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### MEMORANDUM

To: Churches & Nonprofit Partners  
Subject: Employee Retention Tax Credit

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This is a summary overview of the Employee Retention Tax Credit (“ERC”), which is a refundable credit on payroll taxes for organizations that were impacted by COVID either by government rules or by a decline in gross receipts during 2020 and 2021. ERC was originally established by the CARES Act, then later qualified by subsequent action. As it currently stands, ERC is available to small businesses who meet certain qualifications outlined below. Nonprofits and churches are included in the definition of organizations eligible for ERC.

Originally, there was a qualification that organizations could not receive ERC if they had received Payroll Protection Program (“PPP”) loan funds that were subsequently forgiven. However, that rule no longer applies. As it now stands, an employer who went through the PPP loan forgiveness process can still claim ERC, but the same funds subject to PPP cannot be claimed under ERC (no “double dipping”). Unlike PPP, for ERC there is no requirement that funds be utilized in a particular way.

#### **Time Period & Filing**

ERC is available for the period of March 12, 2020 through October 1, 2021. While no wages are eligible after 10/21/21, the IRS allows the ERC to be claimed for up to three years from the original payroll tax deadline for each relevant quarter. As a result, employers are continuing to assess their eligibility and interest in claiming ERC during 2023 (applicable to the eligible months of 2020 and 2021).

To claim ERC, the employer will utilize IRS Form 941X - Adjusted Employer’s Quarterly Federal Tax Return or Claim for Refund. The process is not overly complicated once eligibility is determined.

#### **Eligibility**

Organizations may qualify for ERC based on one of two factors:

- The organization was impacted by government shutdowns or regulations. This is a broad definition and would include full or partial suspension of operations as well as limitation of business activities (including reduced hours, canceled events, or similar disruptions).
- The organization experienced a reduction in gross receipts for quarters during 2020 and 2021 when measured against respective quarters of 2019. The applicable thresholds are declines of more than 50% for quarters in 2020 (compared to 2019) or more than 20% for quarters in 2021

(compared to 2019). Note that any decline in receipts for applicable time periods is not required to be COVID-related in terms of cause and impact.

These criteria are effectively certified by the employer during the filing process. Detailed written documentation or evidence is not required on the submission form.

### **Tax Credits**

If an organization determines that it qualifies for ERC based on the above factors, the amount of the tax credits is calculated on a per employee, per quarter basis. Applicable compensation includes wages subject to FICA and qualified health expenses up to certain maximums. The maximums are \$5,000 total for 2020 and \$7,000 per quarter for 2021. Thus, for any employee for whom ERC is claimed, the relevant amount could be up to \$26,000.

Since wages are tied to payment of FICA on common-law employees, compensation paid to individuals who are not subject to payroll tax are not eligible. This would include ordained ministers or non-employee contractors for whom wages were paid but payroll taxes were not applicable. (Even if a church voluntarily paid the minister a compensation offset to cover his/her FICA, such amounts would not be eligible.)

*This is a summary overview intended to provide general, accurate information on the subject matter. I will do my best to assist any church or nonprofit, but of course consultation with a tax professional is recommended if formal assistance or advising is needed for your organization.*