This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Recent Changes to the 2021 Employee Retention Credit

The Employee Retention Credit ("ERC") was established in March 2020 to encourage employers, despite the challenges of COVID-19, to keep employees on their payroll. It was first introduced through the CARES Act and was amended in December 2020 by the Economic Aid Act. Earlier this year, the American Rescue Plan further expanded and extended the ERC. Also, the IRS clarified many questions raised about the ERC in a number of recent Notices. This summary outlines some of the changes to the ERC relevant to small nonprofit employers.

ERC Availability

- The ERC was extended for wages from July 1, 2021 through December 31, 2021.
- However, for 2021 third and fourth quarters, the ERC is claimed only against the employer portion of the Medicare tax, which is 1.45% of wages. For all periods prior to this, the employee retention credit is claimed against the 6.2% employer portion of the Social Security tax.

Definition Changes or Clarifications

- The definition of small employer changed from less than 100 employees to less than 500 employees expanding who may obtain an ERC.
- In determining the average number of employees, the organization need NOT include full-time equivalents. However, when identifying qualified wages, it does not matter if an employee is full-time. If all other requirements are met, wages to all employees are treated as qualified wages.

Gross Receipts

- When determining gross receipts, a tax-exempt organization should use the same accounting method it normally uses.
- A separate determination of a decline in gross receipts must be done for each 2021 calendar quarter. When determining the decline in gross receipts for a 2021 calendar quarter, either:
    1. The gross receipts for the quarter must be less than 80% of the same quarter in 2019 (or 2020 if the organization didn't exist in 2019) OR

2. The gross receipts for the immediate preceding quarter must be less than 80% of the same quarter in 2019 (or 2020 if the organization didn't exist in 2019).

   By example: If considering taking the ERC for first quarter 2021:

   - In #1 - the organization would compare first quarter 2021 to first quarter 2019 gross receipts for the decline.
   - In #2 – the organization would compare fourth quarter 2020 to fourth quarter 2019 gross receipts for the decline.

- Any Paycheck Protection Program ("PPP") loans, whether First Draw or Second Draw, are not included as part of gross receipts when loan is given.
  - When a PPP loan is forgiven, while the value of that loan forgiveness is generally included in gross receipts, it is NOT included when determining a decline in gross receipts for eligibility for ERC. Thus, an organization should not include the loan forgiveness amount on its employment tax returns when determining eligibility.
- If an organization receives a Shuttered Venue Operator grant or a Restaurant Revitalization grant, while the value of the grant is generally included in gross receipts, it is NOT included when determining a decline in gross receipts for eligibility of ERC and should not be included on its employment tax returns when determining eligibility. However, just like wages paid using PPP, the ERC may not be claimed for wages paid under those grants.