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Understanding & Maximizing the Updated Employee Retention Credit (ERC)

July 28th, 2021

Today's Topics

- **Review of the Employee Retention Credit**
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  - Who May/May Not Claim the ERC
  - What are Qualifications for Claiming ERC
- **Updates to the ERC**
  - The Consolidated Appropriations Act
  - IRS Notice 2021-20 & IRS Notice 2021-23
  - The American Rescue Plan Act -2021
  - Changes to Qualified Wages and Credit Amount for TY 2021
- **Calculating the Credit and Considerations before Claiming**
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  - Form 7200- Claiming Advance Payment of the ERC
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Updates and Notices Clarifying the Employee Retention Credit

- The credit was first introduced as a part of the CARES Act in March 2020 and later amended by the Consolidated Appropriations Act - 2021 (CAA), the American Rescue Plan Act-2021 (ARPA), and two notices: Notice 2021-20 and Notice 2021-23.

- **§ 2301 of the Coronavirus Aid, Relief, and Economic Security Act contains the original provisions of the ERC (CARES Act PL 116-136), Mar. 27, 2020.**
  - The Employee Retention Credit (ERC or ERTC) is a refundable credit that businesses can claim against qualified wages and certain group health benefit costs paid to/for the benefit of employees.
  - All employers who carry on a trade or business and pay wages to employees between Mar. 13, 2020, and Dec. 31, 2020, including tax-exempt organizations, are eligible if they meet at least one of two requirements:
    - The employer/company was under a governmental order to shut-down operations due to COVID-19; **or**
    - The employer experienced a significant decline in gross receipts during the covered period.
  - Wages may not exceed the amount the employee would have been paid in the 3o days prior to when the qualifying wages were paid.
  - Large Employers (those who had more than 100 full-time employees (FTE) in 2019 may only claim a credit for wages paid to employees who were NOT providing services.
  - The initial ERC provided a credit of 50% of up to $10,000 of wages and qualified medical expenses paid to employees between Mar. 13, 2020, and Dec. 31, 2020.
    - The maximum credit amount that may be claimed for each employee for all four calendar quarters in 2020 is $5,000.
  - The ERC cannot be taken by the Government of the United States or the government of any state or any political subdivision.

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Updates and Notices Clarifying the Employee Retention Credit

- **The Consolidated Appropriations Act (CAA), December 27, 2020.**
  - Extended the ERC through June 30, 2021.
  - Made the ERC available to employers who received a PPP loan.
  - Changed the percentage of available credit for qualified wages paid from 50% to 70% of up to $10,000.
  - Changes the maximum wages available to claim an ERC from $10,000 per year to $10,000 per quarter.
  - Changed the comparison of gross receipts from “less than 50% for the same calendar quarter” to “less than 80% for the same calendar quarter.” Section 207(d)(A)(II).
  - An employer may elect to use the gross receipts of the immediately preceding quarter as compared to its corresponding quarter in 2019 to qualify under the gross receipts test for the first two quarters in 2021.
  - CAA removes the requirement that employees be paid no more than they would have received in the 30 days prior to the qualifying period. Bonuses to Essential workers are now “qualified wages.”
  - Employers with fewer than 500 full-time employees (FTE) are allowed advance ERC payments.
  - Colleges and universities, organizations providing certain medical services, and certain organizations chartered by congress now qualify for the ERC.
  - If your business did not exist in 2019, you may compare 2021 quarterly gross receipts to the same 2020 quarter to determine eligibility.
- **IRS Notice 2021-20:** Applies to the credit claimed after March 12, 2020, and before January 1, 2021.
  - Incorporates information from the IRS FAQs and gives guidance on the ERC as amended by section 206 of the CAA.
  - States the rules for those who are claiming the credit for the tax year **2020 only.**
  - Gives examples of the Amended §2301 of the CARES Act, which now permits an employer who received a PPP loan to be eligible to claim an ERC.

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Updates and Notices Clarifying the Employee Retention Credit

- **The American Rescue Plan Act (ARPA), March 11, 2021:**
  - ARPA enacted section 3134 of the Internal revenue code, which gives businesses until December 31, 2021, to claim the credit.
  - Introduces Recovery Start-up Business – Certain small businesses that began after February 15, 2020, and were forced to shutdown due to COVID-19 may qualify for up to $50,000 per calendar quarter. 26 USC Sec. 3134(c)(3).
  - Severely Financially Distressed Employers may claim a credit for wages paid to all employees even if the employer has greater than 500 employees.
    - A severely financially distressed employer is one whose gross receipts for the calendar quarter are less than 10% of the gross receipts for the same calendar quarter in calendar year 2019.
  - Extended the audit period from 3 to 5 years.

