

1: My restaurant has experienced a shutdown, but my gross receipts did not exceed 20% reduction. Do I still qualify?

Yes. There are two ways to qualify for the ERC. One is to have 50% decline in gross receipts for any quarter of 2019 compared to 2020, or a 20% decline in gross receipts for any quarter of 2019 compared to 2021. The second way is to be under a full or partial shut-down by a governmental order that has a more than nominal (10%) effect on the business. Most restaurants were under an occupancy reduction which has had a more than nominal effect on their business. Most indoor dining facilities should qualify for the ERC.

2: For a nonprofit that receives grant funding, can you request a lower PPP loan amount than what you are qualified to receive?

Yes, you can request a lower PPP amount, but that is probably not in your best interest as the ERC is a 70% credit for 2021 and the PPP amount is 100% of qualifying expenses.

3: Would PPP funds received be included in gross receipts for a non-profit?

Yes. PPP funds are tax-exempt income that should be included in gross receipts based on the quarter they were received.

4: If you have an essential business but there were limits on the amounts of customers that you could serve due to government limitations, could you qualify for the ERC?

Yes, if the government limitations had a more than nominal effect (greater than 10% decline) on the business.

5: Is the credit based on 70% of qualified wages + healthcare costs or 70% of the payroll tax? This would be for the recovery start up for Q3 & Q4 in 2021.

The credit is 70% of qualifying wages plus health insurance for a maximum amount of \$10,000 per employee per quarter.

6: Can I apply for ERC for 2020 if I also received a second PPP loan in 2021?

Yes.

7: Does my company still have to show a 50% decline in sales to qualify for ERC for 2020 or is the reduction to 20% rule for 2021 applicable/retroactive to 2020 also?

For 2020, there would need to be a 50% decline in gross receipts. For 2021, there would need to be a 20% decline in gross receipts. What is confusing is that you can qualify for the 1st quarter of 2021 based on a 20% decline in the previous quarter which would be 4th quarter of 2020.

8: Can PBMares do the filing and qualification for our companies and what is the cost?

Yes, we can assist employers in claiming the ERC. The cost depends on the time and effort involved. Each ERC claim is different. It is somewhat dependent on the number of employees and complexity of identifying qualifying wages. It also depends on the number of quarters that we would be claiming the credit. We would need to identify the number of employees and number of quarters before we could quote you a fee for the work.

9: Any recent guidance as to PPP receipts and when/if to include in gross receipts?

PPP loans are tax-exempt income that should be reflected as gross receipts for the quarters when the loan proceeds were received.

10: How do you monetize the credit? Our outsourced payroll processor said they could not do this.

There are ways to claim expenses for the PPP loan forgiveness which are not eligible for the ERC and in that way an employer is able to maximize their credit and loan forgiveness.

11: We are considered an essential business so we stayed open. Sales are good but we have problems getting inventory because most came from China. Does that qualify as a shutdown? We don't get about 30% ordered.

You were not impacted by a government shut-down. You were impacted by foreign supply disruptions which would not qualify for the ERC.

12: If PPP is forgiven, are we disqualified from ERTC?

Payroll that was covered by a PPP loan does not qualify for the ERC. However, if you had salary costs that exceeded your PPP forgiveness, those would qualify for ERC, so long as you meet the other qualifications.

13: Can you use Q1 2021 Revenue to qualify for Q2 2021 ERC? What if you already used it to qualify for Q1 2021 ERC?

Yes. It doesn't matter if you used Q1 to qualify for Q1. It could also qualify you for Q2 if Q1 had a 20% decline in gross receipts compared to 2019.

14: We are a for profit company with 2 full time employees but one is a relative. He has received a W2 for over 5 years.

Your relative's wages would not qualify for ERC (although they could be covered by PPP funds). The other employee's wages would qualify, if you meet the other eligibility criteria.

