

General Background

The employee retention credit (ERC) is a fully refundable tax credit for certain eligible employers based on wages they paid their employees between March 12, 2020 and December 31, 2021. It is intended to help employers continue to pay their employees during government-required suspensions of business and economic downturn due to COVID-19.

Relevant Authority

- ▶ The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020
- ▶ The Consolidated Appropriations Act (CAA) of 2021
- ▶ American Rescue Plan Act (ARPA) of 2021

Amount of the Credit

2020 = \$5,000 per employee (50% of wages up to \$10,000)

2021 = \$7,000 per employee per quarter (70% of wages up to \$10,000 per quarter)

Total Potential Benefit = \$33,000 per employee

Ways to Qualify

The employer must qualify for one of the following reasons:

- ▶ Full or partial suspension of business due to COVID-19
- ▶ A reduction in gross receipts

Full or Partial Suspension Defined

This is a full or partial suspension of your business/nonprofit organization due to a government order (national, state, or local) that places restrictions limiting commerce, travel, or group meetings due to COVID-19. Examples would be restrictions requiring you to close, operate at reduced capacity or limit your business hours. Additionally, government orders that restrict your suppliers' ability to provide you with the products you need to operate your business would qualify.

Reduction in Gross Receipts

Eligibility is calculated on a quarter-by-quarter basis. For 2020, you must have at least a 50% reduction in gross receipts as compared to the same calendar quarter in 2019. For 2021, you must have at least a 20% reduction in gross receipts as compared to the same calendar quarter in 2019.

Eligibility Period

The general eligibility period runs from March 12, 2020 – December 31, 2021. However, employers must qualify on a quarter-by-quarter basis.

If qualifying under the **full or partial suspension**, you may only take the credit for the period in which the government order was in place.

If qualifying based on a **reduction in gross receipts**, you will qualify for the first quarter in which you have a 50% reduction in gross receipts, and you will continue to qualify for every quarter until the quarter after your reduction in gross receipts is less than 20%.

Large Employer Thresholds

2020 > 100 full time employees (in 2019)

2021 > 500 full time employees (in 2019)

A full-time employee is one who in 2019 averaged at least 30 hours of service per week or 130 hours in a month.

Qualifying Wages

Qualifying wages basically consist of gross wages paid to the employee reported on Form 941 plus the cost to maintain a group health plan.

Large employers can only take the credit on wages paid to employees that were not providing services due to a government order or decline in business. If you are not considered a large employer, you may take the credit on ALL wages paid – whether your employees were performing services or not.

You may not take the credit on the same wages you are using for:

- ▶ PPP loan forgiveness (this can get very tricky)
- ▶ Qualified Sick and Family Leave Credit
- ▶ Work Opportunity Tax Credit

Aggregation Rules

Businesses with common ownership or nonprofits with common board control may be required to be combined for the following purposes:

- ▶ When determining full or partial suspension
- ▶ When calculating the reduction in gross receipts
- ▶ When calculating the number of full-time employees
- ▶ When calculating the maximum credit per employee

The rules determining common ownership are quite complex. We advise that you consult your tax advisor for assistance in determining which entities would need to be aggregated.

How to Take the Credit

The credit is taken on your quarterly federal payroll tax return – Form 941. The credit offsets income tax, Social Security, and Medicare taxes that you withhold from employee wages. To the extent the credit exceeds these amounts, you will receive a refund. If Form 941 has already been filed for qualifying quarters, you may file an amended return.

You may also reduce your required federal payroll tax deposits in anticipation of receiving the credit for a qualifying quarter. Additionally, you may apply for an advance refund using Form 7200 for quarters in which you anticipate the credit will exceed your required payroll tax deposits due with Form 941.

Effect on Federal Income Tax Return

For-profit businesses must reduce their wage deduction by the amount of the credit.