- **IRS Notice 2021-23, April 2, 2021:**
  - Provides guidance for those claiming an ERC for the first and second quarters of 2021 only.
  - Prohibits advance payment of the ERC except to 2021 small eligible employers.
  - Small employers may receive an advanced credit of up to 70% of the “average quarterly wages paid” in calendar year 2019 by filing form 7200.
  - Removes the restriction that employers are not allowed a credit for both the ERC and the work opportunity credit under section 51.

- **IRS Frequently Asked Questions:**
  - These have not been updated to reflect the changes made by the above Acts and Notices. However, they have been integrated into the notices and laws later passed.

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Review of Employee Retention Credit

Aggregation Rules Under the ERC

- All entities that are members of a controlled group for purposes of the ERC must be aggregated for the following purposes.
  - Determining whether the employer has a trade or business operation that was fully or partially suspended due to orders related to COVID-19 from an appropriate governmental authority.
    - If one member of the group was shut-down, the entire group may claim an ERC for the period the business was suspended.
  - Determining whether the employer has a significant decline in gross receipts.
    - Gross receipts of all members must be combined to determine if there was a qualifying decline in gross receipts.
  - Determining whether the employer has more than 100/500 full-time employees.
  - Determining the maximum credit amount per employee.
- Once it is determined that an aggregated group qualifies for the Employee Retention Credit, the amount of the Employee Retention Credit must be apportioned among members of the aggregated group on the basis of each member's proportionate share of the qualified wages giving rise to the credit.
- Note: Even if a particular employee works for more than one company in an affiliated group, that employee's wages may only be counted for one of the companies when determining "qualified wages."

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Review of Employee Retention Credit

The First Step in Claiming the ERC is determining whether the employer is a member of an Aggregated Group.

- **Aggregated Groups:**
  - The ERC provides, all persons treated as a single employer under §52 (a) or (b) of the Code or subsection (m) or (o) of §414 shall be treated as one person.
  - **§52 refers to controlled groups** as defined under § 1563(a) for purposes of the ERC and §1563(a) gives the following definition of controlled groups:
    - **Parent-subsidiary controlled group**: There is a common parent corporation; and the common parent corporation owns more than 50% of the total combined voting power of all classes of stock entitled to vote of at least one of the other corporations, or more than 50% of the value of shares of all classes of stock of at least one of the other corporations.
      - If these requirements are satisfied, the parent-subsidiary controlled group will also include any corporation that is owned more than 50% by any other corporation that is a member of the group.
    - **Brother-sister:** Two or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing more than 50% of the voting power of all classes of stock entitled to vote or more than 50% of all shares of all classes of stock of each corporation.
    - **Combined group of corporations:** Three or more corporations, each of which is a member of either a parent-subsidiary or brother-sister controlled group, and at least one of which is both the common parent of an apparent-subsidiary controlled group and also a member of a brother-sister controlled group.
  - **Attribution from Partnerships** stock owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5% or more in either the capital or profits of the partnership.

An Employer May Qualify for ERC by Meeting at Least One or Two Tests

Government Shut-Down

- Essential businesses don't qualify unless they have a supply of critical material/goods disrupted.
  - Must be more than a nominal portion of business operations interrupted.
  - Goss receipts from disrupted operations must have been at least 10% or more of the total gross receipt of the operation during the same calendar quarter in 2019, or
  - The hours of service performed by employees in that portion of the business was not less than 10% of the total number of hours of service performed by all employees in the employer's business using tax-year 2019.
- If your business is closed due to COVID-19, but you are able to continue operations largely intact through telework, you do **NOT** qualify.
- 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.
- Foreign entities and locations are included as members of a controlled group. However, when counting the number of full-time employees in 2019, for purposes of determining if you're over or under the employee headcount threshold, you can exclude foreign employees.
- The credit is only available for the wages paid during the time period when the government order was in effect.

