



## Employee Retention Credit (ERC) Overview For Nonprofit Organizations

**If Eligible, PPPL Recipients May Now Make ERC Claims!  
Retroactive Effect To 2020 & Extended Throughout 2021**

### BACKGROUND

This is a refundable payroll tax credit program, established under the CARES Act in March 2020. The purpose was to help employers to retain employees by assisting them to continue paying wages during the pandemic. Under the ERC program ***eligible*** employers could claim a **tax credit of 50%** on ***qualified wages*** paid to employees between March 12 and December 31, 2020. The **maximum** allowable credit was **\$5,000 per employee** for the entire year and **PPPL recipients were disqualified from applying**. That has all now changed with the Taxpayer Certainty & Disaster Relief Act (Relief Act) of 12/27/20 and the American Rescue Plan Act (ARPA) of 3/11/21.

### NEW RULES

The Relief Act and ARPA have introduced very favorable changes to the program, which are reviewed below. However, the rules are complex and vary significantly from 2020 to 2021. To help you understand the meaning of key terms and compare the changes from 2020 to 2021, Appendix A (2020) and Appendix B (2021) provide definitions and explanations.

### Highlights

1. Receiving the PPP Loan is no longer a bar to claiming the ERC, **so long as** the employer does not claim credits on the same wages used for PPPL forgiveness, Shuttered Venue grants, or for other payroll credits such as the FFCRA.
2. Eligible employers may file amended 2020 quarterly 941 reports to claim up to \$5,000 of credit per employee on qualified wages paid in 2020.

3. The program, which was to end on December 31, 2020, is now extended to December 31, 2021.
4. Program enhancements for 2021 only:
  - a. The tax credit increases from 50% to 70% of qualified wages;
  - b. The maximum ERC has increased from \$5,000 per employee for all of 2020, to \$7,000 per employee PER QUARTER in 2021;
  - c. The government-ordered full or partial shutdown eligibility test is the same for both years. However, the alternative gross-receipts-reduction eligibility test has been relaxed for 2021. Each 2021 quarter need only show gross receipts that are over 20% less than the corresponding 2019 quarter, versus the over 50% reduction requirement for 2020 quarters.
  - d. Employers may choose to compare the immediately preceding quarter's gross receipts to its corresponding quarter's 2019 gross receipts to satisfy the eligibility test for the 2021 current quarter. This effectively will allow two chances at qualifying for the ERC in each quarter in 2021. You may either use the preceding quarter or the current quarter for the test.
  - e. Qualified Wages are very limited for Large Employers. However, the definition of Large Employer has been favorably changed. For 2021, a Large Employer is one who had > 500 FTE employees in 2019. For 2020 you only had to have > 100 FTE employees in 2019 to be considered a Large Employer. Non-FTE employees are ignored for this test. See appendices for definitions.

### **STEPS TO CLAIMING THE ERC (Reference Appendices A & B)**

- A. Ascertain eligibility for each quarter in 2020 and 2021. Do you meet the criteria for either full or partial government ordered shutdown, or for significant decline in gross receipts in each quarter? The former test is preferable if available as it reduces computation effort.
- B. Determine whether you are a small eligible employer or a large eligible employer in each of 2020 and 2021.
- C. Compute qualified wages for each employee for each eligible quarter. This will vary significantly depending on whether you are a small or a large employer. **Remember to exclude any wages used to claim forgiveness on**

**a PPP Loan, to satisfy usage of a Shuttered Venue Operator's Grant, or to claim other payroll tax credits like the FFCRA.**

- D. Compute your ERC amount.
- E. For 2020, file amended quarterly payroll reports for eligible quarters.
- F. For 2021, there are several options.
  - i. Claim for credit on your quarterly 941 reports.
  - ii. Reduce your payroll tax deposits prior to filing your 2021 941 reports
  - iii. Small employers may file a Form 7200, Advance Of Employer Credits Due To Covid-19, to estimate their ERC claims and request funding in advance of related payroll costs.

