



Tax Advisory: Restaurants Utilizing ERTC in October-December 2021 Must Be Cautious

The U.S. House of Representatives is currently considering infrastructure legislation that would eliminate the fourth quarter (October-December 2021) of the COVID-19-related employee retention tax credit (ERTC). In August, the U.S. Senate passed infrastructure legislation (69-30) that terminates the ERTC for the fourth quarter—three months ahead of its scheduled expiration date on December 31. Ending ERTC raises \$8 billion to partially offset federal infrastructure spending increases.

Restaurants that anticipate using ERTC for this current calendar quarter should do so with caution. While ERTC is currently in place for the fourth quarter, the Speaker of the House plans a vote on the infrastructure legislation by October 31. If passed by the House, President Biden is expected to sign the infrastructure legislation into law. While Congressional budget and infrastructure conversations are fluid, restaurants should not assume ERTC will be available for the fourth calendar quarter. If ERTC is eliminated for the fourth quarter, the IRS would not pay ERTC, and restaurants would be subject to standard federal income taxes.

At this time, there is no indication that Congress would eliminate ERTC for calendar quarters previous to October–December 2021.

The Association will continue to provide updates to members and our state restaurant association partners. For more information on ERTC, please access the [ERTC Policy Brief](#).