



Retroactive Employee Retention Tax Credit 2020

In short, a for-profit business or tax-exempt organization that received a PPP loan can now claim a refundable payroll tax credit of up to \$5,000 per employee for qualified wages paid between March 12 and December 31, 2020, but only for qualified wages not claimed as forgivable PPP expenses and paid during a calendar quarter in which the business is either:

- 1) Scenario 1: Shut down by government order, or
- 2) Scenario 2: Experiencing a large drop in year-over-year gross receipts

To qualify for the first scenario, for any quarter in 2020, the operation of the employer's trade or business must have been "fully or partially suspended" during the quarter due to "orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial social, religious, or other purposes, due to COVID-19." Once this occurs, the quarter is an "eligible quarter," but a business will only get a credit on wages paid during the part of the quarter the business was shut down.

Example: Assume your business was closed from March 15 through April 15th. You will have an eligible quarter for both Q1 and Q2, but as we'll see shortly, for Q1, qualified wages can only be paid from March 15 – March 31st, and for Q2, eligible wages can only be paid from April 1 – April 15th.

To meet the second test, for any quarter in 2020, the "gross receipts" from the "trade or business" of the employer must be less than 50% of what they were for the same quarter in 2019. Once this happens, every quarter is an "eligible quarter" until the END of the quarter in which the business's receipts have returned to at least 80% of what they were for the same quarter in 2019.

Example: If receipts in Q1, Q2, Q3 and Q4 of 2019 were \$100,000, \$120,000, \$100,000, and \$150,000, and for the same quarters in 2020 receipts were \$40,000, \$70,000, \$85,000, and \$125,000, the "eligible quarters" for 2020 are Q1 (the first quarter in which receipts are less than 50% of 2019), Q2 (still less than 80% of 2019) and Q3 (the end of the first quarter in which receipts have returned to at least 80% of the same quarter of 2019).

The definition of qualified wages depends on how many employees an eligible employer has.

- If an employer averaged more than 100 full-time employees during 2019, qualified wages are generally those wages, including certain health care costs, (up to \$10,000 per employee) paid to employees that are not providing services because operations were suspended or due to the decline in gross receipts. These employers can only count wages up to the amount that the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.
- If an employer averaged 100 or fewer full-time employees during 2019, qualified wages are those wages, including health care costs, (up to \$10,000 per employee) paid to any employee during the period operations were suspended or the period of the decline in gross receipts, regardless of whether its employees are providing services.

Example: Q is a chain of full-service restaurants with more than 100 average monthly FTEs in 2019. State X forced Q to go to take-out only for Q2 and Q3 of 2020. Q continues to pay its kitchen staff to come in and prepare food every day. Even though Q has had its operations partially suspended, because Q has more than 100 FTEs for 2019, only those wages paid to employees NOT TO WORK are eligible for the credit. Thus, the amount Q pays its kitchen staff to cook are not eligible for the ERC.

Assume, however, that Q also paid wages to waiters and bartenders who are NOT coming in to work. These wages WOULD be eligible for the credit.

If instead, Q had LESS than 100 average monthly FTEs in 2019, ALL wages paid during Q2 and Q3 to ALL employees would be eligible for the credit; even the wages paid to kitchen staff who were continuing to work.

Reporting

For Employers with less than 100 employees:

To track the allowable credits for qualified wages and healthcare expenses related to ERTC navigate to Reporting > Client Reports. Use the Reporting Category dropdown and select COVID 19 Reporting then filter. Click on "CARES Act - Retention Credit Report - Less than 100 Employees"

For Employers with greater than 100 employees:

To track the allowable credits for qualified wages and healthcare expenses related to ERTC navigate to Reporting > Client Reports. Use the Reporting Category dropdown and select COVID 19 Reporting then filter. Click on "CARES Act - Retention Credit Report - Greater than 100 Employees"

We recommend consulting with your CPA to determine if and what eligibility you may have to take a retroactive Employee Retention Tax Credit.