

**Kansas Restaurant and Hospitality Association  
Supporting Testimony  
Senate Bill 81  
Carol Casale, Mize CPA  
Tuesday February 7th, 2023**



Chair and Members of the committee, I am Carol Casale with Mize CPA. I assist many clients in the restaurant and hospitality industry with their tax compliance efforts and this bill addresses a concern regarding the Kansas treatment of the Employee Retention Tax Credit. Basically, Kansas taxes these wages twice, at the employer level because KDOR is disallowing the modification to restore the wage deduction, and at the employee level as the wages are taxable income to the employee. We think this is inconsistent with other programs and deserves to be corrected to not cause additional liabilities largely within and industry that has been decimated by other government decisions.

The Employee Retention Credit (ERTC) was introduced in the CARES Act and first became effective on March 31, 2020. It was enhanced in subsequent Covid related legislation. It expired September 30, 2021, and so was only in effect for 2020 and 2021.

The federal ERTC (Employee Retention Tax Credit) was available to small and midsize business during 2020 and 2021 to encourage employers whose businesses were impacted by the pandemic to retain employees. In 2020, it was available to qualifying small employers (100 full time employee threshold) for wages paid after March 7, 2020. In 2021, it was available to qualifying small and mid-size employers (500 full time employee threshold) for wages paid from January 1-September 30, 2021.

The CARES Act references the tax treatment of IRC Section 280C(a). Under IRC 280C(a), the taxpayer does not include the credit received as income but is disallowed the deduction from wages by the amount of the credit. This is consistent with the federal tax treatment of other hiring credits such as the Work Opportunity Tax Credit (WOTC). The amount of the credit offsets the amount of wages the employer can deduct.

Kansas statutes provide for a modification to taxable income to restore the deduction for wages disallowed at the federal level for hiring credits. See the highlighted language in the attached Kansas Statutes Section 79-32,117. Kansas adjusted gross income of an individual: addition and subtraction modification. This is logical as no Kansas tax benefit was received.

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KDOR has taken the position that there will not be a modification allowed to restore the deduction for wages for which the employer received the federal Employee Retention Tax Credit. This position has been adopted even though the federal CARES Act and the IRS treat the ERTC as a jobs credit under Section 280C and Kansas Statute 79-32,117 provides for the modification to reduce Kansas taxable income by the amount of the targeted jobs tax credit and work incentive credit disallowed at the federal level under Section 280C.

The result is that Kansas taxes these wages twice, at the employer level because KDOR is disallowing the modification to restore the wage deduction, and at the employee level as the wages are taxable income to the employee. It would be appropriate to pass this bill updating the language of 79-332,117 (c) (x) to include the Employee Retention Credit. The effective dates for the change should be tax years 2020 and 2021. Thank you and I will stand for questions at the appropriate time.

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