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RESOURCES

Employee Retention Credit (ERC) FAQs

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AICPA MEMBER ACCESS



This series of frequently asked questions (FAQs) provide answers to questions we are hearing from our members about the employee retention credit (ERC).

The ERC rules are extremely complex and have changed since the credit was originally enacted by the CARES Act. Practitioners need to take additional due diligence steps to understand the nuances that may impact their clients.

For up-to-date resources on this topic, please check out the [AICPA Tax Section's ERC guidance hub](#).

What are the ethical obligations of a CPA who prepares a tax return with an ERC claim that was prepared by a third party?

[Statement on Standards for Tax Services No. 1, Tax Return Positions](#), provides guidance indicating that when preparing and signing a tax return, the member must conclude there is a reasonable basis for the position. The member must not recommend a position that exploits the audit selection process of a taxing authority. If a third party has prepared an ERC claim

where the member does not believe there is a reasonable basis for the claim (e.g., the ERC eligibility criteria is based on partial suspension of operation, but without a government order), then the member should determine whether he or she should sign the tax return that reflects the salary adjustment or disclose the tax return position on the return.

In addition, Circular 230 provides guidance related to dealing with a client who has claimed or is seeking to claim an ERC. Section 10.22(a) of Circular 230 requires a tax practitioner to exercise due diligence when preparing tax returns which includes a duty to inquire of their clients with sufficient detail in order to determine the clients' eligibility and the correct amount for the ERC claimed. Section 10.34(d) allows a tax practitioner to rely on information in good faith and without verification, but that also includes making reasonable inquiries of a client. The IRS notes in an alert from the Office of Professional Responsibility ([Issue Number 2023-02](#)) that if the practitioner cannot reasonably conclude within the standards of Circular 230 that the client is or was eligible to claim the ERC, then the practitioner should not prepare an original or amended return that claims or perpetuates a potentially improper credit. And if a practitioner learns that a current client did not comply with the ERC requirements, the practitioner must inform the client of the error and any penalties that may apply.

What is the latest information released by the IRS related to third-party ERC claims?

The IRS issued a renewed warning in March 2023 ([IR 2023-40](#)) to urge caution when working with a third-party who is aggressively promoting ERC both publicly on radio or online ads as well as soliciting business directly. The release reiterated that tax-related illegal activities related to ERC claims can be submitted to the IRS using [Form 14242](#).

Are there certain businesses or industries that will always qualify for an ERC?

No. Determining whether a business is eligible for the ERC can be quite complex. If the eligible employer does not meet the eligibility under the gross receipts test, then the employer must experience a full or partial suspension of operations due to a government order. Whether an employer experienced a partial suspension is a facts and circumstances determination and will vary depending on the location of the business and the government orders in place. [IRS Notice 2021-20](#) provides several examples of factors to consider.

When do you reduce the salary deduction for the ERC?

The reduction is tied to when the qualified wages were paid/incurred. If the wages are deducted in 2020, then the reduction of wages for the credit will need to be reduced in 2020, even if that results in the need to file an amended 2020 return and the credit is not received until 2021 or after. This is the case whether the taxpayer is on the accrual or the cash method of accounting. See [IRS Notice 2021-49](#).

Did the ERC end early?

Per the [Infrastructure Investment and Jobs Act](#), the ERC ends early, making wages paid after Sept. 30, 2021, ineligible for the credit (except for wages paid by an eligible recovery startup business).

What penalty relief is available for employers that claimed the ERC for wages after Sept. 30, 2021?

[IRS Notice 2021-65](#) provides guidance for employers that received an advance payment or reduced deposits in anticipation of claiming the ERC but are now ineligible to claim the credit. Employers that reduced deposits for wages paid on or after Oct. 1, 2021, must deposit those taxes. If an advance payment was requested (on Form 7200), the repayment must be made by the due date for the applicable employment tax return for the fourth quarter of 2021 (see due dates based on the deposit schedule per the [IRS's website](#)). For employers that reduced payroll deposits due on or before Dec. 20, 2021, the employer will not be subject to a failure-to-deposit penalty if the employer reduced deposits in anticipation of the ERC, deposited the amounts retained on or before the relevant due date for wages paid on Dec. 31, 2021 (based on the employers' deposit schedule), and reports the liability on the applicable employment tax return for the fourth quarter.

For employers that qualify as recovery startup businesses, what changes are made to the ERC for the fourth quarter of 2021?

[IRS Notice 2021-49](#) related to recovery startup businesses provides that a business does not need to be an eligible employer, due to a full or partial suspension of operations or a decline in gross receipts if the employer met the eligibility for a recovery startup business (see [FAQ](#) below). The Infrastructure Investment and Jobs Act removes this requirement for the fourth quarter. This means that an eligible recovery startup business can still qualify for the ERC for the fourth quarter if it meets the eligibility requirements set forth in [IRS Notice 2021-49](#).

Are wages of a more-than-50% corporate shareholder and their spouse considered qualified wages for the ERC?

It depends. If a majority owner of a corporation has living ancestors (parents/grandparents), siblings or lineal descendants (children/grandchildren), any wages paid to the majority owner and their spouse are not qualified wages for the ERC. However, if the taxpayer does not have these listed living relatives, then their wages are qualified. For more information on how the attribution rules work, please see the video: [Employee Retention Credit: Your Questions Answered](#). Also, refer to [IRS Notice 2021-49](#).

