

# **Eligible businesses: Claim the Employee Retention Tax Credit**

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The Employee Retention Tax Credit ("ERTC") is a valuable tax break that was extended and modified by the American Rescue Plan Act ("ARPA"), enacted in March 2021. Here's a rundown of the rules.

## **Background**

Back in March 2020, Congress originally enacted the ERTC in the CARES Act to encourage employers to hire and retain employees during the pandemic. At that time, the ERTC applied to wages paid after March 12, 2020, and before January 1, 2021. However, Congress later modified and extended the ERTC to apply to wages paid before July 1, 2021.

The ARPA again extended and modified the ERTC to apply to wages paid after June 30, 2021, and before January 1, 2022. Accordingly, an eligible employer can claim the refundable ERTC against "applicable employment taxes" equal to 70% of the qualified wages it pays to employees in the third and fourth quarters of 2021. Except as discussed below, qualified wages are generally limited to \$10,000 per employee per 2021 calendar quarter. Therefore, the maximum ERTC amount available is generally \$7,000 per employee per calendar quarter or \$28,000 per employee in 2021.

For purposes of the ERTC, a qualified employer is eligible if it experiences a significant decline in gross receipts or a full or partial suspension of business due to a government order. Employers with up to 500 full-time employees can claim the credit without regard to whether the employees for whom the credit is claimed actually perform services. But, as explained below, employers with more than 500 full-time employees can only claim the ERTC with respect to employees that don't perform services.

Employers who got a Payroll Protection Program ("PPP") loan in 2020 can still claim the ERTC. But the same wages can't be used both for seeking PPP loan forgiveness or satisfying conditions of other COVID relief programs (such as the Restaurant Revitalization Fund program) in calculating the ERTC.

## **Modifications**

Beginning in the third quarter of 2021, the following modifications apply to the ERTC:

- Applicable employment taxes are the Medicare hospital taxes (1.45% of the wages) and the Railroad Retirement payroll tax that's attributable to the Medicare hospital tax rate. For the first and second quarters of 2021, “applicable employment taxes” were defined as the employer’s share of Social Security or FICA tax (6.2% of the wages) and the Railroad Retirement Tax Act payroll tax that was attributable to the Social Security tax rate.
- Recovery startup businesses are qualified employers. These are generally defined as businesses that began operating after February 15, 2020, and that meet certain gross receipts requirements. These recovery startup businesses will be eligible for an increased maximum credit of \$50,000 per quarter, even if they haven’t experienced a significant decline in gross receipts or been subject to a full or partial suspension under a government order.
- A “severely financially distressed” employer that has suffered a decline in quarterly gross receipts of 90% or more compared to the same quarter in 2019 can treat wages (up to \$10,000) paid during those quarters as qualified wages. This allows an employer with over 500 employees under severe financial distress to treat those wages as qualified wages whether or not employees actually provide services.
- The statute of limitations for assessments relating to the ERTC won’t expire until five years after the date the original return claiming the credit is filed (or treated as filed).

Please contact us if you have any questions related to your business claiming the ERTC.

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