

The Employee Retention Credit

CARES Act of 2020 & Consolidated Appropriations Act, 2021



Today's Topics

❖ **2020 ERC**

- What is the Employee Retention Credit (ERC)
- Who May Claim the ERC
- What are the Benefits of Claiming the ERC

❖ **2021 ERC**

- Changes to the Eligibility Period for TY 2021
- Changes to Qualified Wages and Credit Amount for TY 2021

❖ **Interaction of ERC and PPP/Other Credits**

- Claiming the PPP and the ERC
- Employee Leave Credit
- Work Opportunity Credit
- R&D Credit

❖ **How to claim the Credit**

- Form 941
- Form 7200

ERC as Originally Enacted by CARES Act of 2020

- Under the CARES Act of 2020, Congress provided two incentives for employers to retain employees during the global crisis caused by COVID-19:
 - (1) The first incentive was the Paycheck Protection Program (PPP) which provided billions in forgivable loans to small businesses who met certain requirements.
 - (2) The second option was the **Employee Retention Credit (ERC)** which provided a refundable credit of up to \$5,000 per employee for the year.
- The ERC was originally only available to tax-exempt entities and for-profit businesses.
- The CARES Act specifically barred employers from receiving both the PPP loan and the ERC.

Employers are eligible to receive the ERC for any quarter where the business experiences either of two events:

- ❖ **Government Shutdown:** The employer was required to fully or partially suspend operation of business because of a governmental order due to COVID-19, **or**
- ❖ **Gross Receipts Test:** The employer experienced a **more than 50%** decline in gross receipts as compared to the same quarter in 2019.
- Once an employer reaches the required decline in gross receipts, they may claim a credit for every quarter until the end of the quarter in which gross receipts exceed 80% of gross receipts for the corresponding quarter in 2019.

Government Shutdown

- ❖ A partial suspension occurs when an eligible employer continues some, but not all, of a trade or business operations.
 - Operations must not be able to be continued “in a manner comparable to operations before COVID-19”.
 - Modifications to operations must have more than a nominal effect .
 - If employees are able to telework there is no suspension.
 - The credit is only available for the wages paid during the time period when the government shutdown order was in effect.
- ❖ **EXAMPLE:** Business (A) was ordered to shut-down from March 17,2020 - April 17,2020. After April 17th the employer was allowed to resume business operations as usual. However, the employer remained closed through the end of April 2020 just to be safe. Since the government order was only for March 17th – April 17th, the employer may only claim the credit for wages paid during March 17th – April 17th.

Gross Receipts Test-2020

	2019 Gross Receipts	2020 Gross Receipts
Q1	\$100,000	\$79,000
Q2	\$100,000	\$49,000
Q3	\$100,000	\$81,000
Q4	\$100,000	\$79,000

- **Gross Receipts Test:** The employer experienced a **more than 50%** decline in gross receipts as compared to the same quarter in 2019.
- Once an employer reaches the required decline in gross receipts, she may claim a credit for every quarter until the end of the quarter in which gross receipts exceed 80% of gross receipts for the corresponding quarter in 2019.

Gross Receipts Test



Gross Receipts For-Profit Entity

- ❖ **Total Sales (less returns and allowances)**
- ❖ **Plus: (Investment Income)**
 - Interest
 - Dividends
 - Rents
 - Royalties
 - Annuities
- ❖ **Less Adjusted basis in assets sold**

Gross Receipts Not-For-Profit Entity

- ❖ **Total Sales (less returns and allowances)**
- ❖ **Plus: Investment & Other Income**
 - Interest
 - Dividends
 - Rents
 - Royalties
 - Annuities
 - Contributions
 - Gifts
 - Grants
 - Member Dues

How Much is My Credit - 2020

- ❖ Wages paid on or after March 13, 2020 – Dec. 31, 2020
- ❖ At wage rate for the 30 days immediately preceding suspension or significant decline in gross receipts.
- ❖ Employers may receive a credit of **50%** of up to \$10,000 of qualified wages paid **per employee, per year.**
- ❖ The maximum amount of ERC allowed is **\$5,000 per year**, per employee.
- ❖ Qualified Wages includes gross wages subject to social security taxes and allocable health care benefits- HDHPs, HRAs, FSAs
 - Not HSAs or QSEHRAs

