

American Rescue Plan Act

**Employee Retention Credits and
Other Business Tax Provisions:**

***What's Changed and What
Businesses Need to Know***



DISCLAIMER

The information and interpretation of the material included in this presentation related to the CARES Act, Consolidated Appropriations Act, and American Rescue Plan Act is based upon a best efforts review by the presenter. This presentation should not be relied upon to make decisions or file tax returns without first consulting with your advisors. All information included in this presentation is subject to change as additional guidance, pronouncements, Interim Final Rules and FAQs are issued by the Small Business Administration, Department of Treasury, Internal Revenue Service and other governing bodies.

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PPP Loan Forgiveness – To Tax or not to Tax? That is the question.



History



CARES Act passed stating that forgiveness amounts... “shall be excluded from gross income”

Senators Grassley, Neal and Wyden issue letter to Treas. Sec. Mnuchin stating IRS Notice 2020-32 goes against Congressional intent

Consolidated Appropriations Act signed that allows PPP forgivable expenses to be deducted

March
27, 2020

April 30,
2020

May 5,
2020

Nov. 19,
2020

Dec. 27,
2020

Jan. 6,
2021

IRS issues Notice 2020-32 deductions related to PPP loan forgiveness amounts shall be disallowed

IRS issues Rev. Rul. 2020-27 and Rev. Proc. 2020-51 reasserting position in Notice 2020-32 and timing of disallowing deductions

IRS issues Rev. Rul. 2021-2 making Notice 2020-32 and Rev. Rul. 2020-27 obsolete

CARES Act Amended Language



- New language added to Tax Treatment:
 - No deduction shall be denied;
 - No tax attribute shall be reduced; and
 - No basis increase shall be denied by reason of the exclusion from gross income.
- Pass-Through Entities - Basis increase
 - When does basis increase occur?
 - 2020 vs 2021
 - Why is this important?
 - Impacts ability to utilize losses or take tax-free distributions.



Employee Retention Tax Credit Updates and Expanded Eligibility



Employee Retention Tax Credit



- The Employee Retention Tax Credit (ERTC) is a refundable credit enacted as part of the CARES Act designed to incentivize employers to retain employees through the pandemic.
- Notable Changes to the ERTC from the Consolidated Appropriations Act (CAA) and American Rescue Plan Act (ARPA):
 - PPP Loan Recipients (both Round 1 and Round 2) can now claim the ERTC prospectively and retroactively.....However, any wages or health care costs that are claimed toward the ERTC are not eligible for PPP loan forgiveness (i.e. no double dipping).
 - Increased maximum credit of \$5,000 per employee for 2020 to maximum credit of \$7,000 per employee per quarter for all of 2021. Total potential maximum credit per employee of \$33,000.
 - Gross receipts eligibility requirement reduced from 50% decline to 20% decline in 2021 (as compared to same calendar quarter in 2019)
 - Advance credit available to companies with 500 employees or less for 2021
 - Qualified wages can now include pay rate increases, bonuses, etc. to maximize credit (subject to \$10k cap per employee)

Employee Retention Credit Overview



	2020	2021
Applicable Period	3/13/2020 – 12/31/2020	1/1/2021 – 12/31/2021
Eligibility Tests	1) Employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter <u>or</u>	1) Employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter <u>or</u>
	2) Employer's gross receipts are below 50% of the same quarter in 2019 (i.e. 50% reduction in gross receipts)	Employer's gross receipts are below 80% of the same quarter in 2019. (i.e., 20% reduction in gross receipts)
Amount of Credit	50% of up to \$10,000 in qualified wages per employee or maximum \$5,000 credit per employee for 2020	70% of up to \$10,000 in qualified wages per employee or maximum \$7,000 credit per employee per quarter (i.e., \$28,000 max in 2021)

Employee Retention Credit Overview



	2020	2021
	Applicable to Companies with less than 100 employees	Applicable to Companies with less than 500 employees
Qualified Wages	Wages including certain health care costs, up to \$10,000 per employee, paid to any employee regardless of whether or not its employees are providing services.	
	Applicable to Companies with 100 or more employees	Applicable to Companies with 500 or more employees
Qualified Wages	Wages including certain health care costs, up to \$10,000 per employee, paid to any employee that are not providing services because operations were suspended or due to the decline in gross receipts.	

Employee Retention Credit Overview



	2020	2021
How to Monetize Credits	Claim on Form 941-X (Adjusted employer's quarterly federal tax return or claim for refund)	<ol style="list-style-type: none">1) Credit can be claimed as payroll tax deposits are made. Credit is applied against 6.2% of ER portion of Social Security, then rest of federal payroll tax liability, or2) For Companies with less than 500 employees, Companies can request an advance payment not to exceed 70% of average quarterly wages paid in 2019.

