

The Employee Retention Credit (ERC)

|  | 2020 ERC Credits | 2021 ERC Credit | |
|---|---|--|---|
| | Under the CARES Act | Under the Consolidated Appropriations Act | Under the American Rescue Plan Act |
| Amount of credit | 50% of qualified wages | 70% of qualified wages | 70% of qualified wages |
| For wages paid between | 3/13/2020 - 12/31/2020 | 1/1/2021 - 6/30/2021 | 7/1/2021 - 12/31/2021 |
| Maximum amount of qualified wages | \$10,000 per employee per year | \$10,000 per employee per quarter | \$10,000 per employee per quarter Total qualified wages may not exceed \$50,000 per calendar quarter for a “recovery startup business.” |
| Eligible employers | 1) Fully or partially suspend operations during any calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19 which affect an employer’s typical operations, OR 2) Experience a significant decline in gross receipts during the calendar quarter | Same as 2020 ERC Credits - Under the CARES Act | Same as 2020 ERC Credits - Under the CARES Act Additionally, a “recovery startup business” is eligible. A recovery startup business is a business that began operations after 2/15/2020 and whose gross receipts for a 3 taxable year period ending with the taxable year which precedes such quarter does not exceed \$1,000,000. |
| How is a “significant decline” in gross receipts measured? | Determine first calendar quarter in 2020 in which gross receipts are less than 50% of its gross receipts for the same calendar quarter in 2019. Each subsequent quarter in 2020 counts as a significant decline until the end of the first quarter in which gross receipts are greater than 80% of its gross receipts from the same calendar quarter in 2019. | There is a significant decline in gross receipts for each quarter in which receipts decrease by more than 20% comparing quarter 1 of 2021 to quarter 1 of 2019 or quarter 2 of 2021 to quarter 2 of 2019. If a business did not exist at the beginning of the same quarter of 2019, the same quarter of 2020 is substituted. The credit is available for each quarter that has more than a 20% decline in gross receipts. Alternatively, an employer may compare the immediately preceding calendar quarter and comparing that to the corresponding quarter in 2019 to determine if there is a greater than 20% decline in quarter over quarter revenues. | Same as 2021 ERC Credits - Under the Consolidated Appropriations Act |
| Method of computing gross receipts | Tax basis receipts | Same as 2020 ERC Credits - Under the CARES Act | Same as 2020 ERC Credits - Under the CARES Act |

|  | 2020 ERC Credits | 2021 ERC Credit | |
|--|--|---|--|
| | Under the CARES Act | Under the Consolidated Appropriations Act | Under the American Rescue Plan Act |
| Ordering rules | <p>Wages paid are first considered paid as Families First Coronavirus Response Act (“FFCRA”) wages, then ERC wages, and then PPP wages.</p> <p>An election may be made to utilize wages for PPP forgiveness purposes prior to using wages for ERC purposes by not claiming the ERC credits on a payroll tax return for that time period.</p> | Same as 2020 ERC Credits - Under the CARES Act | <p>Same as 2020 ERC Credits - Under the CARES Act</p> <p>Additionally, wages taken into account for purposes of the shuttered venues assistance and the restaurant revitalization grants are not eligible for the ERC.</p> |
| Effect of employer size on determination of qualified wages | <p>“Small” employers (100 or fewer employees) include wages paid to all employees;</p> <p>“Large” employers (more than 100 employees) only include wages paid to employees NOT TO WORK</p> | <p>“Small” employers (500 or fewer employees) include wages paid to all employees;</p> <p>“Large” employers (greater than 500 employees) only include wages paid to employees NOT TO WORK</p> | <p>“Small” employers (500 or fewer employees) include wages paid to all employees;</p> <p>“Large” employers (greater than 500 employees) only include wages paid to employees NOT TO WORK;</p> <p>For severely financially distressed employers (those experiencing 90% or more decline in gross revenues compared to the same quarter of 2019), any wages (up to the \$10,000 limitation) paid during the calendar quarter are included in qualified wages.</p> |
| What is included in “qualified wages”? | Wages and allocable health plan expenses paid by the employer | Same as 2020 ERC Credits - Under the CARES Act | Same as 2020 ERC Credits - Under the CARES Act |
| Related party rules | <p>Wages paid to:</p> <ul style="list-style-type: none"> > individuals owning more than 50% of the corporation or partnership, and > individuals related to anyone owning, directly or indirectly, more than 50% of the stock of a corporation or more than 50% of the capital and profits of an entity other than a corporation, are not qualified wages. | Same as 2020 ERC Credits - Under the CARES Act | Same as 2020 ERC Credits - Under the CARES Act |
| How to claim the credit | <p>An employer may:</p> <ul style="list-style-type: none"> > Reduce federal income tax withholding and Social Security and Medicare payroll tax deposits by the amount of the credit, > File Form 7200, or > Amend Form 941 | Same as 2020 ERC Credits - Under the CARES Act | <p>An employer may:</p> <ul style="list-style-type: none"> > Reduce Medicare payroll tax deposits by the amount of the credit, > File Form 7200 (for small employers only - those with 500 or fewer employees), or > Claim on Form 941 (refundable only for small employers) |