“Qualified Wages” Depends on the # of FTE’s Employed in 2019

- ❖ Employers who averaged **100 or fewer** full-time employees (FTE) in 2019 may include **ALL** wages paid to employees while the government order is in place or during the quarter that has experienced the required decline in receipts.
 - A full-time employee is one who in 2019 averaged at least 30 hours of service per week or 130 hours of service in a month.
 - Determine the # of FTE on a month-to-month basis. Add the total FTE for the year and divide by 12.
- ❖ **EXAMPLE:** Employer-A, a retail shop, has 80 FTEs in 2019. The employer is forced to partially shutdown his business due to COVID-19. He pays his 30 salesmen \$30,000 in wages even though they are forced to stay at home due to a government shutdown. He pays his other 50 employees \$50,000 to work handling orders for curbside pickup. Since Employer A has 100 FTE or fewer, the entire \$80,000 that he pays employees (both to work and to stay at home) is eligible for the credit.

“Qualified Wages” depends on the # of FTE’s employed in 2019

- ❖ Employers who averaged **more than 100** full-time employees during 2019 may only receive a credit for the wages paid to employees **NOT** performing services while the government order was in place or the business had experienced a significant decline in gross receipts.
- ❖ **EXAMPLE:** Employer Baxter Inc., a restaurant, **averaged 200 FTE in 2019**. During 2020 the restaurant is partially shut down due to COVID-19. The employer pays its 50 servers \$50,000 while they’re not working and pays 150 employees/cooks \$150,000 to provide take-out orders. The employer may only claim the ERC for the \$50,000 paid to the servers who were **not working**.

Consolidated Appropriations Act Changes for TY 2021

❖ **Expansion of Eligible Recipients**

- For-profit businesses
- Tax-exempt entities
- Government Entities.

❖ **Enhanced and Extended Benefits for ERC Recipients**

- Extended Time to Claim an ERC to June 30, 2021
- More Employee Wages are Eligible for the Credit
- Increased Credit per Employee for TY 2021

❖ **Credit is Now Available to PPP Borrowers**

Comparison of ERC in 2020 vs 2021



	2021	2020
Refundable Credit Rate	70% of \$10,000 per quarter. Max of \$14,000 per employee	50% of the \$10,000 per year. Max of \$5,000 per employee
Eligibility	20% decline in gross receipts for the first or second quarter of 2021, compared to that same quarter in 2019. Employers may also use the preceding quarter as comparison.	50% decline in gross receipts for quarters in 2020 relative to the same quarter in 2019.
Qualified Wages Per Employee	\$10,000 per employee per quarter	\$10,000 per employee per year
# of Full-time Employees (FTE) for which an employer may claim ALL wages paid.	500 or less	100 or less
Applicable Time Period	1/1/2021 – 06/30/2021	3/13/2020 – 12/31/2020

Gross Receipts Test 2020 vs 2021



2020 Rule: Decline of at least **50%** of gross receipts compared to 2019

2021 Rule: Decline of at least **20%** of gross receipts compared to 2019

	2019 Income	2020 Income
Q1	\$100,000	\$79,000
Q2	\$100,000	\$49,000
Q3	\$100,000	\$81,000
Q4	\$100,000	\$70,000

	2019 Income	2021 Income
Q1	\$100,000	\$79,000
Q2	\$100,000	\$81,000

QUALIFIED WAGES 2020 vs 2021



2020 Rule: Up to 50% of wages paid **per year**

Employee	Q1	Q2	Wage Limit Per Year	Credit Given
Adam	\$15,000	\$10,000	50% of \$10,000	\$5,000
Steve	\$6,000	\$4,000	50% of \$10,000	\$5,000
Total ERC				\$10,000

2021 Rule: Up to 70% of wages paid **per quarter**

Employee	Q1	Q2	Wage Limit Per Q	Credit Given
Adam	\$15,000	\$10,000	70% of \$10,000	\$14,000
Steve	\$6,000	\$10,000	70% of \$10,000	\$11,200
Total ERC				\$25,200

Interaction Between ERC and Other Credits

- Employers may claim both the ERC and the paid family and medical leave credit, but not for the same wages.
- The revised rules of the ERC specifically exclude any wages used to determine the ERC from being qualified for R&D tax credit purposes.
- An eligible employer may not claim the Employee Retention Credit and the Work Opportunity Credit for the same employee for the same period of time.

