



IRS Nationwide Tax Forum | 2021

Employee Retention Credit
Thursday, July 29th, 2021

Start Time: 2:00pm Eastern / 1:00pm Central
12:00 Noon Mountain / 11:00am Pacific

Having Technical Issues?

View the “Technical Issues” troubleshooting guide in the Materials drop-down menu on the left side of this page

Today Our Webinar Will Cover

- Legislation and rules for 2020 and 2021 credit
- Interaction between the ERC and PPP loan forgiveness
- How to claim the credit



Tax Forum

IRS Nationwide

2021



IRS Nationwide

TaxForum | 2021

Legislation and Rules for
2020 and 2021 Credit



Tax Forum

IRS Nationwide

2021

The Basics

- Refundable payroll tax credit
- Help businesses keep employees on payroll
- Available to eligible employers of any size



Timeline of Legislation and Related Guidance

Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 2020)

- Set to expire December 31, 2020
- IRS Notice 2021-20: authoritative guidance on wages paid March 13 – December 31, 2020
 - Interplay of qualified wages with wages reported on PPP loan forgiveness applications
 - Form 941 / Form 941-X filing rules for PPP loan borrowers

Taxpayer Certainty and Disaster Relief Act of 2020 (December 2020)

- Enhanced rules and extended credit to June 30, 2021
- IRS Notice 2021-23: authoritative guidance on wages paid January 1, 2021 – June 30, 2021
 - Rules on the election to use alternative quarter to calculate gross receipts

American Rescue Plan Act of 2021 (March 2021)

- Enhanced rules and extended credit to December 31, 2021
- Guidance pending on wages paid July 1, 2021 – December 31, 2021



Eligible Employer

- Employers of any size
- Engaged in a trade or business
- Pays wages in a calendar quarter in which:
 - Business operations fully or partially suspended due to government order; **or**
 - Business has significant decline in gross receipts

2020

- ✓ Includes tax-exempt orgs
- ✓ Excludes government entities

2021

- ✓ Includes tax-exempt orgs
- ✓ Includes colleges, universities
hospitals and medical care providers



Aggregation Rules for Related Employers

- Aggregated employers treated as single employer for all aspects of ERC
- Aggregated group rules:
 - Section 52(a) – parent-sub or brother-sister controlled group, or combined group corporation rules generally based on > 50% ownership
 - Section 52(b) – similar aggregation rules to partnerships, trusts, estates, sole-proprietorships operating a trade or business
 - Section 414(m) or (o) – normally used to determine related entities for purposes of qualified retirement plans & other employee benefits



Full or Partial Suspension of Business Operations

- Partial suspension: eligible employer continues some, but not all trade or business operations
 - A supply concept, not a demand concept
 - If able to telework, no suspension
 - Operations not able to be continued “in manner comparable to operations before COVID”
 - Modifications to operations must have more than a nominal effect on business operations
 - Safe harbor: 10% of revenue or hours in 2019
- All members of aggregated group are eligible employers if one member of the group has business operations fully or partially suspended due to government order



Government Order

- Order from city mayor requiring non-essential businesses to close
- State emergency proclamation that residents must shelter in place, other than those working for essential business that must travel to and from the workplace
- Order from local official imposing curfew on residents that impact the operating hours of a business
- Order from local health dept. mandating workplace closure for cleaning or disinfecting



Gross Receipts Test

2020

- Decline of at least 50% of gross receipts comparing a 2020 calendar quarter to the same 2019 quarter for the controlled group
- Credit ends in quarter following quarter in which gross receipts reach 80% comparing a 2020 calendar quarter to the same 2019 quarter for the controlled group

2021

- Decline of at least 20% of gross receipts for the controlled group
- Compare a 2021 calendar quarter to the same 2019 quarter
- Compare the preceding calendar quarter to the same 2019 quarter



Gross Receipts

For-Profit Entity

- Total sales (less returns & allowances)
- Plus: Investment income
 - Interest
 - Dividends
 - Rents
 - Royalties
 - Annuities
- Less:
 - Adjusted basis in assets sold

Not-for-Profit Entity

- Total sales** (less returns & allowances)
- Plus: Investment & Other income
 - Sales Proceeds
 - Interest
 - Dividends
 - Rents
 - Royalties
 - Annuities
 - Contributions
 - Gifts
 - Grants
 - Member dues

** Include all activities not only those related to exempt org. status



Gross Receipts for an Employer Not in Business for All of 2019

Alternative measurement periods for employers commencing business in 2019:

- If a business started in the 2nd ,3rd, 4th quarter of 2019, use that quarter as the base period to determine whether it experienced a significant decline in gross receipts.
- If the employer commenced business in the middle of a quarter in 2019, the employer should estimate the gross receipts it would have had for the entire quarter based on the gross receipts for the portion of the quarter that the business was in operation.

