



Earned Retention Credit (ERC) Under Latest COVID-19 Relief Package

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When the initial CARES Act was passed back in March, most businesses rightfully focused on the benefits of the Paycheck Protection Program (PPP). Apart from the PPP, the CARES Act also included the ERC for business that were not eligible for the PPP. In what appears to be a major windfall for businesses, the new stimulus package now allows business to utilize *both* the PPP and the ERC and this is retroactive to March 2020 through the first half of 2021. Below is a brief summary of the ERC and how it may benefit you:

Do I qualify for the ERC retroactively in 2020?

Employers, including tax-exempt organizations, are eligible for the credit if they operate a trade or business during calendar year 2020 and experience either:

1. The full or partial suspension of the operation of their trade or business during any calendar quarter because of governmental orders limiting commerce, travel, or group meetings due to COVID-19, or
2. A 50% decline in gross receipts for any quarter in 2020 as compared to the same quarter in 2019

Do I qualify for the ERC in 2021 (currently only applicable for first half of 2021)?

Employers, including tax-exempt organizations, are eligible for the credit if they operate a trade or business during calendar year 2021 and experience either:

1. The full or partial suspension of the operation of their trade or business during any calendar quarter because of governmental orders limiting commerce, travel, or group meetings due to COVID-19, or
2. A 20% decline in gross receipts for either quarter within the first half of 2021 as compared to the same quarter in 2019
 - a. If the business was started in 2020 then 2020 will be the comparison period
 - b. You may elect to use the prior quarter to determine if you are eligible for the current year (e.g., for 2021 Q1, you may use 2020 Q4 vs. 2019 Q4 as a comparison if more beneficial)

How much do I qualify for?

The amount of the ERC is based upon qualified wages and you *can NOT include the same wages in the ERC calculation that you will include in your PPP forgiveness application*. Wages should always be applied to PPP forgiveness first and, to the extent there are excess wages not needed



for PPP forgiveness, the remaining can be applied to the ERC. Below is a brief summary of the calculation, which is different for 2020 and 2021:

2020 ERC Calculation:

- 50% of qualified wages, capped at a \$5,000 credit per employee for 2020.
- If the business averaged 100 or less employees in 2019, qualified wages includes wages paid to any employee during the period operations were suspended or the period of the decline in gross receipts.
- If the business averaged more than 100 employees in 2019, qualified wages only includes amounts paid to employees who were not actually working during the period operations were suspended or the period of the decline in gross receipts.

2021 ERC Calculation:

- 70% of qualified wages, capped at a \$7,000 credit per employee *per quarter*. Note the change that 2020 was capped per employee for the entire year and 2021 is per employee per quarter.
- If the business averaged 500 or less employees in 2019, qualified wages includes wages paid to any employee during the period operations were suspended or the period of the decline in gross receipts. Note the change that the 2020 employee count threshold was increased from 100 to 500.
- If the business averaged more than 500 employees in 2019, qualified wages only includes amounts paid to employees who are not actually working during the period operations were suspended or the period of the decline in gross receipts.

How do I apply for the ERC?

The ERC, as its names suggests, is a credit that is taken on Form 941 against payroll taxes that must be remitted. It appears that the entire 2020 ERC can be claimed on the Q4 941 rather than having to amend previous quarters. To the extent that the ERC exceeds payroll taxes due, a Form 7200 can be filed to receive a refund for the excess. Additionally, for 2021, there is an option to receive an advance payment of your estimated ERC for the entire first half of 2021. At this point, we are awaiting additional guidance as to how to demonstrate the allocation of payroll costs between PPP and ERC, how to amend PPP forgiveness applications that have already been submitted, and several other topics. *If you have not yet submitted your PPP forgiveness application, we would recommend holding off until additional guidance has been provided.*

As always, Spielman Koenigsberg & Parker, LLP is here to assist you with your needs to ensure you qualify and are properly applying for all eligible COVID-19 relief. Contact us for further guidance.