Final Thoughts on Eligibility

- ❖ Be aware of applicable aggregation Rules
- ❖ Questions Employers need to ask themselves to determine eligibility
- ❖ Summary of CAA changes to the Employee Retention Credit

Final Thoughts on Eligibility



❖ Aggregation Rules for Employers

- Aggregated employers are treated as a single group for all aspects of the ERC.
 - Includes parent-sub or brother-sister or combined group corporation rules generally based on greater than 50% ownership rules.
- Similar aggregation rules apply to partnerships, trusts, estates, sole-proprietorships, and qualified retirement, and other employee benefit plans.
- All members of an aggregated group are eligible employers if one member of the group has business operations fully or partially suspended due to government order.
- When analyzing the gross receipts test FTE are determined based on the group .

Summary of 2021 Credit Enhancements Under the Consolidated Appropriations Act



- **PPP loan borrowers may claim the credit in 2020 & 2021.**
- **Public colleges, universities, and public health care entities may claim credit.**
- Credit extended through June 30, 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 up to 50% to up to 70% of qualified wages.
- Significant decline in gross receipts based on 20% vs 2019 instead of 50%.
- Election to use prior qtr. gross receipts to determine eligibility (e.g. use Q4 2020).
- Employers may receive credit for ALL employees if 500 or fewer employees.
- **Employers with 500 or less FTE qualify for advance payment of the credit (limited to 70% of the average quarterly wages paid by the employer in calendar year 2019).**

Final Thoughts on Eligibility



- Did you experience a sharp decline in receipts or have to shutdown because of government order?
- How many average FTEs did you have for 2019?
- Determine the amount of eligible wages for the credit.
- Determine how you plan to take the credit.

Claiming the Credit

❖ Form 941

- Beginning with the second quarter in 2020 employers may report the total qualified wages and related health insurance costs for each quarter on their quarterly employment tax returns (Form 941).

❖ Reduced Payroll Tax Deposits

- In anticipation of claiming the credit, the employer may reduce/retain payroll tax deposits rather than depositing these with the IRS.
 - Federal Income taxes withheld.
 - SS and Medicare taxes for employee and employer.

❖ Form 7200

- If the amount retained is not sufficient to cover the cost of qualified ERC, employers may file form 7200 to request an advance payment from the IRS.
 - 7200 for advanced payments must be filed by the end of the month following the quarter the employer paid the qualified wages.
 - Employers may file several form 7200s throughout the quarter.

Interaction Between ERC and PPP

- Under the CARES Act, if an employer took advantage of the Paycheck Protection Program (PPP) it was barred from taking advantage of the ERC.
- An employer who applied for a PPP loan, received payment, and repaid the loan by May 18, 2020, is treated as though the employer never received a loan under the PPP.
- PPP Loan proceeds cannot be used to pay “qualified wages” for the ERC.
- Any qualified wages listed on your PPP Loan application for forgiveness, (Form 3508), cannot be also listed as wages paid that qualify an employer for an ERC.
- Compare the wages qualifying for the ERC with the wages being used for the PPP forgiveness application to see if you can hit the maximum ERC without overlapping with covered wages for the PPP application.
- The AICPA issued a letter to the Treasury and IRS asking for guidance.

Retroactively Claiming the Credit



- Employers who took out a PPP loan are now eligible to go back and claim the Employee Retention Credit for 2020.
- Employers will need to file an amended 941 return for each quarter with qualified wages to redeem a credit for that quarter.
- Some payroll companies will assist with this process.

