

The Employee Retention Tax Credit



The Employee Retention Tax Credit (ERTC): What is it?

- Refundable payroll tax credit claimed on quarterly 941s for both 2020 & 2021
- ERC has been through *multiple iterations* since it was originally introduced under CARES Act
- **UNDER CARES ACT** (March 13th through December 31st):
 - Employers receive maximum refund of up to **5K per employee on annual basis** (<100 FTE)
 - Gross receipts must decline >50% in each quarter in 2020 compared to same quarter in 2019 (pre-covid), **OR** operations must be fully or partially suspended due to govt order
 - If recipient of PPP, you may not take ERC

The Employee Retention Tax Credit (ERTC): What is it? (continued)

- **UNDER NEW CONSOLIDATED APPROPRIATIONS ACT (CAA) of 2021** (January 1st through June 30th):
 - *Employers receive maximum refund of up to **7K per employee on a quarterly basis** (<500 FTE)*
 - Gross receipts must decline **>20% in each quarter in 2021 compared to same quarter in 2019 (pre-covid)**, **OR** operations must be fully or partially suspended due to govt order
 - **Safe Harbor Provision** – preceding quarter comparison for Q1 & Q2
 - You can take advantage of both ERC & PPP! **You can even go back RETROACTIVELY to 2020**

The Employee Retention Tax Credit (ERTC): What is it? (continued)

- **UNDER BIDEN'S AMERICAN RESCUE PLAN ACT (ARPA)** – July 1st to December 31st Extension:
 - Same gross receipts/partial suspension qualification as CAA
 - **Now extended for the entire year of 2021; Q3 and Q4**
 - In every quarter you can compare the preceding quarter as an alternative comparison (previously only applicable to Q1 and Q2)
 - Ex: Company evaluates if they can qualify for ERC in Q3. They are not certain if their 2021 Q3 revenue will be >20% down compared to 2019 Q3. They are eligible since their preceding quarter (Q2 revenue) qualified under the GR test.

Potential Benefit and Qualifying ERC Wages: 2020/2021 Breakdown

2020

50% of qualified wages up to \$10,000 paid from March 13, 2020 (potential **max credit of up to \$5,000 per employee for the year**)

Qualified Wages:

- 100 or fewer full-time employees: all wages paid
- More than 100 full-time employees: only wages for not providing services

2021

70% of qualified wages up to \$10,000 through December 31st, 2021 (potential **max credit of up to \$7,000 per employee per quarter**)

Qualified Wages:

- 500 or fewer full-time employees: all wages paid
- More than 500 full-time employees: only wages for not providing services

How to Qualify for the ERTC:

2020

Businesses must either have had:

- Operations partially or fully suspended due to governmental order
- **50% decline in gross receipts** (compared to same quarter in 2019)

2021

Businesses must either have had:

- Operations partially or fully suspended due to governmental order
- **20% decline in gross receipts** (compared to same quarter in 2019)
Ex: Q1 2021 vs Q1 2019 OR Q4 2020 vs Q4 2019

The Interplay of ERTC & PPP Loans:

- Businesses can take advantage of PPP loans and ERTC but they cannot double dip the wages (both 2020 & 2021)
- Deferral strategy for 2021 PPP to maximize ERTC Program
- Navigating the PPP forgiveness application
 - If applying for ERTC for 2020, hold off on applying for forgiveness to make sure you can maximize ERC

3 Ways to Benefit from the Employee Retention Tax Credit:

- Form 941: Immediate dollar for dollar reduction of any payroll tax incurred during the quarter on a timely filed Form 941
- Refund Election on Form 941: Any left-over employee retention credits will be refunded in the form of a check from the IRS
- Form 7200: Advance payment of employee retention tax credits, must be filed before Form 941
 - *Payment is limited to 70% of the average quarterly payroll in 2019*

Diving Deeper into Complete or Partial Suspension:

What is considered a governmental order?

- An order from the city's mayor stating that all non-essential businesses must close for a specified period
- Essential businesses with *more than nominal* portion of its business operations suspended
- Essential businesses who have gone through modifications to follow government order that has *more than nominal effect*
- Businesses who are impacted due to suppliers with suspended operations due to government order
- An order from a local health department mandating a workplace closure for cleaning and disinfecting, resulting in reduced hours of operations

Examples of Partial Shutdown

Were your
suppliers
affected and you
as a result?

Operational
disruption due to
strict OSHA
cleaning
mandates &
protocols?

Inability to
conduct same
work
remotely?

Reduction in
operating hours?

What is a More Than 'Nominal' Portion?

- An employer (including essential businesses) can qualify under partial suspension for ERTC **if a more than nominal portion of the business was suspended** due to government order. How to define 'more than nominal':
 - *More than nominal portion of business drives 10 % or more of the employer's **total gross receipts**.... **OR***
 - *More than nominal portion of business makes up 10% or more **hours worked** by employees compared to the total number of hours worked*

What is a More Than 'Nominal' Effect?

- A business remains FULLY open, BUT its operations are subject to modification due to a government order
 - Social Distancing Mandates
 - OSHA & state/local/county health department mandates
- Did the modification have **more than a nominal effect (10%)** on business operations?

Case Study: Cosmetics Manufacturing Company

- Manufacturing company with 55 employees
- Revenue was not severely impacted due to covid
- Qualified under partial suspension criteria due to below adhered mandates:
 - Cal/OSHA and Los Angeles Dept of Public Health
 - Statewide mandated social distancing requirements of at least six feet between workers
- **Final Results: \$225,978 in refunds for Q1 2021**

Case Study: Plastics Injection Molding Company

- Essential business with 100+ employees; running 24 hours/7 days a week
- Slight increase in revenue in Q1 2021 compared to Q1 2019
- Qualified under partial suspension criteria:
 - Compliance with Cal/OSHA, Local and LA County Health Department Mandates
 - Social Distancing mandates
 - Periodic shutdowns to disinfect premises
 - Employee safety training mandates
 - Delays of vendors and suppliers for raw materials and shipping for specific machines and parts – all due to pandemic related issues
- **Final Results: \$600,000 in refunds for Q1 2021**

ERTC Key Takeaways:

- Advanceable, refundable payroll tax credit only available for 2020 & 2021
 - Cash and Credit benefit
 - Eligible employers can potentially receive up to **\$28,000** per employee for 2021
- Businesses can take advantage of PPP loans and ERTC but cannot double dip the wages
- 2 ways companies can qualify:
 - More than a 20% decline (50% or more for 2020) in gross receipts in a comparative quarter to 2019
 - Partial or full suspension of business operations due to governmental order
- 2nd criteria is very broad and grey and subjective in nature – requires much more due diligence

Are you eligible?

To arrange for a no-cost confidential call with ERTC experts, contact:

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Questions & Answers