APRIL 2018
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AN ALERT FROM THE BDO STATE AND LOCAL TAX PRACTICE

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SALT

SUBJECT

DISASTER TAX RELIEF LAW CREATES EMPLOYEE RETENTION TAX CREDIT FOR CERTAIN EMPLOYERS AFFECTED BY CALIFORNIA WILDFIRES

SUMMARY

Certain employers that were rendered inoperable by California wildfires and are located in the California wildfire disaster area may be eligible to claim an employee retention credit equal to the lesser of $2,400 or 40 percent of the wages paid to each affected employee during the relief period of October 8, 2017, through December 31, 2017.

DETAILS

Background

On February 9, 2018, the Bipartisan Budget Act of 2018 was signed into law, creating an employee retention credit for employers affected by the California wildfires (the Wildfire Employee Retention Credit). To be eligible for the tax credit, the employer must have been actively conducting a trade or business on October 8, 2017, within the California wildfire disaster zone and became inoperable during the applicable relief period as a result of damage sustained by reason of the wildfires.

The Wildfire Employee Retention Credit is based on **qualified wages** paid by an eligible employer to an **eligible employee**. For this purpose, an "eligible employee" is an employee whose principal place of employment on October 8, 2017, was in the California wildfire disaster zone. "Qualified wages" are wages paid to an eligible employee during the relief period in which the business first became inoperable until it resumed significant operations. Qualified wages include wages paid without regard to whether the employee performs any services, performs services at a different location from his or her principal place of employment, or performs services at the principal place of employment before significant operations have resumed.

The credit amount is equal to 40 percent of the qualified wages paid to each eligible employee, up to $6,000 (making the maximum credit $2,400 per eligible employee).

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Notably, the Wildfire Employee Retention Credit cannot be claimed for an employee for any payroll period in which the employer may claim the Work Opportunity Tax Credit (WOTC) for such individual. The following example illustrates the interaction of the Wildfire Employee Retention Credit and the WOTC:

> A calendar year employer hired a veteran on January 1, 2017, at a salary of $2,400 per month. As a veteran, the employee is a member of a targeted group for which the employer may claim a WOTC equal to the lesser of $9,600 or 40 percent of the employee's first year wages, provided the employee works over 400 hours for that year. The employer is located in the California wildfire disaster zone and was rendered inoperable by the disaster on October 8, 2017. Significant operations did not resume before January 1, 2018. Is the employer entitled to claim both the WOTC and the Wildfire Employee Retention Credit with respect to the employee on its 2017 return?

The employer cannot claim the Wildfire Employee Retention Credit to the extent the WOTC is available to the employer. Where the employee worked 400 hours and earned $24,000 by October 31, 2017, the employer may claim the maximum WOTC of $9,600 ($24,000 x 40 percent) for services rendered during the period January 1, 2017, through October 31, 2017. The employer may claim the Wildfire Employee Retention Credit for wages paid during the period beginning on November 1, 2017, and ending on December 31, 2017.

BDO INSIGHTS

- The credit of up to $2,400 per eligible employee will assist employers retain essential staff during the recovery period.
- Taxpayers affected by the California wildfires should consult with their financial statement auditor and tax advisor to evaluate and determine the potential financial statement implications under ASC 740, including the impact on current and deferred taxes, uncertain tax benefits, and disclosures.