

Employee Retention Credit Frequently Asked Questions

By Chris Purnell, Partner and Tax Counsel

Q: What is the employee retention credit (ERC)?

A: The ERC is a fully refundable payroll tax credit.

Q: Are nonprofit organizations eligible to claim the ERC?

A: Yes. Nonprofit organizations, including churches and higher education institutions, can claim the ERC if they meet the eligibility criteria.

Q: Is the ERC still available?

A: Yes, it is still available to be claimed based upon qualified wages paid after March 13, 2020, through September 30, 2021.

Q: Is there a deadline for employers to claim the ERC?

A: Yes. To claim the ERC, employers need to use [Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund](#), which is an amendment to prior-quarter payroll tax filings. The deadline to file those amendments is three years from the due date of the original Form 941.

Note that on September 14, 2023, the IRS announced that it was immediately halting the processing of new ERC claims through at least December 31, 2023, to allow more time for enhanced review of current claims. If you have not yet submitted an ERC claim but plan to do so, we recommend that you wait until the moratorium is lifted. You can learn more [here](#).

Q: How much is the ERC?

A: The ERC can be a significant benefit for employers. The calculation is a percentage of the qualified wages that the employer paid during its eligibility timeframe.

The ERC is a fully refundable payroll tax credit. It can be a significant benefit for employers.

If an employer is claiming the credit for qualified wages paid in 2020 quarters, the amount is 50% of the maximum amount of qualified wages. The maximum amount of qualified wages for 2020 is \$10,000 per employee for the entire year.

For 2021 quarters, the credit is 70% of the maximum amount of qualified wages. The maximum amount of qualified wages for 2021 is \$10,000 per employee per quarter.

Q: What are qualified wages? Are there any exclusions from qualified wages?

A: Qualified wages are those wages paid to employees during your eligibility timeframe. However, the amount of qualified wages depends upon several factors:

- If you are a large employer (100 or more employees in 2019 if claiming 2020 quarters; 500 or more employees in 2019 if claiming 2021 quarters), then your qualified wages are only those wages you paid to employees who were not providing services.
- You must exclude the payroll costs that you entered on your Paycheck Protection Program (PPP) loan forgiveness application and that were necessary to obtain full forgiveness of your PPP loan(s) from the qualified wages amount.
- Ministerial wages cannot be included as qualified wages.

Q: How does an employer calculate whether it is a small or large employer?

A: You will need to evaluate your 2019 employee headcount. If your organization did not exist in 2019, you should evaluate your 2020 headcount. Then, for each month, you will count each employee who worked an average of 30 hours per week or 130 hours per month. You will then add up each month and divide it by the number of months you were in existence during that year (2019 or 2020). That will represent your "average headcount" for the purpose of determining whether you are a small or large employer.

Q: How does an employer determine whether it is eligible for the ERC?

A: There are two separate and distinct pathways to being an eligible employer for the ERC. The first pathway is through experiencing a significant decline in gross receipts between quarters in 2020 or 2021, or both, compared to the same quarter in 2019. For 2020 quarters, the decline must be 50% or greater. For 2021 quarters, the decline must be 20% or greater.

The second pathway is through experiencing a full or partial suspension of services due to governmental orders that limited commerce, travel, or group meetings because of COVID-19. This is a fairly nuanced pathway and requires assessing the modifications made by an employer to their operations as a result of the governmental order, and then measuring whether those modifications had a more than nominal effect on its trade or business.

Q: What is included in “gross receipts” for the purpose of determining eligibility for the ERC?

A: Nearly all items of income are included in gross receipts. For tax-exempt employers, the IRS states in [Notice 2021-20](#), Question and Answer 25, that gross receipts:

... includes, but is not limited to, the gross amount received as contributions, gifts, grants, and similar amounts... the gross amount received as dues or assessment from members or affiliated organizations... gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization qualifies for exemption [from income tax], the gross amount received from the sale of assets... and the gross amount received as investment income, such as interest, dividends, rents, and royalties.

Q: Are forgiven PPP loans included in that gross receipts amount?

A: No. Forgiven PPP loans may be excluded from the gross receipts calculation for the purpose of determining eligibility for the ERC.

Q: If an employer determines that it is eligible for the ERC, what type of documentation should it have available?

