



ERC Guide for wages in 2020

Expansion of the Cares Act: Employee Retention Credit

The **Consolidated Appropriations Act of 2021**, was signed into law on December 27, 2020. Among many changes and updates to the prior relief legislation for COVID-19, this law clarifies and expands the employee retention credit that was created by the CARES Act.

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Key Insights

- The employee retention credit applies more broadly as a result of changes made by the Consolidated Appropriations Act, 2021.
- The changes are effective as of January 1, 2021, and impact 2020 and the first two quarters of 2021.
- Note this key retroactive change: employers who took PPP loans are now eligible to take the employee retention credit, so long as the same wages are not used for both.
- This Credit is scheduled to end on **July 1st, 2021**.

Important Note about ERC in 2021

Although this document discusses the Employee Retention Credit for 2020, the IRS is expected to draft guidance for 2021, which would allow an advance payment of the credit for companies with 500 or fewer employees, based on 70% of average quarterly payroll for the same quarter in 2019. However, if the amount of the actual credit determined at the end of the quarter is less than the amount of the advance payment, the company will need to **repay the excess**. Since this information is **not yet available**, we are advising **all clients wait** on applying for the 2021 credit, at this time.

Determination – General Questions

The following questions will help determine **IF** you are eligible to receive the Employee Retention Credit.

Existing Business

You qualify if your business **existed** in 2020

AND . . .

Applicable Business Types

Your business is an applicable type, i.e., **not** a Federal, State, Local government agency or instrumentality thereof, (**except** for public colleges, universities and organizations whose principal purpose provides medical or hospital care)

AND . . .

Employee Count

Your business has **100 or fewer** employees

THEN . . .

Continue with this document to determine if you qualify, otherwise you do not need to read the rest of this document.

Determination - for Gross Receipts in 2020

Enter the Total Gross Receipts Amount per year, separated by each quarter. If you're business was suspended by a COVID-19 government order for any quarter in 2020, check the associated box. If gross receipts for any quarter in 2020 is less than 50% of the gross receipts for the same quarter in 2019, then check the associated box and consecutive boxes for the remaining quarters until 80% or more of gross receipts is achieved.

Gross Receipts	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
2019	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
2020	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Operations were suspended by a COVID-19 Order	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gross Receipts in 2020 are Less than 50% of 2019?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If **NO BOXES ARE CHECKED**, i.e., you did not lose **50% OR MORE** of your gross receipts when compared to the previous year's quarters **AND** your business operations were **NOT** suspended due to any COVID-19 government order, then you **DO NOT** qualify for the credit and **DO NOT** need to proceed further.

Example

Gross Receipts	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
2019	<input type="text" value="750,000"/>	<input type="text" value="750,000"/>	<input type="text" value="750,000"/>	<input type="text" value="750,000"/>
2020	<input type="text" value="750,000"/>	<input type="text" value="325,000"/>	<input type="text" value="487,500"/>	<input type="text" value="675,000"/>
Operations were suspended by a COVID-19 Order	<input type="checkbox"/>	<input checked="" type="checkbox"/> <i>Business Suspended</i>	<input type="checkbox"/>	<input type="checkbox"/>
Gross Receipts in 2020 are Less than 50% of 2019?	<input type="checkbox"/>	<input checked="" type="checkbox"/> <i>50% Reduction</i>	<input checked="" type="checkbox"/> <i>35% Reduction</i>	<input type="checkbox"/> <i>10% Reduction</i>

Determination - for Wages in 2020

Enter the total Payroll Cost* for the year 2020, separated by each quarter. Next, enter the amount of your PPP Loan amount that was used towards your Payroll Cost*. Finally, subtract the PPP amount from the Payroll Cost* to calculate the Balance for each quarter. If a balance exists for any given quarter, then you may be eligible for the credit. The calculation is 50% of the first \$10,000 in qualified wages for each employee in the entire year.

2020		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
P/R Cost *	+	<input type="text"/>	+	<input type="text"/>	+	<input type="text"/>
PPP Used (and forgiven)	-	<input type="text"/>	-	<input type="text"/>	-	<input type="text"/>
Balance (Potential Credit)	=	<input type="text"/>	=	<input type="text"/>	=	<input type="text"/>

* Payroll Cost includes Wages Paid and Health Insurance Costs.

Example

2020		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
P/R Cost **	+	250,000	+	200,000	+	250,000
PPP Used (and forgiven)	-	0	-	75,000	-	100,000
Balance (Potential Credit)	=	250,000	=	125,000	=	100,000

What Happens Next?