### **SOME STRATEGIES FOR ENHANCING THE ERC**

- If you have not yet filed for PPPL1 loan forgiveness, ensure that you maximize the non-payroll eligible expenditures before you use payroll cost during your covered period (but don't drop payroll costs below the 60% minimum). This will make more payroll available for ERC purposes in 2020.
- If you did file your PPPL1 forgiveness application, consider what wages and health insurance benefits were not claimed for the PPPL and maximize these for the ERC. You are limited to \$10,000 qualified wages per employee in 2020, so anything above this will not be needed to maximize the ERC.
- When comparing gross receipts year-over-year, be sure not to include gross receipts in 2020 or 2021 arising from the CARES Act (eg. EID advances, forgiven PPP loans, Cares Grants awarded from the state (NMFA for New Mexico recipients). Also exclude unrealized gains and losses on investments or intra-fund revenues that should be eliminated upon consolidation (eg. Rent paid by one internal division to another internal division). Also, for nonprofit entities, don't deduct capital costs or costs of sales for long-term asset dispositions.
- For 2021, consider legitimate deferrals or expediting of gross receipts from one quarter to another quarter if that might allow for meeting the gross receipts reduction test in 2021 as compared to 2019. Eg. If a granting agency has a choice of awarding a grant to you in June 2021 or July 2021, ask them to date the award transaction in July to keep it out of Q2 2021 gross receipts (or vice versa).

ERC Rules Summary	2020	2021
<b>Large employer</b>	> 100 FTE in 2019	>500 FTE in 2019
<b>Gross receipts decline %</b>	>50%	>20%
<b>Period for qualifying wages</b>	3/13/20 to 12/31/20	Entire year
<b>Wage limit per employee</b>	\$10,000 per year	\$10,000 per quarter
<b>ERC %</b>	50%	70%
<b>Max. ERC per employee</b>	\$5,000 per year	\$7,000 per quarter
<b>Small employer rules apply</b>	>90% gross receipts decline from 2019	

Applying the Eligibility Tests for 2020 & 2021				
Quarter	Full/Partial Shutdown?	Eligible Due to Government Order?	% of 2019 Gross Receipts	Eligible Due to Gross Receipts Decline?
Q1 20	No	No	55%	No
Q2 20	Yes	Yes	35%	Yes
Q3 20	No	No	82%	Yes
Q4 20	No	No	65%	No
Q1 21	No	No	85%	Yes
Q2 21	No	No	82%	No

Note 1. Q3 20 is ERC eligible even though it is not on shutdown, and gross receipts are only down 18% from 2019. Under the 2020 gross receipts test, if you qualify for one quarter you automatically qualify for the next, even if gross receipts have increased to more than 80% of 2019.

Note 2: Q1 21 is ERC eligible even though its gross receipts are not less than 80% of Q1 19. In 2021 you may use the preceding quarter for the test. Q4 20 has gross receipts that are 65% of Q4 19, less than 80%, making Q1 21 eligible.

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The ERC program is complex and professional guidance is highly recommended. Nonprofits requiring ERC advisory services may contact us for a brief exploratory consultation at [info@501cpa.org](mailto:info@501cpa.org).

Excellent IRS reference & FAQ: <https://www.irs.gov/pub/irs-drop/n-21-20.pdf>

**ERC Rules for 2020 - APPENDIX A**

**501(C)PA**

**Small Eligible Employer**  
(averaged <=100 FTE employees in 2019)

**Large Eligible Employer**  
( averaged >100 FTE employees in 2019)

**Definition of Eligible Employer**

Private sector businesses & tax exempt organizations that carry on a trade or business [501(c) entities are deemed to carry on trade or business] during calendar year 2020 and either:  
(i) Have operations that were fully or partially suspended during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or  
(ii) Experienced a significant decline in gross receipts during the calendar quarter

**New Categories of Eligible Employer Added by American Rescue Plan Act (ARPA)**

**Start-up Businesses After 2/15/20** - Must have annual gross receipts of no more than \$1 million and otherwise do not need to meet the above eligibility requirements. Employer's ERC is capped at \$50,000 per quarter.

