

Take Advantage of this Refund Opportunity – The Employee Retention Credit

The Employee Retention Credit (ERC) is a tax benefit included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act aimed to help employers keep employees on their payroll during the pandemic. While the CARES Act became a law in March of 2020, the effectiveness and availability of this benefit was limited for a few reasons. Most notably, the CARES Act prevented employers from utilizing the ERC if they had taken a Paycheck Protection Program (PPP) Loan. Since many employers qualified for a PPP Loan as a more favorable option, the ERC utilization was limited. With the passing of the Consolidated Appropriations Act (CAA) in December of 2020, this mutually exclusive provision was eliminated, making the ERC retroactively available to employers who received a PPP Loan. In addition to retroactive changes to the 2020 credit, the CAA also provides an extension and enhancement of the credit through the first two quarters of 2021. With this newly available option, we must revisit the following questions:

How much is the credit?

2020

The credit is equal to 50% of qualified wages. Qualified wages cannot exceed \$10,000 per employee for all quarters. The maximum amount of the credit is \$5,000 per employee.

2021

The credit is equal to 70% of qualified wages. Qualified wages cannot exceed \$10,000 per employee, per quarter, for the first two quarters of 2021. The maximum amount of the credit is \$7,000 per quarter, which equates to a total available credit of \$14,000 per employee.

Who is eligible to claim the credit?

2020

An eligible employer is a trade or business that was in operation during 2020 and experienced either:

1. The full or partial suspension of the operation of the business as a result of government order limiting commerce, travel, and group meetings due to COVID-19 restrictions; OR
2. A significant decline in gross receipts, which is a period that begins at the start of the calendar quarter in which the employer's gross receipts are less than 50% of its gross receipts in the same calendar quarter of 2019. The period of significant decline ends following the quarter in which the employer's gross receipts are more than 80% of the same calendar quarter of 2019 (less than 20% reduction).

2021

The eligibility rules are the same for 2021 with a slight adjustment to the test for determining a significant decline in gross receipts. An eligible employer is a trade or business that was in operation during 2021 and experienced either:

1. The full or partial suspension of the operation of the business as a result of government order limiting commerce, travel, and group meetings due to COVID-19 restrictions; OR
2. A significant decline in gross receipts, which is a period that begins at the start of the calendar quarter in which the employer's gross receipts are less than 20% of its gross receipts in the same calendar quarter of 2019. Employers can elect to use the gross receipts test of the preceding quarter to qualify for the current quarter. For example, if the employer has a 20% reduction in the first quarter of 2021, they would also be deemed to meet the test for the second quarter.

What payroll costs qualify?

2020

1. For a large employer, defined as over 100 employees, only wages and health care costs paid to employees not performing services during the eligible quarters are eligible. Large employers only receive the credit for paying employees not to work!
2. For a small employer (under 100 employees), all wages and health care costs paid during the periods described above are qualified wages even if the employee continued to perform services.

2021

The rules are the same as 2020 except for the definition of a small employer. The limitation on the number of employees increased from 100 to 500 employees.

What if I received a forgivable PPP Loan?

As mentioned above, employers now have the opportunity to take advantage of the ERC even if they took a PPP loan to cover payroll costs. It is very important to note, the ERC and forgivable PPP loan can not be used to cover the same payroll costs – no double dipping! This is going to create some complicated calculations, especially for those employers who already applied for and received forgiveness of the PPP. A determination needs to be made on an employee-by-employee basis to determine how much of the wages, including health care costs, are eligible for ERC and how much were forgiven under the PPP loan program.

How do we claim the credit?

The most important part is claiming the credit and getting the money in the hands of the employers. Due to the retroactive nature of the changes for 2020, refund claims are necessary. On the other hand, there are options to increase cash flow for those employers that qualify for the credit in 2021. There are three ways in which the credit can be claimed:

1. **File an Amended Form 941** – The IRS will allow all quarters of 2020 to be included in the fourth quarter payroll tax returns for any credit previously disallowed due to the PPP loan. This will simplify the process rather than filing three (3) amended payroll returns.
2. **Reduce Payroll Tax Deposits** – Employers can reduce the amount of Federal employment tax deposits by the amount of credit determined based on qualified wages paid.
3. **Request an Advance Payment of the Credit** – If an employer is eligible for a credit that exceeds the amount of required deposits, the refundable portion of the credit can be claimed in advance of filing the payroll tax return using Form 7200.

I will leave you with a few action items that will likely require the assistance of an accounting professional. The first step is to determine whether there is a qualifying quarter in 2020 or 2021 based on a required shut down. The second step is to determine if you have any quarters that meet the significant decline in gross receipts tests. The third step is to calculate your qualified wages. Finally, file your refund claim to get the money!