

Reinstating the Employee Retention Tax Credit (H.R. 6161/S. 3625)

The **Employee Retention Tax Credit (ERTC)**, one of the most successful forms of relief during the pandemic, enabled nonprofit and for-profit employers to retain and hire staff when layoffs were excessive. Its retroactive repeal in November 2021 was based on faulty data and imposed tremendous burdens on employers, particularly charitable nonprofits suffering unique workforce challenges. The ERTC must be restored for the fourth quarter of 2021 and Congress should provide additional relief for nonprofits.

Righting a Wrong: Repeal of the ERTC for the fourth quarter of 2021 was based on an incorrect presumption that the program was underutilized. In fact, the Government Accountability Office found that employer usage tripled in 2021 from 2020.ⁱ Repeal occurred with the enactment of the Bipartisan Infrastructure and Jobs Act on November 15, 2021, halfway through Q4 2021. This resulted in a **retroactive repeal of a tax benefit** and severe disruptions to nonprofit finances and budgeting. Nonprofits and businesses retained and hired workers based on the promise of the \$7,000 refundable payroll tax credit per employee for the fourth quarter. The retroactive repeal imposed real harm on workers who had to be laid off as a result and on employers suffering unanticipated losses.

Providing Disaster Relief While the Disaster Continues: The ERTC is, and has always been, a disaster relief provision designed to help employers keep workers on the payroll during trying times. For charitable nonprofits, the times remain trying as more residents seek support and relief, resources aren't keeping up with demand and inflation, and competition for workers imposes costs nonprofits cannot bear. Without restoration of the promised relief, layoffs at community-based nonprofits will be necessary, harming the economic recovery and causing a reduction in the vital services on which our fellow residents and communities rely.

Legislative Solutions

Employee Retention Tax Credit Reinstatement Act ([H.R. 6161/S.3625](#))

Additional Relief:

- Extend this refundable payroll tax credit through 2022.
- Modify nonprofit eligibility beyond the current “gross receipts” test and definition of eligible payroll expenses.

The Nonprofit Workforce Shortages Crisis:

Typically, nonprofits cannot raise prices to pay higher wages, causing many workers to leave the sector for other jobs. As a result, waiting lists for services are growing, or nonprofits are canceling services entirely or shutting down. The ERTC has helped nonprofits bridge the gap during this economic crisis. *Learn more about the nonprofit workforce shortages crisis.*ⁱⁱ

Administratively Feasible: It has been suggested that restoring the ERTC for Q4 2021 would be difficult for the IRS to administer given its widely reported backlog and other challenges. However, Commissioner Rettig has stated that the IRS is on track to close its backlog this year,ⁱⁱⁱ and resources to process ERTC paperwork is not an impediment as Congress provided the IRS adequate funding to handle FY 2021 tax filings.

The Ask

Will you cosponsor the **Employee Retention Tax Credit Reinstatement Act** (H.R. 6161/S.3625) and urge your leaders to include this essential relief from the nonprofit workforce shortage in any bill moving through Congress?

Will you support additional ERTC relief for charitable nonprofits – such as **extending the ERTC through 2022** and fixing provisions to ensure **more nonprofits are eligible**?

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ⁱ COVID-19:IRS Implemented Tax Relief for Employers Quickly, but Could Strengthen Its Compliance Efforts ([GAO-22-104280](#)), Government Accountability Office, May 17, 2022.

ⁱⁱ [The Scope and Impact of Nonprofit Workforce Shortages](#), National Council of Nonprofits, Dec. 13, 2021.

ⁱⁱⁱ [IRS will "absolutely" resolve backlog before end of the year, Commissioner Charles Rettig says](#), Sarah Ewall-Wice, *CBS News*, March 17, 2022.