**Severely Financially Distressed Employer** -Employer that experienced a gross receipts reduction of more than 90% as compared to the same quarter in 2019. If an employer meets this definition, it may treat all wages paid to employees as qualified wages, **regardless of the number of full-time employees.**

**Definition of Qualified Wages**

Wages and compensation (including payments to maintain a group health plan if not taxable to the employee) paid after 3/12/20 and before 2021 with respect to an employee during a calendar quarter in which there is full/partial suspension of operations because of government order, or a significant decline in gross receipts.  
NOTE: Qualified Wages are limited to no more than \$10,000 per employee for the year.

Wages and compensation (including payments to maintain a group health plan if not taxable to the employee) paid after 3/12/20 and before 2021 with respect to an employee during a calendar quarter for time that the employee is **Not Providing Services** due to either (1) full/partial suspension of operations because of government order, or (2) significant decline in gross receipts.  
NOTE: Qualified Wages are limited to no more than \$10,000 per employee for the year.

**Interrelationship with PPPL forgiveness and other payroll credit programs**

Wages claimed as part of a PPPL forgiveness application, or wages used for other payroll credit programs such as the FFCRA, are excluded from "qualified wages" claimed for purposes of the ERC.

**Calculation of average number of FTE employees during 2019**

FTE employee with respect to any calendar month in 2019 means an employee who averages at least 30 hrs of work per week or 130 hrs of work per month. If the business was operated for all of 2019, divide the sum of the number of FT employees in each calendar month by 12. An employer who began business in 2019 should divide the sum of the number of FT employees in each **full** calendar month of 2019 by the number of full months in operation in 2019. If business operations began in 2020, divide the sum of the number of FT employees in each full calendar month of 2020 by the number of full months in operation in 2020.

**Beginning of Period in Which Experienced Significant Decline in Gross Receipts**

Any calendar quarter beginning after 12/31/19 for which gross receipts **are less than 50%** of gross receipts for the corresponding quarter in 2019. **Note:** If the business began in 2019, you would use the quarter in which it began as the baseline for the comparison to the corresponding 2020 quarter and any earlier 2020 quarters for which no related 2019 activity existed. Eg. If business started in Q2 of 2019, gross receipts for that quarter (estimated for the whole quarter if begun in the middle of a quarter) would serve as the comparison number for both Q1 and Q2 of 2020.

**End of Period in Which Experienced Significant Decline in Gross Receipts**

The calendar **quarter following** the first quarter (after the beginning quarter) for which gross receipts **are greater than 80%** of gross receipts for the corresponding quarter in 2019. Eg. Q2 2020 gross receipts are 30% of Q2 2019. Q3 2020 gross receipts are 85% of Q3 2019. Q4 2020 is the end of period of significant decline in gross receipts. Q3 2020 is eligible for the ERC and Q4 2020 **is not eligible** for the ERC.

**Definition of "gross receipts" for a Tax-Exempt employer**

Under IRC S. 6033 regulations, "gross receipts" means the gross amount received by the organization from all sources without reduction for any costs or expenses including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amounts. Thus, 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 assessments from members or affiliated organizations, gross sales (net of refunds and credits), the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and the gross amount received as investment income, such as interest, dividends, rents, and royalties.

**Maximum Amount of ERC**

The credit rate is 50% and the maximum qualified wages for 2020 for each employee is \$10,000. Therefore the maximum refundable credit is \$5,000 per employee for all of 2020. Eg. 10 employees in 2020 with qualified wages of at least \$10,000 in 2020 would produce a refundable credit of \$50,000.