How/when should an amended payroll tax return (Form 941-X) be filed if an original return or amended payroll tax return was filed prior to guidance being received and is now inaccurate?

When an error is discovered on a previously filed Form 941, *Employer's Quarterly Federal Tax Return*, Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, should generally be used to correct the error for each Form 941 filed.

Form 941-X should generally be filed within three years from the date the Form 941 was filed or two years from the date the reported tax was paid, whichever is later. Based on [Circular 230](#) and [Statement on Standards for Tax Services No. 6, Knowledge of Error: Return Preparation and Administrative Proceedings](#), a practitioner should advise the taxpayer of the error and the potential consequences and recommend the measures to be taken. A practitioner should also document the discussion with the client.

What effect does the receipt of Paycheck Protection Program (PPP) forgiveness and other COVID relief have on the calculation of gross receipts for ERC purposes?

Rev. Proc. 2021-33 provides a safe harbor to exclude from gross receipts PPP forgiveness, Shuttered Venue Operating Grants and Restaurant Revitalization Grants. This election is simply made by excluding these amounts from gross receipts for the applicable quarter to determine eligibility on the employment tax return. This election must be applied consistently, including for those treated as a single employer under aggregation.

How does an employer allocate ERC qualified wages versus PPP qualified salary expense for forgiveness purposes?

There is no specific guidance on this from a PPP perspective and borrowers should use their judgement when applying for PPP forgiveness with qualified salaries and wages. For ERC purposes, IRS Notice 2021-20 specifies that an eligible employer may elect to not take certain qualified wages into account for purposes of the ERC by not claiming those qualified wages on its federal employment tax return. Further, the employer is deemed to have made an election to not take qualified wages into account for the purposes of the ERC if the otherwise qualified wages are included as payroll costs on a PPP loan forgiveness application.

How do you calculate the number of employees to determine whether a business is considered a small eligible employer for ERC purposes?

The determination is based on the number of 2019 full-time employees, which are defined as someone working more than 30 hours per week or 130 hours per month. If based on that determination, the employer is a small eligible employer, then the credit can be calculated on all eligible wages for all employees (including part-time employees). See IRS Notice 2021-49.

For reduction of gross receipts, how do you determine the qualifying quarter in 2021?

The determination of a qualifying quarter for 2021 is made on a quarter-by-quarter basis. The alternative quarter election does not have to be used consistently across quarters. See IRS

Are tips included as qualified wages for ERC purposes?

If tips are treated as wages, they are considered qualified wages (as long as they otherwise qualify). IRS Notice 2021-49 also noted that claiming the tip credit under Sec. 45B and considering the wages to be qualified wages for ERC is allowed.

What is a “recovery startup business” and what does that mean for the calculation of that business’ ERC?

A recovery startup business provides an additional way to qualify for the credit. To be considered a recovery startup business, it must have:

- Started its trade or business activities after Feb. 15, 2020
- Have average annual gross receipts of \$1 million or less (as determined under rules similar to Sec. 448(c)(3))

If these apply, the business can treat all qualified wages paid during the period as qualified wages (regardless of the number of full-time employees). The ERC cannot exceed \$50,000 for each of the third and fourth quarters of 2021 if the business is a recovery startup business.

See IRS Notice 2021-49.

What is a “severely financially distressed employer” and what does that mean for the calculation of that business’ ERC?

A severely financially distressed employer is an employer that already meets the eligibility requirements under full or partial suspension of operations or has a significant decline in gross receipts. A significant decline in gross receipts happens if the gross receipts in the third or fourth quarters of 2021 are less than 10% of gross receipts of the corresponding quarter in 2019. These classifications allow the employer to be considered a small eligible employer and use wages paid to all employees to determine qualified wages for the ERC (rather than only those not providing services). See IRS Notice 2021-49.

How do the aggregation rules affect the ERC?

Aggregation rules affect several determinations for the ERC (IRS Notice 2021-20).

- The rules impact whether an employer is a small or large eligible employer.
- Wage limits: For employees who are paid from more than one employer (but are considered a single employer under the aggregation rules), the total qualified wage is limited to \$10,000, in total, for 2020 and \$10,000, per quarter, for 2021.
- For employers treated as a single employer, the significant decline in gross receipts must be determined by comparing the total gross receipts for the combined employer.

- For the purposes of full/partial suspension based on a government order, if the operations of one member of the aggregated group are suspended, then all members of the aggregated group are considered to have their operations suspended.

Related resources

- [AICPA employee retention credit guidance and resources](#) – Collection of resources that addresses the application of the employee retention credit
- [AICPA Employee retention credit \(ERC\): Fact or Fiction](#) – Many misconceptions surround the ERC eligibility rules and credit calculation. Use this flyer as an education guide to navigate the complexities.
- [AICPA Town Hall Series](#) (free webcasts for AICPA members) – Bi-monthly, high-impact news broadcast series that delivers the latest news, analysis, insights and practical guidance to accounting and finance professionals and responds to pressing issues facing the profession
- [IRS employee retention credit guidance](#) – IRS notices and guidance related to the employee retention credit



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