

Employee Retention Credit (ERC) – 2020

(Current as of March 8, 2021)

Background

- ▶ Created by Coronavirus Aid, Relief and Economic Security Act (CARES Act) – March 2020
- ▶ Amended by Consolidated Appropriations Act, 2021 (Relief Act) - December 2020
 - PPP recipients can now claim ERC, if meet eligibility requirements (Section 206)
 - ERC application extended for qualified wages paid after December 31, 2020 and before July 1, 2021 (Section 207 – *Additional guidance expected*)
 - Modified calculation of the ERC amount for qualified wages paid after December 31, 2020 and before July 1, 2021 (Section 207 – *Additional guidance expected*)
- ▶ Section 206 Clarified by Notice 2021-20 for employers claiming the ERC for calendar quarters in 2020 – March 2021
- ▶ Clarification on Section 206 for employers claiming the ERC for calendar quarters in 2021 – TBD

Who is Eligible for 2020 ERC?

- ▶ Any private-sector business or tax-exempt organization carrying on a trade or business in 2020 who experienced:
 - A full or partial suspension due to orders from a local, state, or federal government agency limiting commerce, travel or group meetings which affected operations
- OR**
- Experienced a significant decline in gross receipts (50% or greater) in at least one 2020 calendar quarter in comparison to the same quarter in 2019

How are 2020 ERCs Calculated and Claimed?

- ▶ Applies to qualified wages paid after March 12, 2020 before January 1, 2021
- ▶ The maximum 2020 ERC equals 50% of qualified wages that an eligible employer pays in a calendar quarter.
- ▶ The maximum amount of qualified wages for all quarters in 2020 is \$10,000 resulting in a maximum ERC per employee of \$5,000 for the year ended December 31, 2020.
- ▶ Credits are refundable and may be claimed via Form 941x (must be filed manually – no e-filing)
- ▶ Deadline for advanced payments for the 2020 ERC via Form 7200 has passed

What are Qualified Wages for the 2020 ERC? It Depends...

- ▶ Large Employers:
 - Averaged more than 100 FULL-TIME EMPLOYEES (not full-time equivalents) during 2019
 - Qualified wages are those wages paid during a time the employee is NOT PROVIDING SERVICES due to a full or partial shut-down of operations due to a governmental order or period of significant decline in gross receipts
 - Qualified wages for large employers EXCLUDE wages paid to an employee who is providing services during the period of full or partial shut-down or period of significant decline in gross receipts
- ▶ Small Employers:
 - Averaged 100 or FEWER FULL-TIME EMPLOYEES (not full-time equivalents) during 2019
 - Qualified wages are those wages paid during the period of full or partial shut-down or period of significant decline in gross receipts whether or not the employee is performing services
- ▶ The ERC eligibility period ends when:
 - Employer returns to comparable operations (even if in a remote capacity)
 - January 1, 2021 or the quarter following quarter in which the employer's 2020 quarterly gross receipts are greater than 80% in comparison to the same quarter in 2019

Does the ERC Affect my PPP Loan Forgiveness? Maybe...

- ▶ Qualified wages for which the ERC is claimed are excluded from payroll costs during the covered period that qualify for forgiveness under the PPP.

Other Topics Addressed in [Notice 2021-20](#):

- ▶ Government employers, tribal entities and essential businesses
- ▶ Self-employed individuals, household employers and related parties
- ▶ Examples including:
 - Full and partial shutdowns
 - Governmental orders
 - Return to comparable operations
 - ERC calculations
 - Qualified wages
 - Interaction with PPP Loans
- ▶ Definitions of gross receipts and full-time employees
- ▶ Severance and terminated employees
- ▶ PTO, vacation and sick time

- ▶ Health plan expenses in relation to qualified wages
- ▶ Employers not in operations during 2019 or all of 2020
- ▶ Employers with multiple locations
- ▶ Treatment of payroll tax deferrals
- ▶ Aggregation rules

Next Steps for 2020 ERC:

- ▶ Calculate gross revenue decline Q2019 / Q2020 to identify eligible quarters
- ▶ Determine if operations were fully or partially suspended based on government mandate
- ▶ Identify qualified wages
- ▶ Analyze potential impact on PPP forgiveness
- ▶ File Form 941x for applicable quarters

Status of Section 207 Guidance – 2021 ERC

- ▶ Additional guidance expected
- ▶ Expands eligible employers
- ▶ Applies to qualified wages paid January 1, 2021 – June 30, 2021
- ▶ Change of calculation:
 - Increase in credit rate from 50% to 70% of qualified wages up to \$10,000 per quarter (currently total credit of \$14,000 per employee for 2021)
 - Reduction in required decline in gross receipts from 50% to 20%
 - Increase from 100 to 500 when determining large vs. small employer

Questions?

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Please note this information is current as of March 8, 2021.