15: If a small business (less than 100 employees) is an "Eligible Employer" because they were fully suspended due to government orders in Qtr 2 2020 but they do NOT meet the 50% reduction in Gross Receipts, are the "Qualified Wages" the wages for the employees for the entire 2nd quarter or only the wages for the time operations were suspended due to government orders(40 days)?

Qualifying wages for the ERC would be only during the 40 days of the government shutdown.

16: Does it matter if your recovery business is part of a controlled group?

Yes. Aggregation rules would pull the recovery business into the controlled group and then would not qualify as a recovery business.

17: Do you have to provide back up on the 941X supporting your qualified wage calculation?

Not with the filing of the 941x, but you should keep your supporting documents on hand in the event that the IRS would request additional information.

18: If a business started in the fall of 2020 does it qualify for the Recovery Startup Business program for all quarters of 2021?

It would qualify for Q3 and Q4 of 2021 (the only two quarters for the RSB program).

19: If a new business was started via an asset sale purchase in 2020, would it qualify for the Recovery Startup Business program?

Yes, so long as there is no requirement to aggregate the new business with older businesses. It would be eligible for ERC in Q3 and Q4 of 2021 (the only two quarters for the RSB program).

20: Is there any additional paperwork we need to submit to prove eligibility aside from amended 941's?

No. But you should maintain documentation for how you qualify for the ERC in the event that the IRS would request additional information.

21: If you listed too much payroll costs on the 3508S, can you still use the payroll costs over the 60% minimum for ERC?

No. Wages reported on the 3508 are lost for claiming the ERC.

22: Does this include nonprofits that had to convert from in-person to virtual events that negatively impacted revenue?

If the nonprofit had a 50% decline in gross receipts for 2020 or a 20% decline in gross receipts for 2021, they can qualify for the ERC regardless of what caused the decline in gross receipts.

23: Are the PEOs responsible for submitting the Tax credit on Form 941 for the business?

The employer is ultimately responsible for claiming the ERC. Whether they need to work through the PEO should be a discussion with the PEO.

24: What is the rule for an S-Corp owner for ERC?

Greater than 50% owners and any relative of a greater than 50% owner wages do not qualify for the ERC.

25: What are the deadline(s) for 941-Xs?

IRS' statute of limitations is 3 years from the due date of the original return.

26: Does the PPP forgiveness amount relative to payroll get netted against the ERC wages calculation for the quarter in which forgiveness is granted or looked at annually?

Payroll that was covered by a PPP loan does not qualify for the ERC. You have to do the calculations by quarter, especially since your PPP covered period probably overlaps two or three quarters.

27: Thank you for the very informative session. We claimed ERC in 2020 as we were not eligible for PPP as a 501 c7. Now 501 c7s are eligible for both. My question is, can wages that have exceeded the \$10k limit be claimed as a PPP loan that would be forgiven? Example: one employee made \$15k/qtr; we took the \$7k ERC credit. Can the remaining \$8k in wages be applied toward the PPP?

You cannot go back to 2020 to claim a PPP loan, you can only go forward and claim a PPP loan in 2021. You can, however, go back and claim the ERC on wages paid in 2020 provided that you qualify for the ERC. Prospectively, if you receive a PPP loan, you will have a 24 week period to spend the money. You need to consider how to allocate the PPP loan funds between the weeks to optimize the ERC credit between quarters. To address your specific example: it takes \$10K in wages to get the \$7K ERC. That leaves \$5K that can be applied toward PPP.

28: I received a PPP loan in the second quarter of 2020. Am I ineligible for the ERC for the whole year, or only for that quarter?

Payroll that was covered by a PPP loan does not qualify for the ERC. If payroll was not covered by a PPP loan and you are eligible for the ERC, then you can calculate the ERC on wages that were not covered by the PPP loan.

29: Do gross receipts include interest, in-kinds or capital gains?

Yes.

30: Are healthcare costs included in calculating the Employee Retention Credit for 2020 or just 2021?

Yes, for both years.

31: Actual full-time EE's or Full time equivalent?

Full-time Employee as calculated by working on average 30 hours per week or 130 hours per month.