Form 941-X

Part 3: Enter the corrections for this quarter. If any line doesn't apply, leave it blank.

	Column 1	Column 2	Column 3	Column 4
	Total corrected amount (for ALL employees)	Amount originally reported or as previously corrected (for ALL employees)	Difference (If this amount is a negative number, use a minus sign.)	Tax correction
6. Wages, tips, and other compensation (Form 941, line 2)	<input type="text"/>	<input type="text"/>	<input type="text"/>	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-3c.
7. Federal income tax withheld from wages, tips, and other compensation (Form 941, line 3)	<input type="text"/>	<input type="text"/>	<input type="text"/>	Copy Column 3 here ▶ <input type="text"/>
8. Taxable social security wages (Form 941 or 941-SS, line 5a, Column 1)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/> × 0.124* = <input type="text"/>
9. Qualified sick leave wages (Form 941 or 941-SS, line 5a(i), Column 1)	<input type="text"/>	<input type="text"/>	<input type="text"/>	* If you're correcting your employer share only, use 0.062. See Instructions. <input type="text"/> × 0.062 = <input type="text"/>
10. Qualified family leave wages (Form 941 or 941-SS, line 5a(ii), Column 1)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/> × 0.062 = <input type="text"/>
11. Taxable social security tips (Form 941 or 941-SS, line 5b, Column 1)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/> × 0.124* = <input type="text"/>
12. Taxable Medicare wages & tips (Form 941 or 941-SS, line 5c, Column 1)	<input type="text"/>	<input type="text"/>	<input type="text"/>	* If you're correcting your employer share only, use 0.062. See Instructions. <input type="text"/> × 0.029* = <input type="text"/>
13. Taxable wages & tips subject to Additional Medicare Tax withholding (Form 941 or 941-SS, line 5d)	<input type="text"/>	<input type="text"/>	<input type="text"/>	* If you're correcting your employer share only, use 0.0145. See Instructions. <input type="text"/> × 0.009* = <input type="text"/>
14. Section 3121(q) Notice and Demand—Tax due on unreported tips (Form 941 or 941-SS, line 5f)	<input type="text"/>	<input type="text"/>	<input type="text"/>	* Certain wages and tips reported in Column 3 shouldn't be multiplied by 0.009. See Instructions. Copy Column 3 here ▶ <input type="text"/>
15. Tax adjustments (Form 941 or 941-SS, lines 7 through 9)	<input type="text"/>	<input type="text"/>	<input type="text"/>	Copy Column 3 here ▶ <input type="text"/>
16. Qualified small business payroll tax credit for increasing research activities (Form 941 or 941-SS, line 11a; you must attach Form 8974)	<input type="text"/>	<input type="text"/>	<input type="text"/>	See Instructions <input type="text"/>
17. Nonrefundable portion of credit for qualified sick and family leave wages (Form 941 or 941-SS, line 11b)	<input type="text"/>	<input type="text"/>	<input type="text"/>	See Instructions <input type="text"/>
18. Nonrefundable portion of employee retention credit (Form 941 or 941-SS, line 11c)	<input type="text"/>	<input type="text"/>	<input type="text"/>	See Instructions <input type="text"/>
19. Special addition to wages for federal income tax	<input type="text"/>	<input type="text"/>	<input type="text"/>	See Instructions <input type="text"/>
20. Special addition to wages for social security taxes	<input type="text"/>	<input type="text"/>	<input type="text"/>	See Instructions <input type="text"/>
21. Special addition to wages for Medicare taxes	<input type="text"/>	<input type="text"/>	<input type="text"/>	See Instructions <input type="text"/>
22. Special addition to wages for Additional Medicare Tax	<input type="text"/>	<input type="text"/>	<input type="text"/>	See Instructions <input type="text"/>
23. Combine the amounts on lines 7 through 22 of Column 4	<input type="text"/>			<input type="text"/>
24. Deferred amount of social security tax* (Form 941 or 941-SS, line 13b)	<input type="text"/>	<input type="text"/>	<input type="text"/>	See Instructions <input type="text"/>
25. Refundable portion of credit for qualified sick and family leave wages (Form 941 or 941-SS, line 13c)	<input type="text"/>	<input type="text"/>	<input type="text"/>	See Instructions <input type="text"/>