  Example: Business (A) was ordered to shut-down from March 17, 2020, until April 17, 2020. After April 17, the business was allowed to resume business as usual. However, the employer remained closed through April 30, 2020, just to be safe. Since the government order was only from March 17 – April 17, the employer may only claim a credit for qualified wages paid during that time.
- Employer A operates an auto parts manufacturing business. Employer A's supplier of raw materials is required to fully suspend its operations due to a governmental order. Employer A is unable to procure these raw materials from an alternate supplier. As a consequence of the suspension of Employer A's supplier, Employer A is not able to perform its operations for a period of time.

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Significant Decline in Gross Receipts

- Gross receipts are determined under § 448 (c).
  - Gross receipts of the taxable year and includes total sales (net of returns and allowances) and all amounts received for services. In addition, gross receipts include any income from investments and from incidental or outside sources.
- A significant decline begins on the first day of the calendar quarter, for which **an employer's gross receipts are less than 50% (80% for 2021)** of its gross receipts for the same calendar quarter in 2019.
- A significant decline **ends** on the first day of the first calendar quarter **following** the calendar quarter in which gross receipts are more than 80% of gross receipts for the same calendar quarter in 2019.
- Calculate gross receipts using applicable tax basis gross receipts rules. These are generally receipts from all sources reported for income tax purposes using whatever method is used for the tax.
- Gross Receipts do not include
  - Receipts on repayments of loans
  - Collection of sales tax
  - Tips Collected
  - ERC
  - PPP forgiveness?
- For the first two quarters in 2021, the employer may elect to determine if the decline in gross receipts is met by comparing the immediately preceding calendar quarter with those for the corresponding calendar quarter in 2019 (substituting 2020 for 2019 if the employer did not exist as of the beginning of the specific quarter in 2019).
- If an employer was not in existence as of the beginning of the fourth calendar quarter of 2019, the alternative quarter election will not be available for the first calendar quarter of 2021.

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

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Aggregation Rules

	Co. A 2019 Gross Rec.	Co. A 2020 Gross Rec.	% Decline		Co. B 2019 Gross Rec.	Co. B 2020 Gross Rec.	% Decline		Aggreg-ated 2019	Aggreg-ated 2020	Aggreg-ated % Decline	Qual.
Q1	$375,000	$225,000	**40% Decline**		$275,000	$123,750	**55% Decline**		$650,000	$348,750	**45% Decline**	**NO**
Q2	$350,000	$192,500	**45% Decline**		$250,000	$75,000	**70% Decline**		$600,000	$267,500	**55% Decline**	**YES**
Q3	$325,000	$253,500	**22% Decline**		$225,000	$213,750	**5% Decline**		$550,000	$467,250	**15% Decline This is above 80% of 2019**	**Can Still Receive**
Q4	$300,000	$165,000	**45% Decline**		$200,000	$98,000	**51% Decline**		$500,000	$263,000	**47.5% Decline**	**NO**

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Gross Receipts Test 2020 vs 2021

- 2020 Rule: Decline of at least 50% 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

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

	2019 Income	2021 Income
Q1	$100,000	$79,000
Q2	$100,000	$81,000
Q3	$100,000	$81,000
Q4	$100,000	$50,000

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§ 2301 of the CARES Act References Several Code Sections Which Exclude Wages Paid to Certain Parties.

- Self-employed earnings are not eligible for the ERC, although the ERC may be claimed for wages paid to the sole proprietor's employees.

- §51(i)1 refers to code section 152(d)2 to determine excluded wages. §152(d)2, excluded wages are those paid to a taxpayer's:
  - Child or descendant of a child.
  - Brother, sister, stepbrother, or stepsister.
  - Father or mother, or an ancestor of either.
  - Stepfather or stepmother.
  - Son or daughter of a brother or sister of the taxpayer.
  - Son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.
  - An individual who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

- If the employer is a corporation, excluded wages are those of any individual who is related to an individual who owns, directly or indirectly, more than 50% in value of the outstanding stock of a corporation determined with the application of §267(c).

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§ 2301 of the CARES Act References Several Code Sections Which Exclude Wages Paid to Certain Parties.

- If the taxpayer is an entity other than a corporation, excluded wages are the wages of any individual who is related to an individual who owns, directly or indirectly, more than 50% of the capital and profits interests in the entity (determined with the application of section 267(c).
- Directly or indirectly under §267(c) includes entity-to-member attribution, family attribution, partner-partner attribution, and limits on reattribution.
- Governmental entities and household employers are not eligible for the credit.

