

# Employee Retention Credit

Presented By

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# Who We Are



- Top 60 CPA Firm recognized globally
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# Learning Objectives



- Learn about benefits of the Employee Retention Credit (ERC) applicable to Financial Institutions
- Understand Credit Calculations
- Recent Changes
- Key Considerations

# Agenda



- ERC Qualifications & Timeline
- 2020 ERC Qualifications
- 2021 ERC Qualifications
- Expanded Incentives
- American Rescue Plan/Infrastructure Investment & Jobs Act
- How to Claim the ERC
- Key Considerations

# ERC Timeline & Qualifications



# Timeline



- CARES Act
  - Qualified Wages paid March 13, 2020 through December 31, 2020
- Consolidated Appropriations Act
  - Expanded Credit through June 30, 2021
- American Rescue Plan Act
  - Expanded Credit through December 31, 2021
- Infrastructure Investment and Jobs Act
  - Retroactively ended the Credit early – September 30, 2021

# Eligible Employer



- Employers of any size, including tax-exempt organizations, but not government entities.
- Engaged in a Trade or Business
- Aggregated Employers treated as Single Employer for ERC.

# Aggregation Group



- Section 52(a) – parent-sub or brother-sister controlled group, or combined group corporation rules generally based on > 50% ownership.
- Section 52(b) – similar aggregation rules to Partnerships, Trusts, Estates, Sole-Proprietorships
- Section 414(m) or (o) – normally used to determine related entities for purposes of qualified retirement plans & other employee benefits.



# Tax-Exempt Organizations



- CARES Act
  - In the case of an organization which is described in Section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under Section 501(a) of such Code, all operations of such organization are considered an eligible employer.

# Tax-Exempt Organizations



- Exclusion of Certain Government Employers under CARES Act:
  - An employer is not considered an eligible employer if the organization is the Government of the United States, the government of any State or Political Subdivision thereof, or any agency or instrumentality of any of the foregoing.

# Tax-Exempt Organizations



- Exception for Certain Government Employers under CAA Act:
  - Certain Government Employers section of the CARES Act shall not apply to:
    - Any organization described in Section 501(c)(1) of the Internal Revenue Code of 1986 and exempt from tax under Section 501(a) of such Code (Federal Credit Union).

# Instrumentality – Six Factors



1. Whether the organization is used for a governmental purpose and performs a governmental function.
2. Whether performance of the organizations function is on behalf of one or more States or Political Subdivisions.
3. Whether there are any private interest involved, or whether the States of Political Subdivisions involved have the power and interest of an owner.

# Instrumentality – Six Factors



4. Whether control and supervision of the organization is vested in a public authority or authorities.
5. If express or implied statutory or other authority is necessary for the creation and/or use of such an instrumentality, and whether such authority exists.
6. The degree of financial autonomy and the source of its operating expenses.

**NO ONE FACTOR IS DETERMINATIVE**

# Application to Federal Credit Union



- Tax Exempt under IRC Section 501(c)(1)
- Considered an instrumentality of the United States Government under the IRC.
- Eligible for the Employee Retention Credit under the CAA Act for January 1, 2021 through September 30, 2021.

# Application to State Chartered Credit Union



- Tax Exempt under IRC Section 501(c)(14)(A)
- Determination whether the Credit Union is Instrumental to the United States Government, State Government or Political Subdivision.
- ERC Eligible determination based on facts and circumstances

# Eligibility Requirements



- Businesses with operations that were either fully or partially suspended by a COVID-19 governmental order and only during the period order is in force; OR
- Significant decline in gross receipts
- Must have been in business on February 15, 2020



# Full or Partial Suspension



- Partial Suspension
  - Operations not able to continue in comparable manner to operations prior to COVID-19
  - Operations must have suffered more than a nominal effect of the business
  - No suspension if able to telework
- Full Suspension
  - Governmental order requiring non-essential business to close or residents to shelter in place

# Gross Receipts



- What is included in Gross Receipts for a Tax-Exempt Organization?
  - Gross Receipts from all operations, not only from activities that constitute unrelated trades or businesses.
  - Total sales (net of returns and allowances)
  - All amounts received for services, whether those sales or services are substantially related to the organization's exercise or performance of the exempt purposes or function.

# Gross Receipts



- What is included in Gross Receipts for a Tax-Exempt Organization?
  - Investment Income
    - Dividends
    - Rents
    - Royalties
    - Gross amount received as contributions, gifts, grants, and similar amounts
    - Gross amount received as dues or assessments from members or affiliated organizations.

# 2020 ERC Qualifications



# 2020 Eligibility Requirements



- Businesses with operations that were either fully or partially suspended by a COVID-19 governmental order and only during the period order is in force; **OR**
- Significant decline in gross receipts in calendar quarter of 2020
- Businesses not in existence in 2019 could use a comparison to 2020 for credit purposes.
- Must have been in business on Feb. 15, 2020.