32: What is the revenue amount percentage difference for 2020 in order to qualify?

50% decline in gross receipts for any quarter of 2020 as compared to 2019. Once you have the 50% decline in one quarter, you remain eligible until the quarter after your decline is less than 20%.

33: We use a 3rd party payroll services. Who is responsible for filing the 941x?

It is ultimately the employer's responsibility. You will need to consult with your payroll service.

34: For the Recovery Startup Business program, is the controlling owner rule the same or does it exclude all owners?

The rule is the same. Controlling owners are excluded from ERC.

35: Can you address majority owner differing opinions? AICPA webcast indicated majority owners and spouse do qualify until further guidance from IRS.

The IRS FAQ #59 notes that greater than 50% owners and their relative wages do not qualify for the ERC. I do not know how the AICPA is supporting their position. The confusion arose because the IRS's most recent guidance mentioned the part of Section 51 that discusses relatives but didn't mention the part that discusses corporate owners. That doesn't mean the corporate owner provision is discarded. It is still relevant, and it is clear greater than 50% owners do not qualify.

36: Can I claim rent payments for PPP Loan forgiveness so I can free up some payroll expenses to file for the ERC instead?

Yes, provided you have not already filed for PPP loan forgiveness.

37: Can you explain the details on what costs can be included with regards to healthcare costs? Is it the entire health policy premium, or just the employer portion?

The entire payroll cost.

38: My payroll company will process the 941-X but will not submit Form 7200. If I submit Form 7200 with the information that my payroll company has processed for Form 941-X will the IRS potentially provide double credits? I don't want to get into a confusing situation.

Form 7200 should only be filed for a current quarter. If you are filing 941x amended return to claim the ERC credit there would be no need to file Form 7200.

39: Would you please go over again how to calculate the last quarter one is qualifying for ERC?

I assume you're talking about the decline in gross receipts in 2020. You initially qualify when you document a 50% decline in gross receipts. And then you remain eligible until the end of the quarter after the quarter in which the decline is under 20%. So if you qualify in Q2 2020, you are automatically eligible for Q3, and you remain eligible for Q4, so long as Q3's decline was 20% or more.

40: Can the second PPP loan amount received in 2021 be applied to 2020 dates for forgiveness?

No. PPP expenses are only forgivable when incurred during the loan's covered period, which begins on the day the loan is funded.

41: So if we have received a PPP loan and it was forgiven, the ERC does not apply to us?

PPP loans were for a maximum coverage period of 24 weeks. If you qualify for the ERC based on a 50% decline in gross receipts or a full or partial government shut down, there could be wages in 2020 that could qualify for the ERC.

42: What is the decline in gross receipts comparing quarters from 1st Qtr 2021 versus 4th Qtr 2020?

You never get to compare Q1 2021 to Q4 2020. Instead, you can use Q4 2020 to qualify for Q1 2021 (since Q4 2020 is the immediately preceding quarter) by comparing Q4 2020 to Q4 2019. If that test shows at least a 20% decline in gross receipts, you are eligible for Q1 2021.

43: If someone already got their PPP forgiveness approved, can they change those numbers to allocate wages to only 60% now so that they can use the rest in PPP?

No.

44: We are a non-profit adult day healthcare center under 501 C3 section. The governor ordered to shut down all adult day care centers in March 2020. Based on my knowledge, we should be eligible for ERC. Is this correct?

Yes, you should be eligible for the wages you paid during the shutdown.

45: If my business opened back up in June and had closed in March would only those wages paid from March to June qualify for the ERC? Would any wages paid after re-opening the business in June qualify?

If you are qualifying for the ERC based on a full or partial government shut-down, then it would only be the wages paid during the period of the government shut-down that would qualify for the ERC. It is possible that you might have been more than nominally effected by a partial government shut-down for periods after June, but that would depend on the specific facts and circumstances of your situation.

46: If our waiting room was restricted by the capacity rule, would physician's offices qualify?

Yes.

47: For forgiveness, can you only report 50% for payroll?

No.