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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**

“Qualified Wages” include certain group health care expenses and 401(k) payments

- Employers who provide wages that qualify for the ERC can also include qualified health expenses in the calculation of the ERC.
  - These include the employer and employee cost for group health plan expenses, but only to the extent such amounts are excluded from the gross income of employees.
  - Qualified health plan expenses include employer contributions to health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs), but not to small employer HRAs (known as QSEHRAS) or employer contributions to health savings accounts (HSAs).
  - Employers may also treat as qualified wages the amounts its employees contribute as pre-tax salary reduction contributions to qualified 401(k) plans.

The definition of “qualified wages” depends on the number of full-time employees the employer had in 2019:

- **Full-time Employee**
  - For purposes of the ERC, a full-time employee is one that in 2019 worked at least 30 hours per week or 130 hours in a month. §4980H
    - This is not the same as the full-time equivalent (FTE) used for PPP forgiveness.
    - Employers who were in business the entire calendar year in 2019 or 2020 would take the sum of the number of full-time employees in each calendar month and divide by 12.
- **Qualified Wages for 2020**
  - Large Employers: Those who have more than 100 FTE can only use the qualified wages paid to employees who were NOT providing service.
- **Qualified Wages for 2021**
  - Large Employers: Those who have more than 500 FTE.

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"Qualified Wages" Depends on the Number of FTE's Employed in 2019

- Employers who averaged **fewer than 500** full-time employees in 2019 may receive a credit of 70% of the qualified wages paid to all employees while the government order was in place or while the business was experiencing a significant decline in gross receipts.

- **EXAMPLE:** Employer-A, a retail shop, had 200 FTEs in 2019. The employer is forced to partially shutdown his business due to COVID-19. He pays his 80 salesmen $80,000 in wages even though they are forced to stay at home due to a government-shutdown. He pays his other 120 employees $120,000 to work handling orders for curbside pickup. Since Employee A has 500 or fewer "FTE" the entire $200,000 that he pays employees (both to work and to stay at home) is eligible for the credit.

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"Qualified Wages" Depends on the Number of FTE's Employed in 2019

- Employers who averaged **more than 500** 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 600 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 550 employees/cooks $550,000 to provide take-out orders. The employer may only claim the ERC for the $50,000 paid to the servers who were **not working.**

When a PPP loan has been forgiven, the wages that are eligible for the ERC depends on how the wages were reflected on the PPP loan application.

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- The employer is deemed to have made the election not to claim the ERC under §2301(a)(1) for the amount of qualified wages included in the payroll costs reported on the PPP loan forgiveness application up to (**but not exceeding)** the minimum amount of payroll costs, **together with any other eligible expenses reported** on the loan forgiveness application, needed to receive forgiveness.

- If an eligible employer reports any qualified wages as payroll costs on a PPP Loan Forgiveness Application, but the loan is not forgiven, those wages may be treated as qualified for the ERC.

- If an employer includes **only** qualified wages on the PPP forgiveness application (and no other eligible expenses) the entire amount included on the application (up to the total PPP loan given) will become ineligible for the ERC.

- If an employer includes **only** qualified wages (does not include other eligible expenses) on the PPP loan forgiveness application and the amount of qualified wages shown on the application is **more** than the total loan amount, then the wages up to the total loan amount will be deemed ineligible to claim the ERC. The employer may claim the ERC for any wages above the total loan amount.

- If an employer does not show other eligible expenses on the PPP loan forgiveness application, the employer will not be deemed to have included them, even if the amount of wages on the application exceeds the minimum necessary for forgiveness.

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Example of Qualified Wages and PPP

- Consider the following scenario: Employer A received a $200,000 PPP Loan, pays $200,000 of qualified wages, and has $80,000 of other eligible expenses consisting of rent and utilities. Forgiveness requires the employer to file an application showing $200,000 of payroll costs and other eligible expenses (and a minimum of $120,000 of payroll costs).

- **Example 1**: Employer A files a PPP forgiveness application showing $200,000 of payroll costs and **no other eligible expenses.**
  - Since the employer did not include the $80,000 of other eligible wages, none of the $80,000 will be considered. The employer will not have any wages left to claim the ERC.

- **Example 2**: Employer A files a PPP forgiveness application showing $120,000 of payroll costs and $80,000 of other eligible expenses.
  - This is the ideal scenario. Only the minimum amount of payroll costs needed are shown. When added to the other eligible expenses, the employer qualifies for PPP forgiveness and will be able to maximize the ERC.

