Many states have lower exemptions than Federal – plan to minimize State burden
 - MA - \$1M filing threshold
 - RI - \$1,648,611



Tax Planning Opportunities and Updates- Businesses

- Consider state pass-through entity tax – elective for RI and MA
- Employee Retention Credit – still time to amend 2020 and 2021 returns – be aware of eligibility rules
- Section 179 / Bonus Depreciation
- Be aware of teleworkers and impact on State filing requirements
- Defer income / accelerate expenses for cash basis businesses

A background image showing a business meeting. In the foreground, a person's hand is using a white calculator on a desk. To the left, another person is holding a tablet. In the background, a laptop screen displays some data. The overall scene is dimly lit with a warm, slightly blurred aesthetic.

Employee Retention Credit (ERC) Update

ERC

Question – I was contacted by a tax credit company claiming I am eligible for the ERC because COVID 19 affected my business operations?

Answer – Consult KLR!!!!

Newsroom:

IRS Warns Employers to Beware of Companies Promoting ERC Services

OCTOBER 27, 2022

IRS Provides New Process to Report ERC Mills

NOVEMBER 02, 2022



ERC

Originally introduced as part of the CARES Act, the ERC originally offered a credit of up to \$5,000 (50% of the first \$10,000 in wages) per employee for wages paid by employers whose 1.) operations were fully or partially suspended by a shutdown order or 2.) incurred gross revenues decline of more than 50% when compared to the same quarter in the prior year.

This credit did not have much press in 2020 because if a business applied for a PPP loan, they were ineligible for this credit. For many businesses, the PPP loan was more beneficial than the credit.



ERC

In an unexpected move, The Consolidated Appropriations Act of 2021 not only extended the Employee Retention Credit through June 30, 2021 it expanded the eligibility to include those businesses who obtained PPP loans.

This change in eligibility is retroactive to the Cares Act effective date!

Let's discuss the ERC in two sections –

Section 1 – 2020 (3/13/2020 to 12/31/2020)

Section 2 - 2021 (1/1/2021 to 9/30/2021)

(The American Rescue Plan Act of 2021 extended the Employee Retention Credit through December 31, 2021, and the Infrastructure Investment and Jobs Act ended the credit effective September 30, 2021)



ERC 2020 (Section 1)

Eligibility -

Generally speaking, the ERC is available to businesses whose –

Operations were fully or partially suspended by a government shutdown order

or

Gross revenues declined more than 50% when compared to the same quarter in 2019.



ERC 2020 (Section 1)

Eligibility (cont.) -

Fine Print –

1. For Employers with **more** than 100 average full-time employees for 2019: Only wages paid to employees who are not providing services due to the shutdown order.
2. For Employers with **less** than 100 average full-time employees for 2019: all wages paid to employees count, regardless of whether or not they actually worked.



ERC 2020 (Section 1)

What wages are eligible?

1. Only wages paid during the **shutdown period**.
2. First day of quarter in 2020 where gross receipts declined more than 50% vs. the same quarter in 2019 (period ends first day of the calendar quarter after the quarter for which gross receipts are greater than 80% of gross receipts for the same calendar quarter in 2019).

Healthcare costs paid on behalf of employees are eligible to be included as qualified wages.

Wages paid in accordance with the Families First Coronavirus Response Act are ineligible.



ERC 2020 (Section 1)

How do I receive the credit?

The credit is applied against payroll taxes paid on the employer's payroll tax filings.

The credit is claimed on the employer's quarterly 941 payroll tax return.

For those employers now retroactively claiming the credit, they will need to file amended Form 941 payroll tax returns.



ERC 2021 (Section 2)

ERC changes effective 1/1/21 –

- Increases the rate from 50% of wages to 70% of wages.
- Increases the limit of wages from \$10,000 per year, per employee to **\$10,000 per QUARTER, per Employee.**
 - Effectively raises the potential annual credit from up to \$5,000 per employee to up to \$21,000 per employee.
- Reduces the quarterly gross receipts test from 50% to 20%
 - Note – **There are some exceptions to this rule.**



ERC 2021 (Section 2)

ERC changes effective 1/1/21 –

Increases the average full-time employee cutoff from 100 to 500 when determining small employer status.