ERTC Eligibility Requirements

Suspended Operations



- Business operations **fully** or **partially** suspended due to orders from a government authority limiting commerce, travel or group meetings due to COVID-19
- What situations qualify as partially suspended?
 - Essential businesses vs. Non-essential businesses
 - Impact of essential businesses' suppliers and customers unable to deliver goods or are subject to shelter-in-place orders
 - Comparing operations pre- and post-closure
 - Refer to IRS FAQs: <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

ERTC Eligibility Requirements

Gross Receipts



	2020	2021
Initial Qualifying Quarter	Quarter in 2020 in which gross receipts are less than 50% of gross receipts for the same quarter in 2019	Quarter in 2021 in which gross receipts are less than 80% of gross receipts for the same quarter in 2019 or can use prior quarter gross receipts compared to same quarter in 2019
Subsequent Qualifying Quarters	Subsequent quarters eligible for credit until gross receipts are 80% or more of the gross receipts in the same quarter in 2019	See above related to prior quarter eligibility potentially qualifying subsequent quarter

ERTC Eligibility Requirements

Gross Receipts Examples

Determining Eligibility for 2020



Quarter	2020 Gross Receipts	2019 Gross Receipts	% of 2020 to 2019	Quarter Eligible for ERTC
1	\$ 750,000	\$ 700,000	107%	NO
2	\$ 350,000	\$ 725,000	48%	YES
3	\$ 350,000	\$ 750,000	47%	YES
4	\$ 380,000	\$ 800,000	48%	YES

ERTC Eligibility Requirements

Gross Receipts Examples

Determining Eligibility for 2020



Quarter	2020 Gross Receipts	2019 Gross Receipts	% of 2020 to 2019	Quarter Eligible for ERTC
1	\$ 340,000	\$ 700,000	49%	YES
2	\$ 250,000	\$ 725,000	34%	YES
3	\$ 640,000	\$ 750,000	85%	YES
4	\$ 600,000	\$ 800,000	75%	NO

ERTC Eligibility Requirements

Gross Receipts Examples

Determining Eligibility for 2021



Quarter	2021 Gross Receipts	2019 Gross Receipts	% of 2020 to 2019	Quarter Eligible for ERTC
1	\$ 550,000	\$ 700,000	79%	YES
2	\$ 700,000	\$ 725,000	97%	YES

Notes:

- Q1 qualifies because gross receipts of Q1 2021 are less than 80% of Q1 2019. Note: Q1 could also qualify if the prior quarter (i.e. Q4 2020) gross receipts were less than 80% of the same quarter in 2019 (i.e. Q4 2019).
- Q2 qualifies because the prior quarter (i.e. Q1 2021) qualified.

Notable Considerations for ERTC



- PPP Loan Forgiveness Application
 - Consideration given for using payroll costs vs. non-payroll costs for forgiveness
- Healthcare costs qualify for ERTC even if no wages paid. Key consideration for those businesses that furloughed employees but continued to pay healthcare coverage.
- Coordination between other credits
 - Wages used for ERTC cannot also be used for:
 - Work Opportunity Tax Credit
 - R&D Credit
 - Empowerment Zone
- Similar to other credits, companies are required to add back wages used for ERTC to taxable income (i.e., no double dipping – cannot take deduction and credit on same wages).

ARPA Changes to the ERTC



- Start-up employers – For businesses that began operations after 2/15/2020 and have less than \$1 million annualized gross receipts. Credits capped at \$50,000 per quarter per employer.
- Severely financially distressed employers – greater than 90% decline in gross receipts in a quarter wont be subject large employer rule.
- Medicare Taxes – Can also offset employer share of Medicare taxes after 6/30/2021

Other Business Tax Relief under ARPA



More ARPA Business Tax Relief



- Tax Treatment of COVID-19 Relief
 - Same tax treatment as PPP (i.e. exclusion from gross income, ability to deduct expenses, and no basis loss for pass-through entities) for targeted Economic Injury Disaster Loans/Grants and Restaurant Revitalization Grants
- COBRA Premium Assistance Credits
 - Individuals receiving COBRA coverage are not required to make payments for coverage between 4/1/2021 and 9/30/2021 because employers will fund this coverage.
 - However, employers receive a tax credit equal to the amount of the funded premiums that can be applied against certain payroll taxes.



Questions?