Qualified Wages & Credit Rate

Gross wages subject to Social Security taxes and allocable group health care benefits including HDHPs, HRAs, FSAs; excluding HSAs and QSEHRAs

2020

- \$10,000 annual limit per employee
- Employer with 100 or fewer full-time employees, all wages
- Other employers, wages paid to individuals not rendering services
- Credit rate of 50% of qualified wages
- Max credit of \$5,000 per employee

2021

- \$10,000 per quarter limit per employee
- Employer with 500 or fewer full-time employees, all wages
- Other employers, wages paid to individuals not rendering services
- Credit rate of 70% of qualified wages
- Max credit of \$28,000 per employee





Qualified Wages

- Allocable health plan expenses for employees paid by the employer, determined actuarially, by premiums paid or by using COBRA costs
- Excludes wages for which an FFCRA credit was claimed and, for 2021 if an R&D credit was claimed
- For 2020, at the wage rate paid in 30 days immediately preceding suspension of operations or decline in gross receipt

Number of Full-Time Employees

- A full-time employee is an employee who in 2019 averaged at least 30 hours of service per week or 130 hours of service in a month
- Average number of full-time employees determined by taking number of FTEs in each calendar month in 2019 divided by 12
- Special rules apply if employer was not in business for all of 2019 or started business in 2020



IRS

Tax Forum

IRS Nationwide

2021



IRS Nationwide

TaxForum | 2021

Interaction Between the ERC and PPP Loan Forgiveness

Interaction of ERC and PPP Loan Forgiveness

Wages cannot be used for both PPP loan forgiveness and ERC

- Forgiveness applications often include payroll costs and other expenses in excess of what is needed for loan forgiveness

Example: Timeline for 2020 Wages



Example 2 from IRS Notice 2021-20

Facts

- PPP loan of \$200,000
- Q3 & Q4 2020 ERC qualified wages paid of \$250,000
- Other loan forgiveness eligible expenses paid \$50,000
- Loan forgiveness application reported \$250,000 in payroll costs and not other expenses

\$50,000 in qualified wages reported on loan forgiveness application eligible for ERC

- No other wages can be used as no other eligible expenses were reported on loan forgiveness application.
- If \$50,000 in other expenses had been claimed on the forgiveness application, then \$100,000 in payroll costs could be claimed for ERC as loan forgiveness could rely on \$150,000 of wages and \$50,000 of other costs





Summary of 2021 Credit Enhancements

- PPP loan borrowers can claim the credit in 2020 & 2021
- Public colleges, universities, public health care entities can claim the credit
- Credit extended through December 31, 2021
- Qualified wages per employee increased from \$10K for the year to \$10K per qtr.
- Eliminate 30-day look-back period that limits qualified wages
- Credit calculation increased from 50% to 70% of qualified wages
- Significant decline in gross receipts based on 20% versus 50% of 2019 gross receipts
- Election to use prior qtr. gross receipts to determine eligibility (e.g., use Q4 2020)
- All wages qualify if employer < 500 employees. For employers > 500 employees only wages paid to employees not rendering services vs not rendering services. In 2020 the litmus test was 100 employees
- Employers not in existence in 2019 can claim the credit
- Employers < 500 employees qualify for advance payment of the credit



IRS Nationwide

TaxForum | 2021

How to Claim the Credit



How to Claim the Credit

- Credit for 2020
 - File Form 941-X for *each* quarter credit claimed
- Credit for 2021
 - Reduce payroll tax deposits (federal income tax withheld from employees, SS & Medicare taxes of both employees and employer)
 - Retroactively: File Form 941-X for *each* quarter credit claimed
 - In advance: File Form 7200
 - Currently: File Form 941