- **Example 3**: Employer A files a PPP loan forgiveness application showing $180,000 of payroll and $50,000 of other eligible expenses.
  - Since the employer included other eligible expenses, the IRS will use the $50,000 shown on the PPP forgiveness application to reduce the amount of payroll costs included on the PPP loan application to $150,000. The remaining $50,000 of payroll costs will be eligible to claim the ERC.
    - This is not ideal. $30,000 of payroll costs that could have gone to ERC were unnecessarily included on the PPP forgiveness application

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Preliminary Assessment of Eligibility

- The Taxpayer Advocate Service (TAS) has launched an online tool that employers can use to determine if they are eligible to receive either the ERC or paid sick or family leave credits.
  - TAS is an independent organization within the IRS that helps taxpayers resolve problems and recommends changes that prevent problems.
- https://taxpayeradvocate.irs.gov/BizTaxReliefTool

Decision Tree for Claiming the ERC in 2020 & 2021.

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The Employee Retention Credit (ERC) is available to employers who continue to pay their employees during the COVID-19 pandemic of 2020 and 2021. Use the decision trees below to determine eligibility and the amount of the credit that may be claimed.

Was the employer a member of an affiliated group.

Use affiliated group rules to determine:
1. Revenue Decline
2. Full or Partial Shut-down
3. Total number of employees
4. Determining the maximum credit amount per employee

Was any member of the business group placed under a governmental order to fully or partially shut-down during 2020 due to COVID-19?

May claim credit for only the period of time shut-down was in place.

NO

Did your aggregate group have a quarter with a significant decline in gross receipts as compared to the same quarter in 2019?
>50% in 2020
>20% in 2021

You are not eligible to receive the ERC.

YES

YES

Small Employers - TY 2020 = up to 100 FTE in 2019
TY 2021 = up to 500 FTE in 2019
May claim an ERC for qualified wages paid to **ALL** employees working and not working during covered period.
1. 50% of up to $10,000 for 2020
2. 70% of up to $10,000 for 2021

Large Employers - TY 2020 = > 100 FTE in 2019
TY 2021 = > 500 FTE in 2019
May claim an ERC for qualified wages paid to employees who were **NOT** working due to COVID-19 restrictions.
1. 50% of up to $10,000 for 2020
2. 70% of up to $10,000 for 2021

File 941-X to correct the quarterly Form 941 filed. Deadline: Later of 3 years from original filing or 2 years from paying the tax.

ERC Interactions with the Paycheck Protection Program

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- Employers who received a PPP loan and had the loan forgiven may still qualify for the ERC for any wages not claimed on your PPP loan forgiveness application.

Employee Name	Gross Wages Q1	Health Benefit Costs	Total Wages	PPP Wage amounts	FFCRA Credits Used	Other unqualified items	Total Unqualified Wages	Qualified ERC Wages and Benefits	70% of Qualified Wages and Benefits	PPP Loan Amount is $40,000
David Adams	$8,000.00	$300.00	$8,300.00				$ -	$ 8,300.00	$ 5,810.00	
Melissa Jones	$32,560.00	$300.00	$32,860.00	$22,860.00			$ 22,860.00	$ 10,000.00	$ 7,000.00	
Leslie Klein	$10,000.00	$250.00	$10,250.00	$250.00			$ 250.00	$ 10,000.00	$ 7,000.00	
Morgan Freeman	$10,000.00	$0.00	$10,000.00		$ 1,500.00		$ 1,500.00	$ 8,500.00	$ 5,950.00	
Angel Martin(owner)	$10,000.00	$500.00	$10,500.00	$10,500			$ 10,500.00	$ 0	$ 0	
Stephen Smith	$40,000.00	$200.00	$40,200.00	$6,390.00			$ 6,390.00	$ 10,000.00	$ 7,000.00	
							$ -	$ -	$ -	
							$ -	$ -	$ -	
							$ -	$ -	$ -	
Grand Total	$110,560.00		$112,110.00	$ 40,000.00	$ 1,500.00	$ -	$ 41,500.00	$ 46,800.00	$ 32,760.00	

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Employers May Not Receive and ERC for Wage That Have Been Used to Claim Certain Other Credits

