

Eye on Washington Regulatory Update



IRS Guidance on How to Claim the Employee Retention Credit for 2020

On December 27, 2020, the **Taxpayer Certainty and Disaster Tax Relief Act** (part of the Consolidated Appropriations Act of 2021) was signed into law, providing further stimulus and support to those affected by the COVID-19 pandemic. Section 206 of the Taxpayer Certainty and Disaster Tax Relief Act (the Act) permits an eligible employer to take the Employee Retention Credit (ERC), even if the employer has received a Paycheck Protection Program (PPP) loan. **The ERC can be taken retroactively, for qualifying wages paid after March 12, 2020. Qualifying employers should amend applicable employment tax returns to claim the ERC and request a refund.**

Background on the Employee Retention Credit for 2020

Under the CARES Act, private-sector employers are allowed a refundable tax credit against employer Social Security tax equal to 50 percent of wages paid after March 12, 2020, up to \$10,000 in wages per employee (i.e., a \$5,000 credit per employee). Employers qualified if their operation was fully or partially suspended due to orders from a governmental authority related to COVID-19, or who experienced a 50 percent decline in gross receipts compared to the prior year. The credit is increased by the proportionate share of the employer's health-care costs related to such wages.

The CARES Act enacted in March 2020 provided that employers could either take a PPP loan or take the ERC. Businesses that took a PPP loan were thus not eligible for the ERC. This restriction has now been removed.

The ERC is now retroactively available to PPP borrowers. However, the employer can only claim the ERC on any qualified wages that are not counted as payroll costs in obtaining PPP loan forgiveness. In other words, wages that were paid with PPP loan proceeds that were forgiven or expected to be forgiven cannot also be used to substantiate an ERC claim. Any wages that could count toward eligibility for the ERC or PPP loan forgiveness can be applied to either of these two programs, but not both.

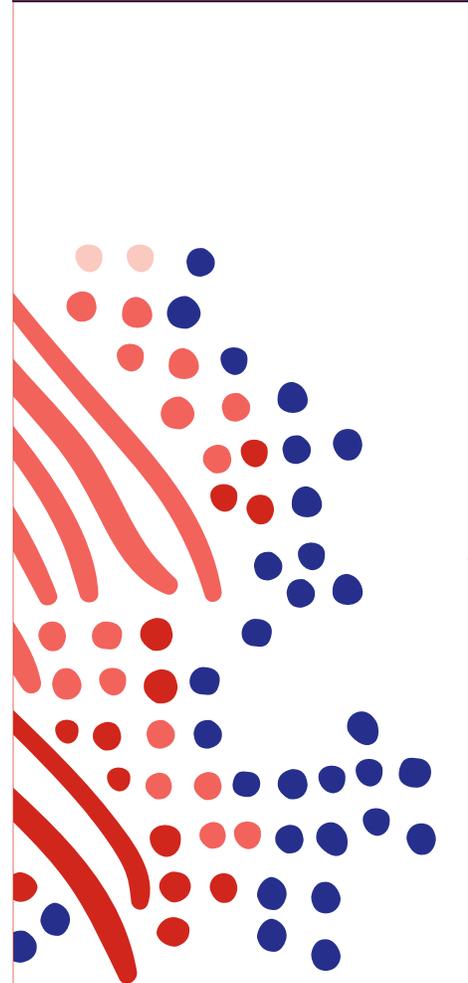
The IRS has issued brief [guidance](#) on this provision, which advises employers to amend the applicable employment tax returns for each quarter.

IRS Guidance

The IRS guidance provides a "limited 4th quarter procedure" by which qualifying ERC wage amounts for the 2nd and/or 3rd quarters of 2020 can be reported on Line 11c or Line 13d (as relevant) of the original 4th quarter Form 941, along with any other ERC amounts for qualified wages paid in the 4th quarter. However, this guidance was released on January 22, and the Form 941 for the 4th quarter is due by January 31. Consequently, most employers will need to instead file an amended return or claim for refund for the quarters ended in June, September and December of 2020 using Form 941-X..

Employee Retention Tax Credit Extended and Revised for 2021

The Act extended and modified the Employee Retention Tax Credit. From January 1, 2021 through June 30, 2021, the credit is expanded to 70 percent (from 50 percent) of qualified wages. The wage limitation is increased from \$10,000 per year to \$10,000 per quarter; i.e., the maximum credit per employee in 2021 is \$14,000.



Eye on Washington Regulatory Update

Employers are also eligible if they can demonstrate a decline in gross receipts of 20 percent (formerly 50 percent), and employers may also use prior quarter gross receipts to determine eligibility.

For 2021, eligibility is also expanded to certain public instrumentalities, such as public universities, hospitals and medical-care providers, and new rules permit new employers not in existence in 2019 to claim the credit. Originally the CARES Act provided that for employers with more than 100 employees the credit was only available for wages paid to employees for which no services were provided (i.e., for paid time off). Employers with 100 or fewer employees were eligible for the credit for all wages paid; i.e., for time worked, in addition to paid time off. This 100-employee threshold for determining qualified wages is now changed to 500 for 2021.

IRS [News Release 2021-21](#) notes that employers can access the ERC for the 1st and 2nd quarters of 2021 prior to filing their employment tax returns by reducing employment tax deposits. Employers with an average of 500 or fewer full-time employees in 2019 may request advance payment of the credit (subject to certain limits) on [Form 7200](#), Advance of Employer Credits Due to Covid-19, after reducing deposits.

Important Note for ADP Tax Filing Clients

All advances requested via the IRS Form 7200 must be reconciled with the ERC and any other credits for which the employer is eligible on the IRS Form 941, Employer's Quarterly Federal Tax Return. ADP

clients will need to advise ADP of any Forms 7200 that they submit to the IRS. Failure to do so would result in an IRS advance payment AND application of the same credit by ADP, which would result in underpayments of tax, and significant IRS penalties and interest.

Employers should consult with appropriate legal and tax advisors to determine whether the organization is eligible for the ERC, noting the different rules that apply for 2020 and 2021. There are several details and specific measures that are not fully explained above.

For Additional Information

IRS Form 941: <https://www.irs.gov/pub/irs-pdf/f941.pdf>

IRS Form 941 Instructions: <https://www.irs.gov/pub/irs-pdf/i941.pdf>

IRS News Release 2021-21: <https://www.irs.gov/newsroom/new-law-extends-covid-tax-credit-for-employers-who-keep-workers-on-payroll>

IRS Announcement:

<https://www.irs.gov/forms-pubs/didnt-get-requested-ppp-loan-forgiveness-you-can-claim-the-employee-retention-credit-for-2020-on-the-4th-quarter-form-941>

IRS FAQs: How to Claim the Employee Retention Credit:

<https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-how-to-claim-the-employee-retention-credit-faqs>

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP Eye on Washington Web page located at www.adp.com/regulatorynews.

ADP is committed to assisting businesses with increased compliance requirements resulting from rapidly evolving legislation. Our goal is to help minimize your administrative burden across the entire spectrum of employment-related payroll, tax, HR and benefits, so that you can focus on running your business. This information is provided as a courtesy to assist in your understanding of the impact of certain regulatory requirements and should not be construed as tax or legal advice. Such information is by nature subject to revision and may not be the most current information available. ADP encourages readers to consult with appropriate legal and/or tax advisors. Please be advised that calls to and from ADP may be monitored or recorded.

If you have any questions regarding our services, please call 855-466-0790.