Your Guide to the Employee Retention Credit

Summary – as of 1/15/2021

The Consolidated Appropriations Act of 2021 (Act), signed into law on December 27, 2020, contains significant enhancements and improvements to the Employee Retention Credit (ERC). The ERC, which was created by the CARES Act on March 27, 2020, is designed to encourage employers (including tax-exempt entities) to keep employees on their payroll and continue providing health benefits during the coronavirus pandemic. The ERC is a refundable payroll tax credit for wages paid and health coverage provided by an employer whose operations were either fully or partially suspended due to a COVID-19-related governmental order or that experienced a significant reduction in gross receipts.

Employers may use ERCs to offset federal payroll tax deposits, including the employee FICA and income tax withholding components of the employer's federal payroll tax deposits.

Due to the changes to ERC, it is important for organizations to reconsider how or if it applies. The tools here can help you to better understand this.

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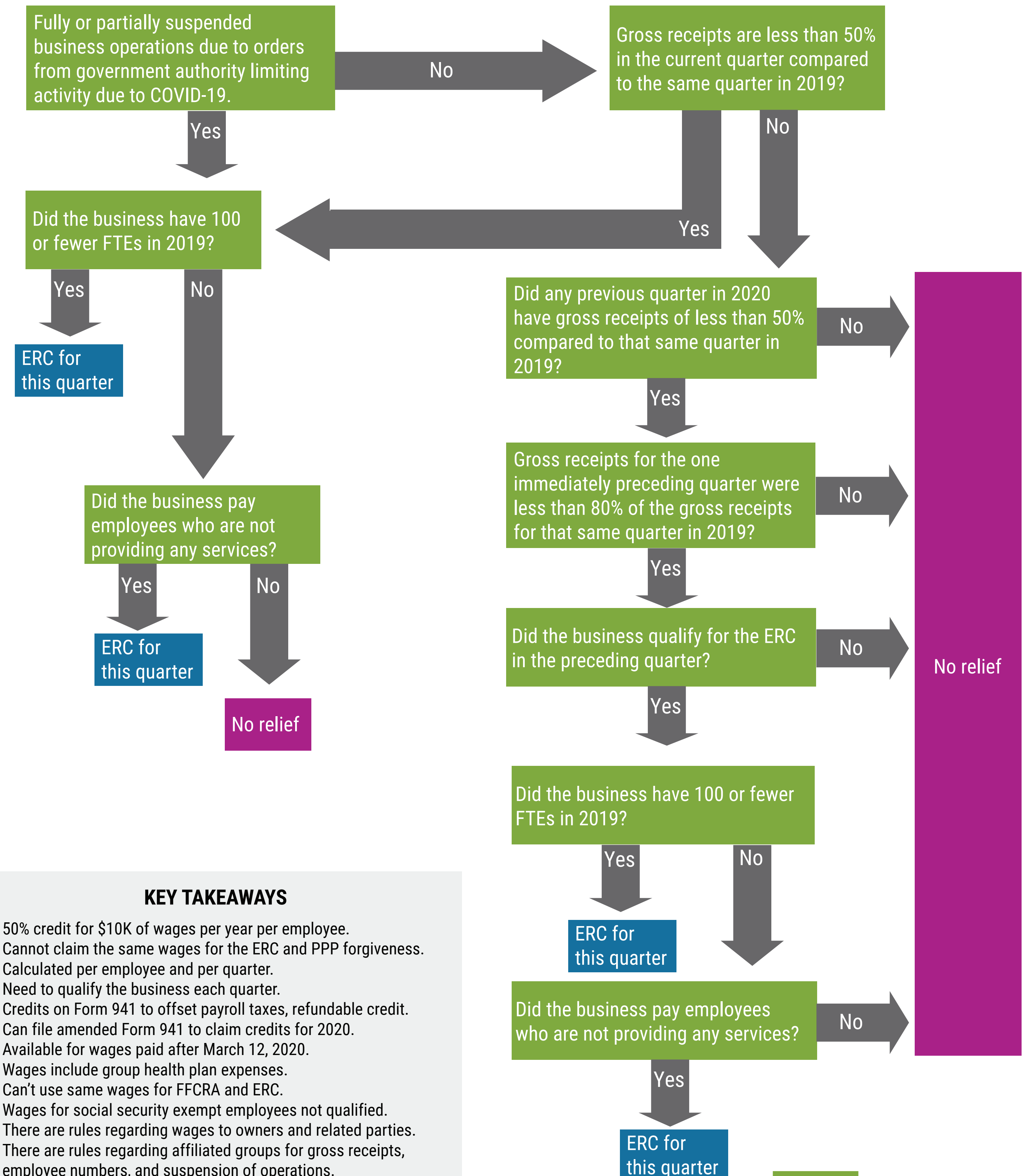
Employee Retention Credit (ERC) Flow Chart

