



**Revenue Ruling No. 22-001**  
**April 4, 2022**  
**Individual Income Tax**  
**Corporate Income Tax**

**Application of 280C Deduction to Federal Employee Retention Credit**

The purpose of this revenue ruling is to provide guidance to employers with regard to the Federal Employee Retention Credit (ERC), as authorized by Section 2301(e) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Additionally, the revenue ruling addresses the applicability of LA R.S. 47:293(9)(a)(ix)<sup>1</sup> and 47:287.73(C)(4)<sup>2</sup>, which allows a taxpayer a deduction for any amounts disallowed pursuant to Internal Revenue Code (IRC) Section 280C.

IRC Section 280C

IRC Section 280C(a) requires an employer to reduce a deduction for the portion of wages or salary equal to the sum of certain credits determined under the Internal Revenue Code. These tax credits include:

- the Indian Employment Credit<sup>3</sup>,
- the Military Differential Wage Payment Credit<sup>4</sup>,
- the Employer Credit for Paid Family and Medical Leave<sup>5</sup>,
- the Work Opportunity Tax Credit<sup>6</sup>, and
- the Empowerment Zone Employment Credit<sup>7</sup>.

Each of these tax credits is accumulated as part of the General Business Credit available under IRC Section 38 and, as such, is applicable against federal income tax.

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<sup>1</sup> Statutory language of this provision reads as follows, "A deduction for expenses disallowed by I.R.C. Section 280C. In computing net income, a deduction shall be allowed for expenses which would otherwise be deductible under federal law, but for the disallowance provisions of I.R.C. Section 280C, relative to certain expenses for which federal credits are allowable."

<sup>2</sup> Statutory language of this provision reads as follows: "Expenses disallowed by 26 U.S.C. 280C. Expenses that would otherwise be deductible under federal law but for the disallowance provisions of 26 U.S.C. 280C, relative to certain expenses for which credits are allowable."

<sup>3</sup> 26 U.S.C.A. 45A(a)

<sup>4</sup> 26 U.S.C.A. 45P(a)

<sup>5</sup> 26 U.S.C.A. 45S(a)

<sup>6</sup> 26 U.S.C.A. 51(a)

<sup>7</sup> 26 U.S.C.A. 1396(a)

A Revenue Ruling is issued under the authority of LAC 61III.101 (C). A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.

### Employee Retention Credit

On March 27, 2020, the CARES Act was enacted. Sections 2301(e) of the CARES Act allows a refundable ERC against applicable employment taxes for eligible employers that pay qualified wages or compensation to some or all employees after March 12, 2020, and before January 1, 2021. Because the tax credits contained in Section 280C are applicable against federal income tax, rather than employment tax, the provisions of Section 280C cannot be directly applied to the ERC by reference. As such, Section 2301(e) of the CARES Act provides only that “rules similar to Section 280C(a) of the IRC shall apply for purposes of the ERC.” IRS Notice 2021-20 further clarifies that the wage deduction disallowance provisions contained in Section 280C(a) are also applicable to employers claiming the ERC pursuant to 2301(e). As such, Section 2301(e) requires employers to reduce any amount of deduction claimed for the payment of wages or compensation which are also utilized for purposes of claiming the ERC by the amount of the credit.

### IRC 280C Expense Deduction

LA R.S. 47:293(9)(a)(ix)<sup>8</sup> and 287.73(C)(4)<sup>9</sup> provide a deduction for expenses disallowed by IRC Section 280C. These expenses include payments made for salary and wages, which would be otherwise deductible but for the provisions of IRC Section 280C, and for which a credit is available. The deduction disallowance for the payment of salary and wages claimed under the ERC pursuant to Section 2301(e) is not done by Section 280C itself, but rather through “rules similar to Section 280C(a)...”. However, the wage deduction disallowance, as provided in Section 280C(a), remains unchanged and its application produces an identical result as that of Section 2301(e). As the provisions of LA R.S. 47:293(9)(a)(ix) and 287.73(C)(4) are intended to compensate for the effect of any such offset amounts, expenses claimed for purposes of the ERC pursuant to Section 2301(e) of the CARES Act and subsequently disallowed for purpose of claiming a wage deduction as required by “rules similar to Section 280C(a)...” remain eligible for the deductions provided in LA R.S. 47:293(9)(a)(ix) and 287.73(C)(4).

**Ruling** Employers claiming the ERC for the payment of wages pursuant to Section 2301(e) of the CARES Act and subject to the wage deduction disallowance for amounts utilized to claim the credit may recover such offset amounts by claiming the applicable IRC 280C Expense Deduction provided for in LA R.S. 47:293(9)(a)(ix) or 287.73(C)(4).

**Kevin J. Richard, CPA**  
**Secretary of Revenue**

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<sup>8</sup> The IRC 280C deduction is claimed on Schedule E of Form IT-540, Louisiana Resident Income Tax Return and on Nonresident and Part-Year Resident Worksheet of Form IT-540B, Louisiana Nonresident Income Tax Return.

<sup>9</sup> This deduction is claimed on Schedule F, Line 3(f) of the Form CIFT-620 Corporation Income and Franchise Tax Return.