



Do you qualify for the Employee Retention Credit

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Employee Retention Credit

Qualifying Businesses Basics and Factors

Qualified Wages

Interaction with PPP and other credits

Income Tax Return Application



Guidance

- + Coronavirus Aid, Relief and Economic Security (CARES)
- + Consolidated Appropriations Act (CAA)
- + American Rescue Plan Act of 2021 (ARP)
- + FAQs ERC Under the CARES Act (FAQs)
- + IRS Notice 2021-20
- + IRS Notice 2021-23
- + IRS Notice 2021-24





Qualifying Businesses Basics and Factors

Qualifying Businesses

- + MEETS ONE of the Qualifying Factors AND is
- + Any private sector business or tax-exempt organization that carries on a trade or business
- + Tribal Government is eligible
- + For 2021 Governmental employers that are eligible
 - + A Section 501 (c)(1)(12) tax exempt organization
 - + A public college or university
 - + A public entity whose principal purpose or function is providing medical or hospital care



Qualifying Factors – Only need ONE

- +The Business had a decrease in Gross Receipts during any Quarter
 - +2020 – Gross receipts decline by at least 50% compared to same quarter in **2019** - qualify until receipts exceed 80%
 - +2021 – Gross receipts decline by at least 20% compared to same quarter in **2019** or you can use the previous quarter's receipts compared to the same quarter in 2019



Qualifying Factors – Only need ONE

- + The Business was fully or partially suspended due to orders from the federal, state or local government limiting commerce, travel, or group meetings for commercial, social, religious or other purpose due to Covid 19



Aggregation Rules

- + For those businesses consider to be controlled groups of corporations, under common control or affiliated service groups that are treated as a single employer. You would aggregate for the following:
 - + Full or Partial Suspension – so if one is suspended all are considered
 - + Decline in Gross Receipts
 - + Number of Full-time Employees
 - + Employee's Credit Max



Gross Receipts

+ For Profit

- + Sales less returns and allowances
- + Interest, Dividends, Rents, Royalties and Annuities
- + Do not include:
 - + Collection of Sales Tax
 - + Receipts on the repayment of loans

+ For Tax Exempt

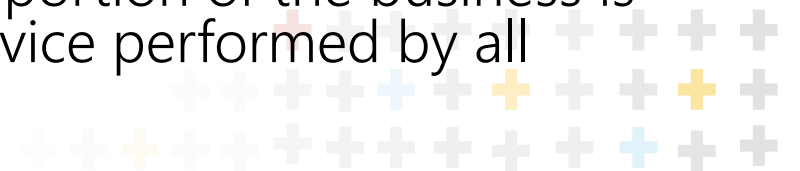
- + Contributions, Gifts, Grants, and similar amounts
- + Interest, Dividends, Rents, Royalties and Annuities
- + Dues or assessments from member or affiliated organizations
- + Gross amount received from the sale of assets without reduction for cost or other basis and expense of sale

+ If you acquired a business in 2020 you must include their 2019 receipts in your calculation in determining the reduction



Full or Partially Suspended

- + Federal, State or Local Governmental orders, proclamations, or decrees if they limit commerce, travel, or group meetings due to Covid-19 and have “more than a nominal” impact.
- + The credit is during the term of the suspension.
- + Nominal effect Safe Harbors:
 - + The gross receipts from that portion of the business affected is at least 10 percent of the total gross receipts in 2019 or
 - + The hours of service performed by employees in that portion of the business is at least 10 percent of the total number of hours of service performed by all employees in 2019



Full or Partially Suspended

- + A Business' suppliers were suspended
- + A Business with multiple locations where only some locations were affected
- + Essential business that had more than a nominal portion of its operations affected
- + Aggregated group where only a portion was effected
- + Not all tasks could be handled via remote working:
 - + Any task needing hands on services
- + Required shutdowns for sanitization
- + Reduction of hours that had more than a nominal affect



Business Starts in 2019

- + If the company started in the middle of a quarter
 - + Prorate the 2019 revenue for the entire quarter
- + If the company began after the 1st quarter 2019, use the 2019 quarter the business began as the comparison to all prior quarters.
 - + Started 2nd qtr. – you would use 2nd qtr. 2019 to compare to 1st and 2nd qtr. 2020.



Business Starts after 2019

- + If the business started by 2/15/20 the credit can be claimed by using the 1st qtr. of 2020 as the base quarter
- + If the business started in 2021, compare to the same quarter of 2020






Qualifying Wages

Employee Retention Credit

2020

- + Annual Cap of \$10,000 Wages and Health Insurance per employee
- + Credit is 50% of Costs
- + Maximum credit per employee \$5,000
- + Large employer >100 Full time employees

2021

- + Quarterly Cap of \$10,000 Wages and Health Insurance per employee
 - + Credit is 70% of Costs
 - + Maximum Credit per employee is \$28,000
 - + Large employer > 500 Full time employees
- 

Full Time Employee

+Code Section 4980H

- + Someone who works 30 hours per week or 130 hours per month. The number is calculated each month, totaled then divided by 12 (or the number of months in business).



