

Employee Retention Credit (ERC)

Amount of Credit

CARES Act: 50% of the qualified wages paid to the employee, plus the cost to provide health benefits to the employee.

CAA: Effective Jan. 1, 2021, the credit amount is increased to 70% of qualified wages, which includes the cost to continue providing health benefits.

ARPA: Retains 70% credit for qualified wages paid between July 1, 2021 and Dec. 31, 2021, which includes the cost to provide health benefits.

Eligibility Requirements for the Credit

CARES Act: For wages paid when business operations that are either fully or partially suspended by a COVID-19 lockdown order; or, for any quarter in 2020, if gross receipts are less than 50% of gross receipts for the same quarter in 2019.

CAA: Effective Jan. 1, 2021, for wages paid when business operations that are either fully or partially suspended by a COVID-19 lockdown order; or, for any quarter in 2021, if gross receipts are less than 80% of gross receipts compared to the same quarter in 2019. There is an election to use the prior quarter's gross receipts for purposes of determining if the company's gross receipts were less than 80% of gross receipts compared to the same quarter in 2019.

ARPA: Same as CAA but provides two changes. First, the election to use the prior quarter's gross receipts for purposes of determining if the company's gross receipts were less than 80% of gross receipts compared to the same quarter in 2019 is extended to the third and fourth quarters of 2021. Under this election, a company could use its second quarter 2021 gross receipts compared to its second quarter 2019 gross receipts to determine credit eligibility for the third quarter and could use its third quarter 2021 gross receipts to determine credit eligibility for the fourth quarter 2021.

Maximum Credit Amount

CARES Act: The credit is capped at \$5,000 for all qualified wages paid between March 13, 2020 and Dec. 31, 2020 (the credit amount allowed for \$10,000 in qualified wages × 50% credit rate).

CAA: The credit rate cap is increased to \$7,000 per quarter for qualified wages paid between Jan. 1, 2021 and June 30, 2021 (the credit for \$10,000 in qualified wages × 70%).

ARPA: The credit continues to be capped at \$7,000 per quarter for qualified wages paid between July 1, 2021 and Dec. 31, 2021.

Credit Eligibility Whether or Not an Employee is Working

CARES Act: For a company that had more than 100 Full time employees in 2019, no credit is available for wages paid to an employee performing services for the employer (either teleworking, or working at the workplace, even though at reduced capacity due to reduction in business). To determine this 100-employee threshold, the employees of all affiliated companies sharing more the 50% common

ownership are aggregated. On the other hand, a company that had 100 or less employees in 2019 is eligible for the credit, even if its employees were working.

CAA: Effective Jan. 1, 2021, this threshold was raised to a company that had more than 500 employees in 2019, so that for the first two quarters of 2021, a company that had 500 or fewer employees in 2019 will be eligible for the credit, even if its employees are working. The same aggregation rules to include employees of related companies sharing more than 50% common ownership under the CARES Act remain in effect.

ARPA: Continues the 500-employee threshold as in CAA, but adds a new category, a Severely Financially Distressed Employer (SFDE). This is a company whose gross receipts for the quarter are less than 10% of gross receipts for the same quarter in 2019 (i.e., a reduction in gross receipts of more than 90%). A SFDE is allowed the credit if its employees are performing services, even if it had more than 500 employees in 2019. This would potentially apply to companies in severely distressed industries, such as the cruise, hospitality, and entertainment industries. Because the effective date of ARPA is July 1, 2021, however, a SFDE will only be eligible to claim the credit for the second two quarters of 2021. Furthermore, because of the election to allow a company to calculate credit eligibility by testing gross receipts for the prior quarter, a company could use its second quarter 2021 gross receipts compared to its second quarter 2019 gross receipts to determine whether it qualifies as an SFDE (and use third quarter 2021 gross receipts to test whether it qualifies as an SFDE for the fourth quarter).

Paycheck Protection Program (PPP) Loans

CARES Act: Under the original credit rule, a company that received a PPP loan was not eligible to claim the employee retention tax credit.

CAA: The credit prohibition for PPP borrowers was repealed retroactively and allowed the credit for wages that were not paid with the proceeds of a PPP loan. Conversely, the credit is not allowed for wages paid with the proceeds of a PPP loan.

ARPA: Same as CAA, but also adds that the credit is not allowed for wages paid with the proceeds of entertainment venue grants or restaurant revitalization grants.