- Section 2301(e) of the CARES Act states, “rules similar to section 280C(a) of the Internal Revenue Code shall apply to the Employee Retention Credit.”
- Code § 280C(a) provides, “no deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the sum of the credits determined for the taxable year under sections 41, 45A(a), 45P(a), 45S(a), 51(a), 3131, 3132, and 1396(a). See the detailed list below.
  - **Credit for paid sick leave §3131.**
  - **Credit for increasing research activities §41. Excluded for 2021.**
  - Indian Employment Credit 45(A). Applies to 2021.
  - Credit for active-duty members of the uniformed services 45(P). Applies to 2021.
  - **Credit for paid family and medical leave §45S.**
  - **Work opportunity Credit §51. An employer who received a WOP in 2020 may not claim an ERC for 2020.**
  - Empowerment Zone Employment Credit §1396. Applies to 2021.
  - Credit for paid family leave §3132.
- ERC wages are NOT qualified disaster relief payments because qualified disaster payments do not include qualified wages paid by an employer.

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How to Claim the Credit

- The credit can be claimed in one or a combination of these three ways:

  1. **Reduction of Federal Tax Deposits**
  2. **Form 7200 Advanced Payment**
  3. **Federal Employment Tax Returns**

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Reduce Federal Tax Deposits

- In anticipation of the credit, an employer may reduce the amount of federal tax deposits.
  - Employers can retain a corresponding amount of the employment taxes that otherwise would have been deposited, including federal income tax withholding, the employees' share of Social Security and Medicare taxes, and the employer's share of Social Security and Medicare taxes for all employees, up to the amount of the credit
    - No penalty for underpayment of employer's share of taxes will be assessed if (1) the employer paid qualified wages in the calendar quarter prior to the time of the required deposit, (2) the amount of employment taxes not deposited, reduced by applicable credits, is less than or equal to the anticipated ERC, and (3) the employer did not already seek an advance payment on form 7200 for the same wages.
    - Only reduce deposits made if confident in the ERC amount anticipated.

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Form 7200

- Eligible employers may claim an advance of the Employee Retention Credit by submitting form 7200.
  - Employers may request an advance of the amount that exceeds the reduced federal deposit amounts by filing form 7200 before the earlier of : (1) filing date the employer filed the quarter's 941, or (2) the due date for filing the relevant quarter's form 941.
  - Form 7200 can be filed at any time before the end of the month following the quarter in which qualified wages were paid, and you can file Form 7200 several times during each quarter if needed.
- In order to file this, employers will need to know:
  - Average number of FTE's in 2019.
  - Total qualified family sick leave wages eligible for the quarter.
  - Amount deposits have already been reduced for the quarter.

Claiming ERC in Past Quarters: 941-X

- When retroactively claiming the credit (2020 or Q1 2021), an amended Federal 941 return is required for each quarter in which you are claiming the credit.
- Money being received around 6-9 months.
- Needed items to file an amended return are:
  - Original 941 filed.
  - Wage reports listed by employee.
  - Credit calculation with qualified wage amount and total credit requested.
  - Worksheet 1 from 941-X instructions.


Form 941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund

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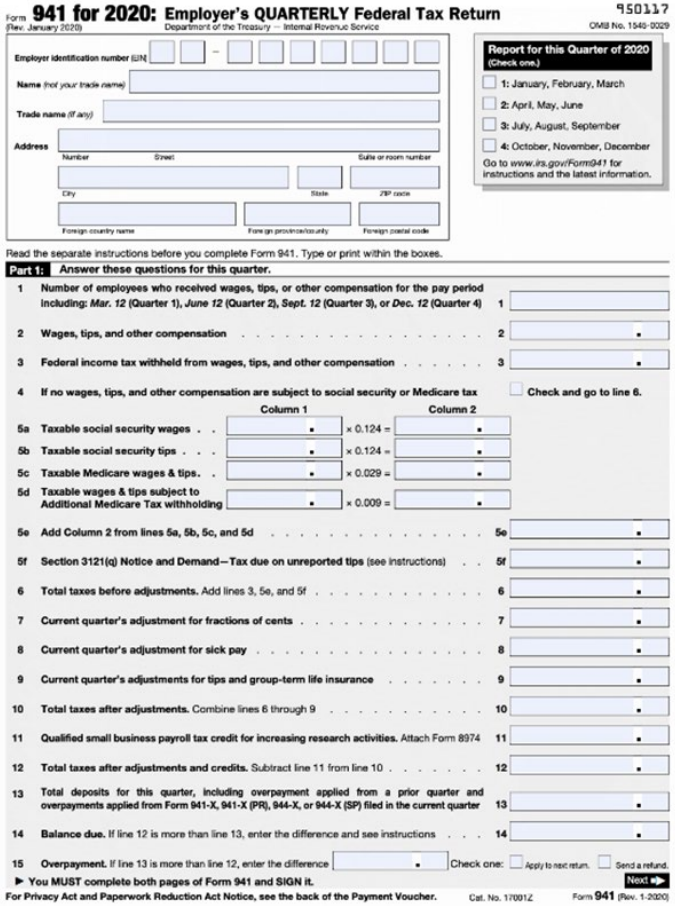
Current Quarters and Moving Forward