Qualifying Wages

- + Wages paid from March 13, 2020 to December 31, 2020
- + Wages paid from January 1, 2021 to December 31, 2021

- + Salaries and wages (Social Security Wages)
- + Tips if included on W-2s
- + Bonuses
- + Health Insurance Costs – Pre tax paid by employee and Employer paid portion



Qualifying Wages

- + Large employer – only “not providing services” wages
- + Small employer – all wages
- + Not Providing Services:
 - + Paid for not working at all
 - + Paid for time above what they are performing
 - + Paid for services performed that would normally be paid at a lower rate of pay
 - + Paid during a furlough including their health insurance
 - + Large employer cannot claim an increase in wages the equivalent of the wage for the 30 days immediately preceding the suspension or the first day of the quarter of the decline in gross receipts

Owners and Related Individuals

- + Code section 51(i)(1) states no wages shall be considered for any individual **who is related** to a more than 50% owner of the business.
- + Related individuals as defined in 152(d)(2) is:
 - + Child or a descendant of a child
 - + Brother, Sister, Step-siblings
 - + Father, Mother, Step- Parents or an ancestor of either
 - + Niece or Nephew
 - + Aunt or Uncle
 - + In laws – son, daughter, father, mother, brother, or sister





Interaction with PPP and Other Credits

PPP Loan

- + For the ERC you must exclude any wages used for the forgiveness of the PPP loan.
- + Wages paid prior to and after the PPP loan are eligible wages.
- + Wages in excess of the PPP loan but included on the forgiveness application are eligible wages.
- + You can not use the 40% other costs to lower your PPP wages if they were not used on the forgiveness application.



Other Credits

- + Wages used for other credits noted below cannot be used for ERC:
 - + Credits for qualified sick or family leave wages under Code section 7001 and 7003 of the FFCRA
 - + Work Opportunity Credits
 - + Credits for paid Family medical leave under Code section 45S
- + For 2021 Additional credits – cannot use the same wages
 - + R&D Credits
 - + Indian employment credit
 - + Military differential wage payment credit
 - + Empowerment zone credit
 - + Shuttered venues grant
 - + Restaurant Revitalization grant (ARP)



Severely Financially Distressed Employers

- + Experienced at least a 90% decline in gross receipts compared to the same quarter 2019 may take all wages paid during those quarters into account for the ERC.
- + The limitation for large employers on wages paid for non performing does not apply to this.



Recovery Startup

- + Started after February 15, 2020 and has an average annual gross receipts up to \$1,000,000
 - + Eligible for a \$50,000 credit per calendar quarter
 - + Does not need to meet either
 - + the reduction in gross receipts test or
 - + have been under a governmental shutdown





Income Tax Return Application

Code Section 280C

- + Disallows a deduction for the portion of wages or salaries paid or incurred equal to the sum of the credit.
- + Based upon guidance provided for other wage credit reductions in past years; such as the WOTC
 - + The 280C reduction of expense for the 2020 ERC can be applied when the funds are received if returns have been filed for the 2020 year.



Statute of Limitations

- + The IRS has extended the statute of limitations for the auditing of the ERC to FIVE years from the normal three year limit. They will have the ability to audit and issue assessment for any fraudulent claims related to the ERC.
- + Documentation, Documentation, Documentation



Penalty Relief

- + Notice 2021-24 has provided penalty relief for non payment of employment taxes reduced in anticipation of the following credits:
 - + Paid Sick and Family Leave under FFCRA and ARP
 - + Employee Retention Credit under CARES and ARP
 - + Cobra Assistance under ARP





COBRA Assistance

COBRA Premium Subsidy

+It can be offered to:

- + Employees who have been involuntarily terminated or have reduced schedules that make them no longer qualified for health coverage
- + Employees who are currently enrolled in COBRA coverage
- + Individuals that did not initially elect COBRA coverage but whose COBRA periods have not yet expired
- + Individuals who did elect COBRA coverage, allowed the coverage to lapse, but their coverage period has not expired.



COBRA Premium Subsidy

- + The coverage period is:
 - + Begins April 1
 - + Ends when one of the following occurs:
 - + First month the individual is eligible for Medicare or coverage by another group health plan
 - + The end of the maximum COBRA coverage period (usually 18 months)
 - + September 30, 2021



COBRA Premium Subsidy

- + Subsidy is reimbursed to the employer through credits on their 941 returns.
- + Form 7200 has a draft update to allow you to request an advancement
- + Further guidance to come from the IRS





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