



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 125, Columbia, South Carolina 29214-0575

SC REVENUE RULING #22-4

**SUBJECT:** Federal Employee Retention Credit – Modification for Qualified Wages  
for Tax Years 2020 and 2021  
(Income Tax)

**EFFECTIVE DATE:** Applies to all periods open under statute, but only with respect to qualified wages paid or accrued after March 12, 2020, and before January 1, 2022

**REFERENCES:** Internal Revenue Code Sections 3134 and 280C  
S.C. Code Ann. Section 12-6-1130(7) (2014)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
S.C. Revenue Procedure #09-3

**SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

**QUESTION**

Is a taxpayer allowed a modification from federal taxable income on its South Carolina income tax return for qualified wages disallowed as a deduction for federal income tax purposes when the disallowance results from the taxpayer claiming the federal employee retention credit in 2020 and 2021?

**CONCLUSION**

Yes. The taxpayer is allowed a modification to its federal taxable income on its South Carolina income tax return. They may deduct qualified wages disallowed for federal tax purposes as a result of claiming the federal employee retention credit.

The modification to federal taxable income on the South Carolina income tax return is only applicable to qualified wages paid or accrued after March 12, 2020, and before January 1, 2022.

## LAW AND DISCUSSION

### Overview – Federal Coronavirus Employee Retention Credit

In 2020, Congress passed the Coronavirus Aid, Relief and Economic Security Act (CARES Act) that included a new employee retention credit along with various other relief programs aimed at alleviating the economic fallout from COVID-19.<sup>1</sup> The employee retention credit is a refundable employer payroll tax credit based on qualified wages paid to an employee during a prescribed period of time. Subsequent federal legislation modified and then repealed the employee retention credit for specific periods (calendar quarters) during 2021.<sup>2</sup> In the American Rescue Plan Act of 2021,<sup>3</sup> the employee retention credit, originally enacted as an uncodified provision in the CARES Act (Section 2301), was codified as Section 3134 of the Internal Revenue Code.<sup>4</sup>

CAUTION: The Internal Revenue Service (IRS) released various guidance regarding the federal legislative developments, quarterly payroll periods, and procedures applicable to the employee retention credit and qualified wages paid in 2020 and 2021.<sup>5</sup> Before claiming a federal employee retention credit, the legislation and IRS guidance should be reviewed to address compliance with the various technical modifications to the credit during 2020 and 2021.

### Federal Wage Deduction Disallowance

The relevant federal legislation concerning the employee retention credit includes the following limitation: “For purposes of this section, rules similar to [... IRC Section] 280C(a) shall apply.” (Emphasis added)

IRC Section 280C(a), “Rule For Employment Credits,” provides:

No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the sum of the credits determined for the taxable year under sections 45A(a), 45P(a), 45S(a), 51(a), and 1396(a). ...

The employee retention credit is not specified in the list of IRC sections subject to this federal statutory disallowance provision.

However, the relevant federal authorities applicable to the employee retention credit (including IRC Section 3134(e)) provide that “rules similar to” IRC Section 280C(a) shall apply. IRS Notice 2021-20 (Section III Guidance; L. Special Issues for Employers: Income and Deduction) specifically addressed the scope of this limitation in Question and Answer 60 of that Notice.<sup>6</sup>

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<sup>1</sup> Pub. L. No. 116-136, Section 2301.

<sup>2</sup> Pub. L. No. 116-260, Sections 206 and 207; Pub. L. No. 117-2, Section 9651; and Pub. L. No. 117-58, Section 80604.

<sup>3</sup> The American Rescue Plan Act of 2021, Pub. L. No. 117-2, Section 9651.

<sup>4</sup> South Carolina does not adopt Section 3134 of the Internal Revenue Code. See SC Code Section 12-6-50(16).

<sup>5</sup> Selected IRS Guidance: [Notice 2021-20](#), 2021-11 I.R.B. 922 (wages paid in 2020); [Notice 2021-23](#), 2021-16 I.R.B. 1113 (wages paid in Q1 and Q2, 2021); [Notice 2021-49](#), 2021-34 I.R.B. 316 (wages paid in Q3, 2021; retroactively limited); and [Notice 2021-65](#), 2021-51 I.R.B. 880 (wages paid in Q4, 2021).

<sup>6</sup> IRS [Notice 2021-20](#), 2021-11 I.R.B. 922.

Question 60: Does the employee retention credit reduce the expenses that an eligible employer could otherwise deduct on its federal income tax return?

Answer 60: Yes. Section 2301(e) of the CARES Act provides that rules similar to section 280C(a) of the Code shall apply for purposes of applying the employee retention credit. Section 280C(a) generally disallows a deduction for the portion of wages or salaries paid or incurred equal to the sum of certain credits determined for the taxable year. Accordingly, a similar deduction disallowance applies under section 2301(e) of the CARES Act with regard to the employee retention credit, such that an employer's deduction for qualified wages, including qualified health plan expenses, is reduced by the amount of the employee retention credit. ... (Emphasis added)

### South Carolina Income Tax Treatment of Qualified Wages

Code Section 12-6-1130(7) provides that the IRC Section 280C expense limitations related to certain federal tax credits do not apply. As a result, this statutory provision allows a modification to federal taxable income for the applicable portion of wages that were unable to be deducted in 2020 or 2021 for federal income tax purposes as a result of IRC Section 280C. While the deduction disallowance for the payment of wages claimed under the employee retention credit is not done directly through IRC 280C, but under “rules similar to” that statute, the Department will follow IRS Notice 2020-21 and treat the federal disallowance of the wage deduction as though that reduction occurred pursuant to IRC Section 280C. In addition, the longstanding position of the Department is to allow a deduction for wages that are disallowed as a result of a federal tax credit since there is no South Carolina tax credit for these wages. Accordingly, Code Section 12-6-1130(7) will apply and an employer may make a modification to federal taxable income on its South Carolina income tax return to allow a subtraction for any qualified wages paid that were disallowed under the federal employee retention credit provisions.

To the extent an taxpayer's deduction for qualified wages is reduced by the amount of the employee retention credit for federal income tax purposes in 2020 and 2021, that reduction is a modification on the South Carolina income tax return (i.e., a subtraction from federal taxable income, the starting point of the South Carolina return) in computing South Carolina taxable income.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell  
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W. Hartley Powell, Director

June 10, 2022  
Columbia, South Carolina