ERC Shut Down Orders

1. Can't be voluntarily, needs to be govt order. (Government asking for social distancing does not count.)
2. If the work could be replaced by teleworking, you will not qualify.
3. Think reductions in capacity or complete closure orders from the government (Restaurants).
4. Does the shutdown order have a more than nominal effect on the business operations. The IRS considers revenues (or hours) in excess of 10% as the threshold to determine whether or not a shutdown order had a more than nominal effect



PPP Loan Interaction

PPP funded wages are ineligible to be used when claiming the ERC. The IRS released Notice 2021-20 which address how the ERC and PPP interact. The notice is over 100 pages long, so we are going to focus on the two main questions that employers typically have -

1. Are all the wages reported on my loan forgiveness application ineligible even though they exceed my original loan amount?
2. How do I determine which wages are PPP vs ERC?



PPP Loan Interaction

Are all the wages reported on my loan forgiveness application ineligible even though they exceed my original loan amount?

Good news! Even if a PPP borrower reports more wages on their PPP loan forgiveness application than their original loan amount, only the wages up to the original loan amount will be considered ineligible. For example, if a PPP borrower reports \$250,000 in wages, but their original loan amount was only \$150,000, the excess of \$100,000 in wages would be eligible for the ERC.

Furthermore, if the PPP borrower reported \$25,000 in non-payroll costs, those non-payroll costs would further increase the eligible wages for ERC to \$125,000.



PPP Loan Interaction

Bonus Question - **Why would I have to start using PPP wages as soon as I got my PPP loan? Can't I wait to start using PPP money in order to maximize the credit?**

To be clear, there is nothing in the IRS notice that says you can't do that. However, when PPP loan recipients applied for their loans, they attested that *"Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."*

If an employer decides that it will first use ERC wages and will start using PPP funded wages at a later date, then the SBA could question whether or not the original PPP loan was economically necessary. Employers who decide to delay the start of PPP funded wages should document their understanding why their PPP loan was economically necessary, yet they did not start using those loan funds until a later date.



PPP Loan Interaction

Bonus Question - **Why would I have to start using PPP wages as soon as I got my PPP loan? Can't I wait to start using PPP money in order to maximize the credit?**

It is a misconception that the SBA \$2 million dollar economic safe harbor means that the SBA will not evaluate a PPP borrower's economic necessity. If a PPP loan under \$2 million is selected for review by the SBA, all facets of the loan can be reviewed.

This brings up something that we've talked about since the inception of the PPP loan & ERC program. All borrowers should be maintaining a due diligence file for all their COVID relief program activities. The most important documents in that file are a memo documenting management's decision that a PPP loan was economically necessary for the business, and documentation of ERC eligibility and related credit calculations.



ERC Do's & Dont's

DO speak with your tax advisor about ERC!

DO obtain/create a workbook documenting entity's eligibility and calculation of credit by quarter by employee!

DO optimize ERC with PPP!

DO include Health Insurance costs paid by company!

DO aggregate all related parties!

DON'T be overly aggressive with SHUT DOWN orders!

DON'T claim ERC on owners' wages or related family members!

DON'T double dip on PPP or other non eligible wages!



A close-up photograph of a person's hands counting a stack of US dollar bills. The person is wearing a light-colored shirt with thin, dark vertical stripes. The focus is on the hands and the money, with the background being a soft, out-of-focus indoor setting. The text 'Strategic Business Planning' is overlaid in white, centered on the image.

Strategic Business Planning

Items for Consideration

Business Succession

- Buy, Sell, Give Away or Just Run Away
- Working Capital Considerations
- Valuation

