



Employee Retention Tax Credit Expansion 2021

The Employee Retention Tax Credit (ERTC) was originally enacted as part of the CARES Act and is a refundable tax credit against an employer's share of FICA taxes. It was designed to reward those companies who kept employees on the payroll.

The Consolidated Appropriations Act, 2021 made a number of changes to the ERTC in Sections 206 and 207 of the Taxpayer Certainty and Disaster Relief Act of 2020.

Section 206

Section 206 of the law revises who may claim the ERC for the period after March 12, 2020 and before January 1, 2021. It does not change the calculation of the credit for that time period. Section 206 also provides some clarity on certain ERC provisions.

For the 2020 tax year, the Act, retroactive to the effective date of the CARES Act, does the following:

- Provides that employers who receive Paycheck Protection Program (PPP) loans may still qualify for the ERC with respect to wages that are not paid with forgiven PPP proceeds;
- Clarifies that group health plan expenses can be considered qualified wages even when no other wages are paid to the employee.

Section 207

Section 207 of the Act extends the ERC, which was originally scheduled to expire at the end of 2020, until June 30, 2021. More significantly, this Section of the Act modifies the calculation of the ERC for the first six months of 2021.

For January 1, 2021 through June 30, 2021, the modification of the credit includes:

- An increase in the credit rate from 50% to 70% of qualified wages;
- An increase in the limit on per-employee creditable wages from \$10,000 for the year to \$10,000 for each quarter;
- A reduction in the required year-over-year gross receipts decline from 50% to 20%;
- An increase from 100 to 500 in the number of employees counted when determining the relevant qualified wage base; and
- Rules allowing new employers who were not in existence for all or part of 2019 to be able to claim the credit.

Example: If an employer with 400 employees satisfies the 20% decline in gross receipts for each of its first two quarters of 2021 and each of its employees have at least \$10,000 of compensation in each quarter, including allocable healthcare expenses, then it would generate the maximum credit of \$7,000 per quarter for each employee. This would create \$5,600,000 of refundable credits over the first six months of 2021.

Alternatively, if an employer with 200 employees does not satisfy the gross receipts test but is partially shutdown because of a government order during January 2021, it would also be eligible for the retention credit but only for qualified wages paid to its employees during the period it was partially shut down. If its employees averaged \$3,500 of compensation and health benefits in January, it would be eligible a credit of \$490,000.