2020 Quarters



KEY TAKEAWAYS

- 50% credit for $10K of wages per year per employee.
- Cannot claim the same wages for the ERC and PPP forgiveness.
- Calculated per employee and per quarter.
- Need to qualify the business each quarter.
- Credits on Form 941 to offset payroll taxes, refundable credit.
- Can file amended Form 941 to claim credits for 2020.
- Available for wages paid after March 12, 2020.
- Wages include group health plan expenses.
- Can't use same wages for FFCRA and ERC.
- Wages for social security exempt employees not qualified.
- There are rules regarding wages to owners and related parties.
- There are rules regarding affiliated groups for gross receipts, employee numbers, and suspension of operations.

If you qualify based on suspended business operations, only wages paid during the period suspended qualify.

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Employee Retention Credit (ERC) Flow Chart

2021 Quarters

Fully or partially suspended business operations due to orders from government authority limiting activity due to COVID-19.
- Yes → Did the business have 500 or fewer FTEs in 2019?
- No → Gross receipts are less than 80% in the current quarter compared to the same quarter in 2019?

Gross receipts are less than 80% in the current quarter compared to the same quarter in 2019?
- Yes → Did the business have 500 or fewer FTEs in 2019?
- No → Gross receipts in the previous quarter were less than 80% of that same quarter in 2019?

Did the business have 500 or fewer FTEs in 2019?
- Yes → ERC for this quarter
- No → Did the business pay employees who are not providing any services?

Did the business pay employees who are not providing any services?
- Yes → ERC for this quarter
- No → No relief

Gross receipts in the previous quarter were less than 80% of that same quarter in 2019?
- Yes → Did the business make the alternative quarter elections?
- No → No relief

Did the business make the alternative quarter elections? (Gross receipts in the immediately proceeding quarter are less than 80% compared to that same quarter in 2019)*
- Yes → Did the business have 500 or fewer FTEs in 2019?
- No → No relief

Did the business have 500 or fewer FTEs in 2019?
- Yes → ERC for this quarter
- No → Did the business pay employees who are not providing any services?

Did the business pay employees who are not providing any services?
- Yes → ERC for this quarter
- No → No relief

KEY TAKEAWAYS

- 70% credit for $10K of wages per year per employee.
- Cannot claim the same wages for the ERC and PPP forgiveness.
- Calculated per employee and per quarter.
- Need to qualify the business each quarter.
- Credits on Form 941 to offset payroll taxes, refundable credit.
- Can file amended Form 941 to claim credits for 2020.
- Available for wages paid after March 12, 2020.
- Wages include group health plan expenses.
- Can't use same wages for FFCRA and ERC.
- Wages for social security exempt employees not qualified.
- There are rules regarding wages to owners and related parties.
- There are rules regarding affiliated groups for gross receipts, employee numbers, and suspension of operations.

If you qualify based on suspended business operations, only wages paid during the period suspended qualify.

*Currently unknown how you make this election.