- When claiming the credit for the rest of 2021, the credit will be recorded on the Federal 941 form.
- Money usually received with 2 months.
- Needed items to file return are:
  - Credit calculation with qualified wage amount and total credit requested.
  - Wage reports listed by employee.
  - Worksheet 1 from 941 instructions.



Form **941 for 2020: Employer's QUARTERLY Federal Tax Return** 950117
(Rev. January 2020) Department of the Treasury – Internal Revenue Service OMB No. 1545-0029

Employer identification number (EIN) –
Name (not your trade name)
Trade name (if any)
Address
Number Street Suite or room number
City State ZIP code
Foreign country name Foreign province/county Foreign postal code

Report for this Quarter of 2020 (Check one.)
1: January, February, March
2: April, May, June
3: July, August, September
4: October, November, December
Go to www.irs.gov/Form941 for instructions and the latest information.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: Answer these questions for this quarter.

1 Number of employees who received wages, tips, or other compensation for the pay period including: *Mar. 12* (Quarter 1), *June 12* (Quarter 2), *Sept. 12* (Quarter 3), or *Dec. 12* (Quarter 4) 1
2 Wages, tips, and other compensation 2
3 Federal income tax withheld from wages, tips, and other compensation 3
4 If no wages, tips, and other compensation are subject to social security or Medicare tax ☐ Check and go to line 6.

		Column 1		Column 2
5a	Taxable social security wages		× 0.124 =	
5b	Taxable social security tips		× 0.124 =	
5c	Taxable Medicare wages & tips		× 0.029 =	
5d	Taxable wages & tips subject to Additional Medicare Tax withholding		× 0.009 =	

5e Add Column 2 from lines 5a, 5b, 5c, and 5d 5e
5f Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions) 5f
6 Total taxes before adjustments. Add lines 3, 5e, and 5f 6
7 Current quarter's adjustment for fractions of cents 7
8 Current quarter's adjustment for sick pay 8
9 Current quarter's adjustments for tips and group-term life insurance 9
10 Total taxes after adjustments. Combine lines 6 through 9 10
11 Qualified small business payroll tax credit for increasing research activities. Attach Form 8974 11
12 Total taxes after adjustments and credits. Subtract line 11 from line 10 12
13 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 13
14 Balance due. If line 12 is more than line 13, enter the difference and see instructions 14
15 Overpayment. If line 13 is more than line 12, enter the difference Check one: ☐ Apply to next return. ☐ Send a refund.

► You MUST complete both 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. 1-2020)

Worksheet 1

- Found in instructions of 941 returns.
- Used to help fill out 941 and 941-x returns (3 Steps).
- Step 1 calculates the “nonrefundable” portion of credit.
- Step 2 calculates the qualified sick and family leave. wage credit.
- Step 3 calculates the refundable portion and total ERC amount.

Worksheet 1. Credit for Qualified Sick and Family Leave Wages and the Employee Retention Credit

Keep for Your Records

Determine how you will complete this worksheet

If you paid both qualified sick and family leave wages and qualified wages for purposes of the employee retention credit this quarter, complete Step 1, Step 2, and Step 3. If you paid qualified sick and family leave wages this quarter but you didn't pay any qualified wages for purposes of the employee retention credit this quarter, complete Step 1 and Step 2. If you paid qualified wages for purposes of the employee retention credit this quarter but you didn't pay any qualified sick and family leave wages this quarter, complete Step 1 and Step 3.

