



New Availability of Employee Retention Tax Credits

May 4, 2022

Under the CARES Act, if an employer took advantage of the Paycheck Protection Program (PPP) it was barred from taking advantage of the Employee Retention Tax Credit (ERTC). The ERTC is a refundable credit against applicable employment taxes, for qualified wages paid.

The Consolidated Appropriations Act, passed at the end of 2020, changed this rule, and now employers can retroactively claim the ERTC for 2020 even if they received a PPP Loan, subject to some limitations. The main limitation is that PPP loan proceeds cannot be used to pay qualified wages for purposes of the ERTC, so that there can be no “double dipping.” The Consolidated Appropriations Act also extended the ERTC through September 30, 2021 and changed how the credit will work for 2021. This tax credit has potentially significant cost savings for LCMS ministries and should be considered.

Below is a summary of how the tax credit works for 2020 and 2021 qualified wages. Contact a tax advisor for information more specific to your ministry.

Summary

	2021	2020
Refundable Credit Rate	70% of qualified wages	50% of qualified wages
Eligibility	20% decline in gross receipts for the first or second quarter of 2021, compared to that same quarter in 2019 OR Business fully or partially suspended during at least one quarter of 2021	50% decline in gross receipts for quarters in 2020 relative to same quarter in 2019 OR Business fully or partially suspended during at least one quarter of 2020
Per-Employee Qualified Wages	\$10,000 per employee per quarter	\$10,000 per employee per year
Full-time employee (FTE) limit for Change in Qualified Wages	500 or less	100 or less
Applicable Time Period	1/1/2021 - 7/1/2021	3/13/2020 - 12/31/2020

Steps to Determine Potential Eligibility and Credits

- Determine if the ministry is eligible: did it have an eligible quarter?
- Determine how many average monthly FTEs the business had for 2019.
- Determine amount of eligible wages for credit.
- Offset credit amount against applicable employment taxes.

Who is an Eligible Employer?

2020

- An employer (including a tax-exempt employer) carrying on trade or business during calendar year 2020 that meets one of the following criteria:
 - > experiences a full or partial suspension of operations due to orders from a government authority limiting commerce due to COVID-19, OR
 - > experiences a significant decline (more than 50%) in gross receipts when compared to the same quarter in the previous year. Once this happens, every quarter is an eligible quarter until the end of the quarter in which the business's receipts have returned to at least 80% of what they were for the same quarter in 2019.
- The credit may no longer be claimed when the full \$10,000 per employee qualified wage maximum is reached, or when an employer's gross receipts for a quarter in 2020 are greater than 80% of the gross receipts for the same calendar quarter in 2019.

2021

- The credit is only available through September 30, 2021.
- An employer that experiences a full or partial suspension of operations due to orders from a government authority limiting commerce due to COVID-19 OR
- An employer that experiences a 20% or more decline in gross receipts in the first or second quarter of 2021 as compared to the same quarter in 2019 (not 2020) is eligible.
 - > An employer can also elect to satisfy the gross receipt test by looking at the immediate preceding calendar quarter and comparing that to the same quarter in 2019. Therefore, if there had been a 20% drop in gross receipts in Quarter 4 of 2020 as compared to Quarter 4 of 2019, then Quarter 1 of 2021 would be a qualifying quarter.

What Counts as Qualified Wages?

2020

- Employers with more than 100 full-time employees on average during 2019: wages paid to employees not providing services due to COVID-19-related suspension of operations or significant decline in gross receipts
- Employers with 100 or fewer full-time employees on average during 2019: wages paid to any employee, whether working or not
- Wages are only included if paid during the period March 13, 2020 through December 31, 2020.
- Wages do not include payments made under section 7001 or 7003 of the Families First Coronavirus Response Act ("FFCRA"): required paid sick leave or required paid family leave.
- Wages include a pro-rata portion of employer's qualified health plan expenses to the extent such amounts are excluded from an employee's gross income and properly allocated to those employees with qualified wages.
- Salaries or wages paid to ministers do not count as qualified wages.
- **Qualified wages does not include any wages paid with PPP loan proceeds**, including health care costs. Remember that at least 60% of any PPP loan must be used for payroll expenses, so be careful not to "double dip."

2021

- Increases the cut-off for the number of full-time employees before change in treatment of qualified wages from 100 to 500.
 - > Therefore, employers with more than 500 full-time employees on average during 2019 only have qualified wages if paying employees who are **not** providing services, due to COVID-19 related suspension of operations or significant decline in gross receipts.
 - > Employers with 500 or fewer full-time employees on average during 2019 have qualified wages for any wages paid to an employee, whether that employee is working or not.
- Wages include a pro-rata portion of employer's qualified health plan expenses to the extent such amounts are excluded from an employee's gross income
- The other limitations on qualified wages still apply.

What is the Amount of the Credit?

2020

- The credit amount is 50% of qualified wages (see bullets below) paid to an employee on or after March 13, 2020 through December 31, 2020 in each calendar quarter. The maximum qualified wages total per employee for all quarters is \$10,000. (50% of \$10,000 maximum wages per employee equals a maximum credit of \$5,000 per employee)
- The credit is against an employer's applicable employment taxes (see bullets below) for each calendar quarter, with any excess refunded to the employer.

2021

- Credit amount is 70% of qualified wages instead of 50% as it was for 2020.
- The maximum amount of creditable qualified wages is \$10,000 for **any quarter**. Example:
 - > If in 2020 a school teacher was paid \$10,000 in qualified wages for quarter 3 and \$10,000 in qualified wages in quarter 4, the resulting credit would be \$5,000 (or 50% of \$10,000 in wages for the **entire year**).
 - > In 2021, if that teacher were paid \$10,000 of qualified wages in each of quarters 1, 2 and 3, the resulting credit would be \$21,000 (70% of the \$10,000 in wages for **each quarter**).

What are the Applicable Employment Taxes?

2020

- These employment taxes include the employer portion of Social Security taxes (Code Section 3111(a)), which is generally 6.2% of an employee's wages, reduced by any of the following credits received by an employer:
 - > employment of qualified veterans under Code section 3111(e)
 - > research expenditures of qualified small businesses under Code section 3111(f)
 - > required paid sick leave under section 7001 of the FFCRA
 - > required paid family leave under section 7003 of the FFCRA
- It is not yet clear how to claim the credit retroactively since these taxes have already been paid, although that is clearly the intent of the bill. We are awaiting additional guidance on this topic.

2021

- Small employers (those with fewer than 500 full-time employees in 2019) may elect to receive the credit in **advance** of a quarter, in an amount up to 70% of the average quarterly wages paid by the employer in 2019. The advance credit would have to be reconciled against the actual credit at the end of the quarter.

Please consult a tax advisor for more specific information on eligibility and utilizing these credits.