Economic Concerns and You

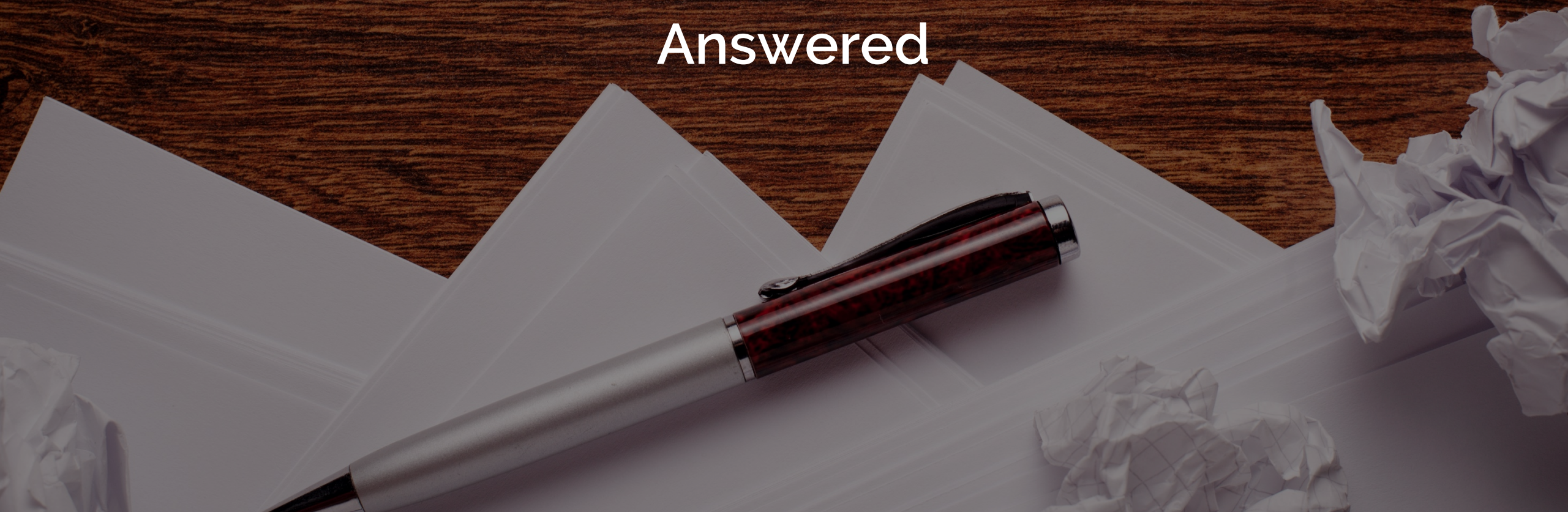
- Inflation, Interest Rates and Supply Chain
- Work Force/Leverage
- R&D

Technology/Cyber

- 14 Seconds
- 8+ Trillion/2.2 million
- **\$1**



Your Questions Answered



A background image showing a professional office setting. In the foreground, a person's hands are visible, one holding a pen and the other a smartphone. A laptop is open on a wooden desk. In the background, another person is writing on a document. The overall scene is dimly lit, with a focus on the work environment.

Questions

- What's your outlook for corporate tax rates and individual tax rates considering latest election outcome?
- What do you think will happen with the step up in basis rules at death, if anything?
- What are the rules for 2022 and 2023 re: 100% write off of new equipment?
- Are there anticipated changes to the SALT deduction for 2022 and beyond?
- Is there a way to check with IRS on the status of our ERTC? We submitted a revised 941 back in the spring.

A background image showing a group of people in a professional setting, likely a meeting or conference. They are seated at a large wooden table, working on laptops and looking at documents. The image is dimmed to serve as a background for the text.

Questions

- Does it make sense to convert some or all of our traditional IRA to a Roth IRA this year?
- Should we consider making gifts in 2022 to use of some/all of the existing federal estate tax exemption?
- What's the latest on the potential changes to QSBS (Section 1202)?
- What's your sense of how the IRS is focusing its newly-authorized resources?
- With manufacturing plants in MA and PA, we sell product into multiple states. How can we minimize MA millionaire tax?
- Any delays allowed for RMDs due to market declines?

A blurred office scene with people working at a desk. In the foreground, a person's hands are visible, one holding a pen and the other near a smartphone. A laptop is open on the desk. In the background, another person is writing on a tablet. A document with a bar chart is visible on the desk. The text "Final Thoughts" is overlaid in the center.

Final Thoughts

We're Here.



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[2022 Year-End Tax Planning Guides](#)

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Please note that the proposed BBBA legislation is not yet finalized, and as such, clarifications and additional guidance on various tax changes will be issued if/when necessary. KLR is dedicated to providing you the most up to date information and we are following developments in congress closely.