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

Step 2. **Figure the sick and family leave credit**

2a	Qualified sick leave wages reported on Form 941, Part 1, line 5a(i), column 1	2a	
2a(i)	Qualified sick leave wages included on Form 941, Part 1, line 5c, but not included on Form 941, Part 1, line 5a(i), column 1, because the wages reported on that line were limited by the social security wage base	2a(i)	
2a(ii)	Total qualified sick leave wages. Add lines 2a and 2a(i)	2a(ii)	
2b	Qualified health plan expenses allocable to qualified sick leave wages (Form 941, Part 3, line 19)	2b	
2c	Employer share of Medicare tax on qualified sick leave wages. Multiply line 2a(ii) by 1.45% (0.0145)	2c	
2d	**Credit for qualified sick leave wages.** Add lines 2a(ii), 2b, and 2c		2d
2e	Qualified family leave wages reported on Form 941, Part 1, line 5a(ii), column 1	2e	
2e(i)	Qualified family leave wages included on Form 941, Part 1, line 5c, but not included on Form 941, Part 1, line 5a(ii), column 1, because the wages reported on that line were limited by the social security wage base	2e(i)	
2e(ii)	Total qualified family leave wages. Add lines 2e and 2e(i)	2e(ii)	
2f	Qualified health plan expenses allocable to qualified family leave wages (Form 941, Part 3, line 20)	2f	
2g	Employer share of Medicare tax on qualified family leave wages. Multiply line 2e(ii) by 1.45% (0.0145)	2g	
2h	**Credit for qualified family leave wages.** Add lines 2e(ii), 2f, and 2g		2h
2i	**Credit for qualified sick and family leave wages.** Add lines 2d and 2h		2i
2j	**Nonrefundable portion of credit for qualified sick and family leave wages.** Enter the smaller of line 1l or line 2i. Enter this amount on Form 941, Part 1, line 11b		2j
2k	**Refundable portion of credit for qualified sick and family leave wages.** Subtract line 2j from line 2i and enter this amount on Form 941, Part 1, line 13c		2k

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	Qualified wages (excluding qualified health plan expenses) paid March 13, 2020, through March 31, 2020, for the employee retention credit (Form 941, Part 3, line 24). Enter an amount here only for the second quarter Form 941	3c	
3d	Qualified health plan expenses allocable to qualified wages paid March 13, 2020, through March 31, 2020, for the employee retention credit (Form 941, Part 3, line 25). Enter an amount here only for the second quarter Form 941	3d	
3e	Add lines 3a, 3b, 3c, and 3d	3e	
3f	**Retention credit.** Multiply line 3e by 50% (0.50)		3f
3g	Enter the amount of the employer share of social security tax from Step 1, line 1l	3g	
3h	Enter the amount of the nonrefundable portion of the credit for qualified sick and family leave wages from Step 2, line 2j	3h	
3i	Subtract line 3h from line 3g	3i	
3j	**Nonrefundable portion of employee retention credit.** Enter the smaller of line 3f or line 3i. Enter this amount on Form 941, Part 1, line 11c		3j
3k	**Refundable portion of employee retention credit.** Subtract line 3j from line 3f and enter this amount on Form 941, Part 1, line 13d		3k

Caution: *Only complete lines 3c and 3d for your second quarter 2020 Form 941.*

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Things to Consider Before Claiming the Credit

- Will it be worth the expense to claim the ERC?
  - The ERC is not includible in gross income, but it is subject to expense disallowance rules.
  - Example: If an employer receives $100,000 in Employee Retention Credits, then the employer must reduce its deductible wage expenses, including health plan expenses, by $100,000. Thus, adding an additional $100,000 of taxable income.

- If an employer has already filed its federal tax forms, those forms may need to be amended.
  - Forms 941 for 2020.
  - Federal income tax return form.
  - Personal income tax return form if the employer is a pass-through entity .

- The Reduction of Federal tax deposits and filing form 7200 can be risky.

- The overpayment will be subject to offset under section 6402(a) of the Code prior to being refunded to the employer.
- Extension of limitation on assessment. From 3-5 years.

- Reach out to your Payroll provider.

Employer Record Keeping

Employers are required to retain the following records for four 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

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Resources

- **§ 2301 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act PL 116-136), Mar. 27, 2020.**
- Consolidated Appropriations Act -2021 (CAA)
- American Rescue Plan Act-2021 (ARPA)
- Notice 2021-20
- Notice 2021-23
- 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

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Questions?