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Employee Retention Credit - 2020 Versus 2021

	2020	2021
How Is The Credit Calculated?		
Tax Credit Amount	**50%** of qualifying costs up to $10,000 per employee	**70%** of qualifying costs up to $10,000 per employee
Tax Credit Period	**For the year** ($5,000 maximum credit per employee for the year)	**Per quarter** ($7,000 maximum credit per employee for each quarter, so $14,000 for the year)
Entities with Common Ownership	Multiple entities in a commonly controlled group must be combined for purposes of determining if the FTE threshold has been met, whether operations are partially suspended, and whether there has been a decline in gross receipts.	Multiple entities in a commonly controlled group must be combined for purposes of determining if the FTE threshold has been met, whether operations are partially suspended, and whether there has been a decline in gross receipts.
How to claim	Refundable credit on original or amended 941s. Catch up provision for Q4 2020 941s.	Refundable credit on original or amended 941s. Advance credit claim available on Form 7200.
Does My Business Qualify?		
Qualifying Quarter	Gross receipts down greater than **50%** from the same quarter in 2019 or subject to at least partial Government suspension of operations.	Gross receipts down greater than **20%** from the same quarter in 2019 or subject to at least partial Government suspension of operations.
Qualifying Quarter Continues (under gross receipts qualification only)	If gross receipts test met, the business will still have a qualifying quarter on an ongoing basis ending on the first day of the first calendar quarter following the quarter that gross receipts exceed 80% of the same quarter in 2019.	Not applicable
Safe Harbor / Alternative Option	None	Prior quarter's gross receipts can be used for comparison to 2019 instead (i.e.: Q42020 v Q42019 could be used for 2021 1st Qtr ERC qualifier)
Gross receipts is defined as	Total gross sales (less returns and allowances) and income from services provided following your tax accounting method. Also include most all other forms of income & proceeds.	Total gross sales (less returns and allowances) and income from services provided following your tax accounting method. Also include most all other forms of income & proceeds.
What Wages Qualify?		
Qualifying Costs	Gross wages plus employer-paid healthcare paid between 3/13/20 and 12/31/20.	Gross wages plus employer-paid healthcare paid between 1/1/21 and 6/30/21
Employees (FTEs) threshold to claim on all wages	**100** employees (FTEs) and under	**500** employees (FTEs) and under
If OVER FTE threshold	Only wages paid not to work will qualify	Only wages paid not to work will qualify
Related parties	Wages of relatives of >50% owner are not qualified wages. Includes child, descendants of child, brother, sister, parents, ancestors of parents, niece, nephew, aunt, uncle, "in-laws" and "step" relatives of a >50% owner.	Wages of relatives of >50% owner are not qualified wages. Includes child, descendants of child, brother, sister, parents, ancestors of parents, niece, nephew, aunt, uncle, "in-laws" and "step" relatives of a >50% owner.
Social Security Exempt Wages	Do NOT qualify	Do NOT qualify
Interaction with FFCRA sick leave for COVID	Wages paid for sick leave under the FFCRA are not qualified wages for ERC.	Wages paid for sick leave under the FFCRA are not qualified wages for ERC.
Interaction with PPP	PPP borrowers can now also claim ERC, but wages used for ERC are not elligible for PPP forgiveness.	PPP borrowers can now also claim ERC, but wages used for ERC are not elligible for PPP forgiveness.

Employee Retention Credit - Examples

How large could the credit be?

	2020	2021
Tax Credit	**50%** of wages up to $10,000 per employee per year	**70%** of wages up to $10,000 per employee per quarter
Max Credit for 5 employees	$25,000	$70,000
Max Credit for 15 employees	$75,000	$210,000
Max Credit for 50 employees	$250,000	$700,000
Max Credit for 100 employees	$500,000	$1,400,000
Max Credit for 200 employees	$1,000,000	$2,800,000
Max Credit for 350 employees	$1,750,000	$4,900,000

The examples above reflect max credit AND qualifying for all periods.

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For questions or assistance, please contact your Trout CPA professional.

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