Form 941-X

Part 3: Enter the corrections for this quarter. If any line doesn't apply, leave it blank. (continued)

	Column 1		Column 2		Column 3		Column 4
	Total corrected amount (for ALL employees)	-	Amount originally reported or as previously corrected (for ALL employees)	=	Difference (If this amount is a negative number, use a minus sign.)	See instructions	Tax correction
26. Refundable portion of employee retention credit (Form 941 or 941-SS, line 13d)	[]	-	[]	=	[]	See instructions	[]
27. Total. Combine the amounts on lines 23 through 26 of Column 4							[]

If line 27 is less than zero:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or 941-SS for the tax period in which you're filing this form. (If you're currently filing a Form 944, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 27 is more than zero, this is the amount you owe. Pay this amount by the time you file this return. For information on how to pay, see *Amount you owe* in the instructions.

Going Forward in 2021 with Form 941



11b Nonrefundable portion of credit for qualified sick and family leave wages from Worksheet 1 11b

11c Nonrefundable portion of employee retention credit from Worksheet 1 11c

► You MUST complete all three pages of Form 941 and SIGN it.

Next ►

For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher.

Cat. No. 17001Z

Form **941** (Rev. 3-2021)

Going Forward in 2021 with Form 941



Part 1: Answer these questions for this quarter. *(continued)*

11d	Total nonrefundable credits. Add lines 11a, 11b, and 11c	11d	<input type="text"/>	■
12	Total taxes after adjustments and nonrefundable credits. Subtract line 11d from line 10	12	<input type="text"/>	■
13a	Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, or 944-X (SP) filed in the current quarter	13a	<input type="text"/>	■
13b	Deferred amount of social security tax	13b	<input type="text"/>	■
13c	Refundable portion of credit for qualified sick and family leave wages from Worksheet 1	13c	<input type="text"/>	■
13d	Refundable portion of employee retention credit from Worksheet 1	13d	<input type="text"/>	■
13e	Total deposits, deferrals, and refundable credits. Add lines 13a, 13b, 13c, and 13d	13e	<input type="text"/>	■
13f	Total advances received from filing Form(s) 7200 for the quarter	13f	<input type="text"/>	■
13g	Total deposits, deferrals, and refundable credits less advances. Subtract line 13f from line 13e	13g	<input type="text"/>	■
14	Balance due. If line 12 is more than line 13g, enter the difference and see instructions	14	<input type="text"/>	■
15	Overpayment. If line 13g is more than line 12, enter the difference <input type="text"/> ■	Check one: <input type="checkbox"/> Apply to next return. <input type="checkbox"/> Send a refund.		

Going Forward in 2021 with Form 941



Part 3: Tell us about your business. If a question does NOT apply to your business, leave it blank.

- 17 If your business has closed or you stopped paying wages Check here, and enter the final date you paid wages / / ; also attach a statement to your return. See instructions.
- 18 If you're a seasonal employer and you don't have to file a return for every quarter of the year Check here.
- 19 Qualified health plan expenses allocable to qualified sick leave wages 19 .
- 20 Qualified health plan expenses allocable to qualified family leave wages 20 .
- 21 Qualified wages for the employee retention credit 21 .
- 22 Qualified health plan expenses allocable to wages reported on line 21 22 .
- 23 Credit from Form 5884-C, line 11, for this quarter 23 .
- 24 Deferred amount of the employee share of social security tax included on line 13b 24 .
- 25 Reserved for future use 25 .