If you have **ANY** boxes checked in the “Determination for Gross Receipts”

AND . . .

You have a Balance in any **MATCHING** quarter in the “Determination for Wages”

THEN . . .

You May Have a Credit

OTHERWISE . . .

You Do Not Qualify

IF YOU ARE ELIGIBLE for a potential credit in 2020, **THEN** . . .

- Please **DOWNLOAD** the 2020 ERC Worksheet using [\[THIS LINK\]](#).
- Enter the required **INFORMATION**, including check-marking the qualifying quarters.
- **RETURN** the Worksheet to your Client Experience Representative.
- We will then **REVIEW** the document and begin the process of researching your payroll history and **CALCULATE** any potential credit amount.
- We will then send you a **VERIFICATION** form.
- You are then required to **CERTIFY** that the information is accurate, and return that verification form to your Client Experience Representative.
- Upon receiving that verification form, we will begin the process of filing amended **TAX-RETURNS** for the affected quarters, to the proper agencies, if applicable.

Important Notes

Please be aware that calculating the potential credit amount **AND** amending any quarterly tax returns can take several weeks. Associated Fees will be determined on a case-by-case basis.

Questions and Links

If you have specific questions regarding this document, please review the “**Reference**” and “**Glossary of Terms**” first and then contact your client experience representative next.

If you have more specific questions regarding government laws, regulations or mandates about the Cares Act, you may visit the following links:

Please take note that the various links **MAY NOT** contain “up-to-date” information.

- ❖ Employee Retention Credit
<https://www.irs.gov/coronavirus/employee-retention-credit>

- ❖ Cares Act: ERC FAQ’s
<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

- ❖ Full Document of House Resolution 133 (Warning, HR133 is 2,124 Pages long!)
<https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf>

Reference

For your reference, this document includes a comparison of key provisions between the old and new laws.

	CARES Act (Before 2021)	Consolidated Appropriations Act, 2021
Time Period Credit is Available	Qualified wages paid after March 12, 2020, and before January 1, 2021.	Qualified Wages* paid after March 12, 2020, and before July 1, 2021 (now available in the first two quarters of 2021).
Eligibility Requirements	<p>Businesses with operations that were either fully or partially suspended by a COVID-19 governmental order and only during the period the order is in force; or</p> <p>Gross receipts were less than 50% of gross receipts for the same quarter in 2019 until such quarter as gross receipts are 80% of same quarter in 2019.</p> <p>Businesses that were not in existence in 2019 could use a comparison to 2020 for purposes of the credit.</p>	<p>Beginning January 1, 2021, the credit will be available to businesses with operations that are either fully or partially suspended by a COVID-19 governmental order and only during the period the order is in force; or</p> <p>Gross Receipts* are less than 80% of gross receipts for the same quarter in 2019.</p> <p>Businesses that were not in existence in 2019 may use a comparison to 2020 for purposes of the credit.</p>
Percentage of Wages	The credit was 50% of the qualified wages paid to an employee, plus the cost to continue providing health benefits to the employee.	Beginning January 1, 2021, the credit is 70% of qualified wages, plus the cost to continue providing health benefits to the employee.
Maximum Credit Amount	Annual cap of \$5,000 per employee (\$10,000 in qualified wages x 50%).	<p>Beginning January 1, 2021, the cap is increased to \$7,000 per employee for each of the first two quarters of 2021 (\$10,000 in qualified wages x 70%) for a possible \$14,000 credit per employee.</p> <p>The 2021 credit is available even if the employer received the \$5,000 maximum credit for wages paid to such employee in 2020.</p>
Employer Count and Whether an Employee is Working or Not:	<p>A company with more than 100 employees could not take the credit for wages paid to an employee performing services for the employer (either teleworking, or working at the workplace, even though at reduced capacity due to reduction in business).</p> <p>A company with 100 or fewer employees was eligible for the credit, even if the employee was working.</p>	<p>Beginning January 1, 2021, the threshold increases to 500.</p> <p>An employer with 500 or fewer employees will be eligible for the credit, even if employees are working.</p> <p>When calculating the 500-employee threshold, the employees of all <u>affiliated companies</u> sharing more the 50% common ownership are aggregated.</p>

Continued on Next Page . . .

