

Employee Retention Credit Overview

By Ted R. Batson, Jr., Partner and Tax Counsel

Now that Paycheck Protection Program applications are in full swing, attention is turning to other benefits provided by the CARES Act. This includes a new benefit called the Employee Retention Credit (ERC). Below, we answer several questions we've been receiving about the ERC.

Note: This article is not intended to be a complete explanation of the ERC. Please review the IRS's [general explanation](#) and [FAQs](#) to further understand this important benefit.

What is the Employee Retention Credit?

Section 2301 of the CARES Act authorized a new benefit called the Employee Retention Credit (ERC). The ERC is a credit against certain payroll taxes allowed to an eligible employer for qualifying wages.

Who is an eligible employer?

An eligible employer must have been in business at any time in calendar year 2020 and for any calendar quarter during 2020 must:

1. Have had its trade, business, or nonprofit activity fully or partially suspended during the calendar quarter as a result of an order from an appropriate governmental authority which limited commerce, travel, or group meetings (whether for commercial, social, religious, or other purposes) due to COVID-19; or
2. Have experienced a greater than 50% decrease in gross receipts with respect to the same calendar quarter during 2019.

Note that only one of these two circumstances must exist.

The Employee Retention Credit is a credit against certain payroll taxes allowed to an eligible employer for qualifying wages.

The shelter-in-place or stay-at-home orders in effect in most states will trigger the application of item 1 so long as an entity has fully or partially suspended its activity during a calendar quarter in which the order was in effect.

Can a tax-exempt organization utilize the ERC?

Yes. CARES Act section 2301(c)(2)(C) specifically includes tax-exempt organizations among eligible employers.

Is there a wage limit for claiming the ERC?

You may claim a cumulative credit of up to \$10,000 per employee.

What wages qualify for the ERC?

Wages for purposes of the ERC include wages subject to FICA tax (I.R.C. § 3121(a)) or RRTA tax (I.R.C. § 3221(a)). *This means that wages paid to a minister in his or her capacity as a minister **are not qualifying wages**.*

In addition, there is a second rule that differs in application based on the number of full-time equivalent employees (as that term is defined by the Affordable Care Act) employed by an employer.

If an employer has more than 100 full-time equivalent employees, then only wages paid to an employee who is not providing services as a result of either of the two circumstances defining an eligible employer are qualifying wages.

If an employer has 100 or fewer full-time equivalent employees, then otherwise qualifying wages paid to all employees, regardless of whether they are providing services or not, are qualifying wages.

Which payroll taxes are refundable under the ERC?

If the amount of qualifying wages during a pay period exceeds the amount of qualifying payroll taxes owed for

the pay period, the excess is treated as a refundable overpayment.

For how long is the ERC available?

In the case of a partial or temporary suspension of trade, business, or nonprofit activities, the ERC is available beginning with the first calendar quarter in which the applicable governmental order is in effect and ends with the last calendar quarter in which the applicable governmental order is in effect.

In the case of a decline in gross receipts, the ERC is available beginning with the first calendar quarter in 2020 in which there is a 50% decline in gross receipts when compared to the same calendar quarter in 2019 and ending in the calendar quarter in which gross receipts have recovered to 80% when compared to the same calendar quarter in 2019.

However, in all cases the ERC program expires on December 31, 2020.

We received a Paycheck Protection Program loan. Can we also receive the ERC?

Section 2301(j) of the CARES Act states that the recipient of a Paycheck Protection Program loan is ineligible to receive the ERC.

How can my organization receive this credit?

The IRS has issued [Form 7200](#), *Advance Payment of Employer Credits Due to COVID-19*, that qualifying employers can file to receive advances of employment taxes that are refundable under the new tax credits created under the Families First Coronavirus Response Act and the CARES Act. The IRS is warning employers to [watch for these common errors](#) when filing out Form 7200.

Please [contact us online](#) or via email at info@capincrouse.com with any questions.

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