A: If an employer is eligible via the significant decline in gross receipts pathway, it should keep records of its financials for the 2019 quarter(s) as well as 2020 and 2021 quarter(s).

If an employer is eligible via the suspension of services pathway, it should keep robust records that substantiate the following:

- A description of the modifications the employer made to its operations;
- A timeline for the modifications made by the employer to its operations;
- A narrative that demonstrates the more than nominal impact that the modifications had on its trade or business; and
- A copy of the governmental order(s) that caused the employer to make the modifications noted above.

Q: How long does the IRS have to audit an employer’s claim of the ERC?

A: The IRS has allowed itself five years from the date of the employer claiming the ERC to audit the ERC claim.

Q: How do employers claim the ERC?

A: As noted above, employers use [Form 941-X](#), *Adjusted Employer’s Quarterly Federal Tax Return or Claim for Refund*, to claim the ERC. The form has been retrofitted for ease of claiming various CARES Act and COVID-19 relief credits, including the ERC.

Q: What should our organization do now that the IRS has announced a moratorium on processing new ERC claims?

A: As we noted above, in September 2023 the IRS announced that it was halting the processing of new ERC claims through at least December 31, 2023, to allow more time for enhanced review of current claims. Depending on where your organization is in the ERC process, you may have several decisions to make. Learn more [here](#).

Q: Can we withdraw an ERC claim we’ve already made?

A: The IRS has provided two options for organizations that now believe their ERC claims were submitted improperly.

Organizations that have applied for the ERC but have not yet received the funds, or have received a check but have not deposited or cashed it, can withdraw their claim through the process [outlined here](#).

Organizations that have received their ERC funds and now wish to repay them to avoid potential interest, penalties, and litigation can apply for the ERC Voluntary Disclosure Program, as [explained here](#). Applications are due by March 22, 2024.

Q: How long is it taking for employers to receive their ERC claims?

A: It is taking a fairly lengthy amount of time, so patience is required. Further, it is an evolving time horizon, given that the IRS is still receiving 941 and 941-X Forms. Payouts for existing claims will continue during the moratorium period, but at a slower pace due to detailed compliance rules. The IRS said that during the moratorium the standard processing goal will increase from 90 days to 180 days (or longer if the IRS determines that the claim warrants further review or audit).

Q: What ERC services does CapinCrouse provide?

A: We want to be as helpful to you as possible as you explore the ERC. To that end, we provide the following types of services to assist your organization no matter what stage of the ERC process you are in. (Note that these would be considered non-attest services when provided to our attest clients.)

- Initial consultations for those who are considering the ERC
- Consultations with those who have particular questions about the ERC
- Gathering and drafting of ERC eligibility documentation you can keep in case of an IRS audit or for external auditors
- Calculation of the amount of qualified wages and ERC claim
- Drafting and signing as paid preparer of the 941-X Form(s)
- Review of ERC claims that have already been made or are about to be made.

We can work with you to address your organization's specific needs. Please do not hesitate to [contact us](#) if you have questions or would like more information.

This article has been updated.

Additional Resources:

[Assistance with the Employee Retention Credit](#)

[Tax Implications of the Employee Retention Credit](#)

[Accounting and Reporting for the Employee Retention Credit](#)

[Employee Retention Credit Updates and Considerations](#)

[Next Steps as IRS Halts Processing of New ERC Claims Through End of Year](#)

[IRS Launches Process for Withdrawing Employee Retention Credit Claims](#)

[IRS Launches New Employee Retention Credit Voluntary Disclosure Program](#)

About the Author

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A licensed attorney, Chris advises exempt organizations of all sizes on a wide range of issues, including tax and employee benefit related matters, representation before state and federal tax authorities, and assistance with firm audit or advisory engagements to formulate advice and counsel on important operating and tax issues. Chris also assists clients with general tax issues, unrelated business income, charitable solicitation, and missionary employment structures. Prior to joining CapinCrouse in 2019, Chris served as the Executive Director of the Neighborhood Christian Legal Clinic, one of the nation's largest Christian legal aid organizations.

Note: Although licensed to practice law in Indiana, Chris's services through CapinCrouse do not involve the practice of law and consequently do not result in the creation of an attorney-client relationship.

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