Form 941 Worksheet 1



Step 1. Determine the employer share of social security tax this quarter after it is reduced by any credit claimed on Form 8974 and any credit to be claimed on Form 5884-C	
1a	Enter the amount of social security tax from Form 941, Part 1, line 5a , column 2 1a _____
1b	Enter the amount of social security tax from Form 941, Part 1, line 5b , column 2 1b _____
1c	Add lines 1a and 1b 1c _____
1d	Multiply line 1c by 50% (0.50) 1d _____
1e	If you're a third-party payer of sick pay that isn't an agent and you're claiming credits for amounts paid to your employees, enter the employer share of social security tax included on Form 941, Part 1, line 8 (enter as a positive number) 1e _____
1f	Subtract line 1e from line 1d 1f _____
1g	If you received a Section 3121(q) Notice and Demand during the quarter, enter the amount of the employer share of social security tax from the notice 1g _____
1h	Employer share of social security tax. Add lines 1f and 1g 1h _____
1i	Enter the amount from Form 941, Part 1, line 11a (credit from Form 8974) 1i _____
1j	Enter the amount to be claimed on Form 5884-C, line 11, for this quarter 1j _____
1k	Total nonrefundable credits already used against the employer share of social security tax. Add lines 1i and 1j 1k _____
1l	Employer share of social security tax remaining. Subtract line 1k from line 1h 1l _____

Form 941 Worksheet 1



Step 3.

Figure the employee retention credit

3a	Qualified wages (excluding qualified health plan expenses) for the employee retention credit (Form 941, Part 3, line 21)	3a	_____
3b	Qualified health plan expenses allocable to qualified wages for the employee retention credit (Form 941, Part 3, line 22)	3b	_____
3c	Add lines 3a and 3b	3c	_____
3d	Retention credit. Multiply line 3c by 50% (0.50)	3d	_____
3e	Enter the amount of the employer share of social security tax from Step 1, line 1l	3e	_____
3f	Enter the amount of the nonrefundable portion of the credit for qualified sick and family leave wages from Step 2, line 2j	3f	_____
3g	Subtract line 3f from line 3e	3g	_____
3h	Nonrefundable portion of employee retention credit. Enter the smaller of line 3d or line 3g. Enter this amount on Form 941, Part 1, line 11c	3h	=====
3i	Refundable portion of employee retention credit. Subtract line 3h from line 3d and enter this amount on Form 941, Part 1, line 13d	3i	=====

Form 7200



Part II Enter Your Credits and Advance Requested

1	Total employee retention credit for the quarter. See instructions			1	
2	Total qualified sick leave wages eligible for the credit and paid this quarter. See instructions			2	
3	Total qualified family leave wages eligible for the credit and paid this quarter. See instructions			3	
4	Add lines 1, 2, and 3			4	
5	Total amount by which you have already reduced your federal employment tax deposits for these credits for this quarter	5			
6	Total advanced credits requested on previous filings of this form for this quarter	6			
7	Add lines 5 and 6			7	
8	Advance requested. Subtract line 7 from line 4. If zero or less, don't file this form			8	

Employer Record Keeping

Employers are required to retain the following records for 4 years

- Documentation showing your eligibility for the employee retention credit based on suspension of operations or a significant decline in gross receipts.
- Documentation showing how you figured the amount of the employee retention credit.
- Documentation showing how you figured the amount of qualified health plan expenses that you allocated to wages.
- Retain records of FTEs, including how you arrived at the average number.
- Retain copies of completed Form(s) 7200 you filed with the IRS.

Contact Us:



Natasha M. Hicks, J.D., LL.M

Tax Supervisor

(w) 312-888-4634

nhicks@muellercpa.com



Dan Patterson, CPA

Senior Client Advisory Services
Associate

(w) 847-783-1917

dpatterson@muellercpa.com

Resources

A wind turbine is positioned on the right side of the frame, its three blades extending upwards. The background is a dark, starry night sky with the Milky Way galaxy visible as a bright, hazy band of light stretching across the right side. The overall scene is serene and evokes a sense of clean energy and natural beauty.

IRS FAQs: <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

Form 7200, Advance Payment of Employer Credits Due to COVID-19: <https://www.irs.gov/pub/irs-pdf/f7200.pdf>

Form 941, Employers QUARTERLY Federal Tax Return: <https://www.irs.gov/pub/irs-pdf/f941.pdf>