Continued	CARES Act (Before 2021)	Consolidated Appropriations Act, 2021
<p>PPP Loan Interplay</p>	<p>REPEALED – A company that received a Paycheck Protection Program (PPP) loan was ineligible to claim the employee retention credit.</p> <p>This disallowance rule extended to all affiliated companies that shared common ownership, so that if one company received a PPP loan, any other company with more than 50% common ownership was ineligible to claim the credit.</p>	<p>This change is retroactive to the effective date under the original law for wages paid after March 12, 2020.</p> <p>A company that received or receives a PPP loan is no longer prohibited from claiming the employee retention tax credit.</p> <p>The credit, however, may not be claimed for wages paid with the proceeds of a PPP loan that have been forgiven.</p> <p>A company that received a PPP loan in 2020 and paid qualified wages in excess of the amount of the forgiven PPP loan used to pay wages, and is otherwise eligible to claim the credit, can claim the credit retroactively. The IRS is expected to issue guidance on how to claim the credit retroactively.</p> <p>Companies related to a PPP borrower that did not claim the credit because of the affiliation rules should be able to claim the credit retroactively, if they are otherwise eligible for the credit.</p>
<p>Advance Payments</p>	<p>In 2020, there was no provision to receive the credit before qualified wages were paid.</p>	<p>The IRS is expected to draft guidance to allow an advance payment of the credit for companies with 500 or fewer employees, based on 70% of average quarterly payroll for the same quarter in 2019.</p> <p>If the amount of the actual credit determined at the end of the quarter is less than the amount of the advance payment, the company will need to repay the excess.</p>
<p>Limitation on Hazard Pay</p>	<p>No credit for pay rate increases.</p>	<p>Under the new law, the credit now allows for hazardous duty pay increases.</p>
<p>Disallowance of Credit for Governmental Entities</p>	<p>The employee retention credit was not available to any federal, state, or local governments, or any agency or instrumentality thereof.</p>	<p>Effective January 1, 2021, the following entities are eligible for the credit:</p> <p>Public colleges or universities</p> <p>Organizations whose principal purpose is providing medical or hospital care</p> <p>Certain Federal instrumentalities, such as federal credit unions.</p>
<p>Definition of Gross Receipts for Tax Exempt Entities</p>	<p>No definition of gross receipts as applicable to tax exempt entities was included.</p>	<p>The new law defines gross receipts for tax exempt entities by reference to Section 6033 of the Internal Revenue Code.</p> <p>Gross receipts include the following: contributions, gifts, grants, dues or assessments, sales or receipts from unrelated business activities, sale of assets, and investment income (e.g., interest, dividends, rents, and royalties).</p> <p>Gross receipts are not reduced for any associated costs or expenses.</p>

Glossary of Terms

Affiliated Companies

This term refers to the general condition whereby one or more companies are owned, or at least 51% owned, and should therefore be grouped-together and considered one large entity for analysis purposes. When considering affiliated companies, this may affect the total number of personnel that you employ and, as a result, could affect your ability to qualify for various relief funds from government agencies and programs.

COVID-19 Government Order

“COVID-19 Government Order” refers to various Emergency Declarations, Executive Orders, Laws and/or Mandates which have been issued, since the discovery of COVID-19, and affect whether or not your business can remain open and how you must comply with these regulations in order to continue offering services to the public.

Gross Receipts

The total amount in monies or other consideration received by a taxpayer in a given period for goods sold and/or services performed.

Payroll Cost

Includes the Wages Paid **and** Health Insurance Costs, EXCLUDING any PPP Funds that have been applied.

PPP

Refers to the “Paycheck Protection Program”, a loan designed to provide a direct incentive for small businesses to keep their workers on the payroll. The Small Business Administration (SBA) will forgive loans if all employee retention criteria are met, and the funds are used for eligible expenses. PPP loans have an interest rate of 1%.

Qualified wages

The definition of qualified wages depends on **how many employees an eligible employer has**.

If an employer **averaged more than 100** FTE (full-time employees) during 2019, qualified wages are generally those wages, including certain health care costs, (up to \$10,000 per employee) paid to employees that are not providing **business** services because operations were suspended or there was at least an 80% decline in gross receipts over any of the previous year’s quarters. These employers can only count wages up to the amount that the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

If an employer **averaged 100 or fewer** FTE (full-time employees) during 2019, qualified wages are those wages, including health care costs, (up to \$10,000 per employee) paid to any employee during the period operations were suspended or there was at least an 50% decline in gross receipts over any of the previous year’s quarters, **regardless** of whether or not its employees are providing services.