**ERC Rules for 2021 - APPENDIX B**

**501(C)PA**

**Small Eligible Employer**  
(averaged <=500 FTE employees in 2019)

**Large Eligible Employer**  
(averaged >500 FTE employees in 2019)

**Definition of Eligible Employer**

Private sector businesses & tax exempt organizations PLUS certain government employers, that carry on a trade or business during calendar year 2021 and experience either:  
(i) Full or partial suspension of operations during any calendar quarter in 2021 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or  
(ii) A significant decline in gross receipts during a calendar quarter in 2021.

**New Categories of Eligible Employer Added by American Rescue Plan Act (ARPA)**

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**Severely Financially Distressed Employer** -Employer that experienced a gross receipts reduction of more than 90% as compared to the same quarter in 2019. If an employer meets this definition, it may treat all wages paid to employees as qualified wages, **regardless of the number of full-time employees.**

**Definition of Qualified Wages**

Wages and compensation (including payments to maintain a group health plan if not taxable to the employee) paid after 12/31/20 and before 2022 with respect to an employee during a calendar quarter in which there is full/partial suspension of operations because of government order, or a significant decline in gross receipts.  
NOTE: Qualified Wages are limited to no more than \$10,000 per employee PER QUARTER in 2021.

Wages and compensation (including payments to maintain a group health plan if not taxable to the employee) paid after 12/31/20 and before 2022 with respect to an employee during a calendar quarter for time that the employee is **Not Providing Services** due to either (1) full/partial suspension of operations because of government order, or (2) significant decline in gross receipts.  
NOTE: Qualified Wages are limited to no more than \$10,000 per employee PER QUARTER in 2021.

**Interrelationship with PPPL forgiveness and other payroll credit programs**

Wages claimed as part of a PPPL forgiveness application, or wages used for other payroll credit programs such as the FFCRA, are excluded from "qualified wages" claimed for purposes of the ERC.

**Calculation of average number of FTE employees during 2019**

FTE employee with respect to any calendar month in 2019 means an employee who averages at least 30 hrs of work per week or 130 hrs of work per month. If the business was operated for all of 2019, divide the sum of the number of FT employees in each calendar month by 12. An employer who began business in 2019 should divide the sum of the number of FT employees in each full calendar month of 2019 by the number of full months in operation in 2019. If business operations began in 2020, divide the sum of the number of FT employees in each full calendar month of 2020 by the number of full months in operation in 2020.

**Quarterly test for Eligibility**

Any calendar quarter beginning after 12/31/20 for which gross receipts are less than 80% of gross receipts for the corresponding quarter in 2019. An optional test for 2021 allows for the use of the preceding quarter's gross receipts to determine eligibility for the following quarter. Eg. If Q4 2020 gross receipts < 80% of Q4 2019 gross receipts, Q1 2021 is eligible for the ERC. Alternatively, eligibility for Q1 2021 may exist if Q1 2021 gross receipts are < 80% of Q1 2019 gross receipts.

**End of Period in Which Experienced Significant Decline in Gross Receipts**

This is a quarter by quarter test in 2021. If the employer satisfies either the government-ordered full or partial shut-down test, or the significant decline in gross receipts test, they are eligible for the quarter, otherwise not. There is no "grace quarter" provided as was the case in 2020.

**Definition of "gross receipts" for a Tax-Exempt employer**

Under IRC S. 6033 regulations, "gross receipts" means the gross amount received by the organization from all sources without reduction for any costs or expenses including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amounts. Thus, 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 assessments from members or affiliated organizations, gross sales (net of refunds and credits), the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and the gross amount received as investment income, such as interest, dividends, rents, and royalties.

**Maximum Amount of ERC**

The credit rate is 70% and the maximum qualified wages for 2021 for each employee is \$10,000 **PER QUARTER**. Therefore the maximum refundable credit is \$7,000 per employee per quarter. Eg. 10 employees in 2021 with qualified wages of at least \$10,000 each per quarter, potentially produces a refundable credit of \$70,000 for each quarter in which the employer meets at least one eligibility criterion.