



Agenda

- Reintroduction to the ERC
- Recent Stimulus Changes
 - Retroactive
 - Prospective
- BDO Capabilities



Reintroduction to the Employee Retention Credit

CARES Act Employee Retention Credit (ERC) - enacted on March 27, 2020 in response to the COVID-19 pandemic.

- Refundable credit against employment taxes (IRS Form 941)
- Applied to certain “qualified” wages paid to employees between March 13, 2020 and December 31, 2020
- Credit equal to 50% of qualified wages up to \$10,000 in qualified wages per employee, for a maximum credit per employee of \$5,000

An employer must meet at least one of the following eligibility tests

- The employer’s operations were fully or partially suspended due to a governmental order related to COVID-19; or
- The employer incurred a decline in gross receipts of greater than 50% during a 2020 calendar quarter compared to the same calendar quarter during 2019

“Qualified wages” for ERC purposes varies depending upon the employer’s average headcount in 2019

- 100 or fewer full-time employees: Qualified wages are wages paid to all employees
- Greater than 100 full-time employees: Qualified wages are wages paid to employees who are not performing services due to COVID-19
- The ERC uses controlled group rules 52(a), 52(b), and affiliated service group rules 414(m), 414(o) to determine headcount

Additional provisions:

- Allocable health plan expenses are eligible for the ERC (subject to the \$10,000 qualified wage limitation)
- The ERC was not available to employers that received a Paycheck Protection Program (PPP) loan
- Other restrictions applied relating to the Families First (FFCRA) leave credit and the Work Opportunity Tax Credit (WOTC)



Employee Retention Credit - Retroactive Modifications under the Consolidated Appropriations Act, 2021 (Sec. 206)

The following changes apply to the ERC as if they were enacted originally as part of the CARES Act

PPP Loan Eligibility

- Old rule: An employer that receives a PPP loan is not eligible to claim the ERC
- New rule: Employers that receive a PPP loan may be eligible to claim the ERC in 2020 and 2021

Impact to PPP Loan Recipients

- Payroll costs funded by forgiven PPP loans are not eligible for the ERC. Similarly, ERC qualified wages cannot be considered payroll costs eligible for PPP forgiveness
- Pending SBA guidance, If an employer elects to designate wages for PPP forgiveness rather than the ERC, and the PPP payroll costs are not forgiven, then the employer may still treat the amounts as qualified wages for ERC purposes

Treatment of Health Plan Expenses

- Old rule: Although eligible for the ERC, allocable health plan expenses were considered separate from qualified wages for purposes of the credit
- New rule: The definition of qualified wages has been expanded to include allocable health plan expenses, thereby aligning the law with IRS guidance that allocable health plan expenses qualify for the ERC even if no other qualified wages are paid



Employee Retention Credit - Prospective Modifications under the Consolidated Appropriations Act, 2021 (Sec. 207)

The following changes apply to periods beginning January 1, 2021 through June 30, 2021

Credit Availability

- Old rule: The ERC is applicable to qualified wages paid between March 13, 2020 and December 31, 2020
- New rule: The ERC is applicable to qualified wages paid through June 30, 2021

Employer Eligibility under Gross Receipts Test

- Old rule: The employer incurred a decline in gross receipts of greater than 50% during a 2020 calendar quarter when compared to the same calendar quarter during 2019
- New rule: The employer incurred a decline in gross receipts of greater than 20% during a 2021 calendar quarter when compared to the same calendar quarter during 2019. In addition, a safe harbor allows the employer to use the preceding calendar quarter's gross receipts when applying the test.

Full-time Employee Threshold

- Old rule: 100 or fewer full-time employees on average in 2019: Qualified wages are wages paid to all employees. Greater than 100 full-time employees on average in 2019: Qualified wages are wages paid to employees who are not performing services due to COVID-19
- New rule: Replaces “100” with “500” above



Employee Retention Credit - Prospective Modifications under the Consolidated Appropriations Act, 2021 (Sec. 207)

The following changes apply to periods beginning January 1, 2021 through June 30, 2021

Credit Percentage Amount

- Old rule: The ERC is equal to 50% of qualified wages and allocable health plan expenses
- New rule: The ERC is equal to 70% of qualified wages and allocable health plan expenses

Qualified Wages & Allocable Health Plan Expense Limitations

- Old rule: Qualified wages and allocable health plan expenses may not exceed \$10,000
- New rule: Qualified wages and allocable health plan expenses may not exceed \$10,000 per quarter

Pay Rate Increases

- Old rule: Qualified wages paid to an employee may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the operational suspension or the first day of the quarter in which the employer experienced a significant decline in gross receipts
- New rule: Limitation above has been removed

Advance Payments

- Old rule: No provision for monetizing credit before qualified wages were paid
- New rule: Treasury will draft guidance to allow advanced payment of the credit for employers with 500 or fewer employees, with certain limitations



BDO Capabilities

Engagement Process

- Determine eligibility via gross receipts test or government order
- Evaluate controlled group and/or affiliated service group issues
- Identify qualifying wages via payroll record review, survey creation and execution, and client interviews
- Leverage Credit Connect, BDO's proprietary software tool, to assist clients with the ERC documentation gathering process
- Calculate the credit on a quarterly basis
- Prepare and file forms 7200, 941, or 941x to claim refunds
- Prepare memo documenting key issues and procedures
- Interface with the client's payroll provider and/or the IRS to resolve payroll filing issues