# 2020 Gross Receipts Test



- Decline of at least **50%** of gross receipts in a 2020 calendar quarter compared to the same 2019 calendar quarter for the controlled group.
- Credit ends in quarter following quarter in which gross receipts reach 80% compared to a 2020 calendar quarter to the same 2019 quarter for the controlled group.
- Decline does not need to be COVID related.

# 2020 Gross Receipts Test



- Example - significant decline in gross receipts
  - Significant decline in gross receipts begins on April 1, 2020 and ends on Sept.30, 2020.

Year	Jan – March	April – June	July – Sept	Oct – Dec
2019	\$200,000	\$210,000	\$230,000	\$250,000
2020	\$160,000	\$100,000	\$190,000	\$230,000
	80%	48%	83%	92%

# 2020 Qualified Wages & Credit Rate



- \$10,000 annual qualified wage limit per employee
- Credit rate is 50% of qualified wages



# 2020 Qualified Wages & Credit Rate



- Small Employer: 100 or less Full-Time employees in 2019
  - All Wages Allowed
- Large Employer: More than 100 Full-Time employees in 2019
  - Only wages paid to individuals not rendering services allowed

# 2020 Qualified Wages & Credit Rate



- Qualified wages include
  - Gross wages subject to social security taxes, AND
  - Allocable group health care benefits
  - Wages not already applied to credits or PPP loan forgiveness

# 2020 Qualified Wages & Credit Rate



- Allocable group health care benefits include:
  - Portion of cost paid by employer
  - Pre-tax portion paid by employee (not after-tax portion)
  - Large employers – only include health care benefits for portion of time employee not providing services
  - Contributions to HSAs and Archer MSAs are not included

# 2020 Qualified Wages & Credit Rate



- Large employers – qualified wage exclusions
  - Pre-existing paid time off (i.e., vacation, sick or other personal leave policy)
  - Severance and other post-termination payments
  - Limited to wage rate paid for 30 days immediately preceding suspension or significant decline in gross receipts

# 2020 Qualified Wages & Credit Rate



- Wages paid to the following related individuals are not allowed
  - A child or a descendant of a child;
  - A brother, sister, stepbrother, or stepsister;
  - The father or mother, or an ancestor of either;
  - A stepfather or stepmother;
  - A niece or nephew;
  - An aunt or uncle;
  - A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

# 2021 ERC Qualifications



# 2021 Eligibility Requirements



- Businesses with operations that are either fully or partially suspended by a COVID-19 governmental order and only during the period order is in force; **OR**
- Gross receipts are less than 80% of gross receipts for the same quarter in 2019
- Ability to make election to use immediately preceding calendar quarter for comparison to same quarter in 2019 (example, to qualify for Q1 2021, compare Q4 2020 to Q4 2019)

# 2021 Gross Receipts Test



- Decline of at least **20%** of gross receipts in a 2021 calendar quarter compared to the same 2019 calendar quarter for the controlled group.
- Ability to make election to use immediately preceding calendar quarter for comparison to same quarter in 2019
  - Example: To qualify for Q1 2021, compare Q4 2020 to Q4 2019).
  - Not required to be used consistently
- Decline does not need to be COVID related.



# 2021 Gross Receipts Test



- Example – Alternative Gross Receipts Election

	2019	2020	2021
Q1	105,000	90,000	90,000
Q2	115,000	95,000	N/A
Q3	110,000	90,000	N/A
Q4	125,000	80,000	N/A

- 2021 Q1 No Election Decrease
  - $(90,000/105,000) - 1 = -14\%$  - NOT ELIGIBLE

# 2021 Gross Receipts Test



- Example – Alternative Gross Receipts Election

	2019	2020	2021
Q1	105,000	90,000	90,000
Q2	115,000	95,000	N/A
Q3	110,000	90,000	N/A
Q4	125,000	80,000	N/A

- 2021 Q1 Alternative Election

- $(80,000/125,000) - 1 = -36\%$  - ELIGIBLE

# 2021 Qualified Wages & Credit Rate



- \$10,000 annual employee qualified wage limit per quarter
- Credit rate of 70% of qualified wages

# 2021 Qualified Wages & Credit Rate



- Small Employer: 500 or less Full-Time employees in 2019
  - All wages allowed
- Large employer: More than 500 Full-Time employees in 2019
  - Only wages paid to individuals not rendering services allowed

# Expanded Incentives



# Expanded Incentives



## Percentage of Wages

**2020**

50% of qualified wages paid to an employee, plus cost to continue providing health benefits to the employee

**2021**

70% of qualified wages, plus the cost to continue providing health benefits to the employee

# Expanded Incentives



## Annual Maximum Credit Per Employee

### 2020

Annual credit cap of \$5,000 per employee (\$10,000 in qualified wages times 50%).

Maximum \$5,000 credit per employee for the year.

### 2021

Quarterly credit cap of \$7,000 per employee (\$10,000 in qualified wages times 70%).

Maximum \$28,000 credit per employee for the year.

# Expanded Incentives



## Employer Size & Services Performed Requirements

### 2020

100 or fewer FTE in 2019 - all employee wages available for the credit calculation, regardless of whether the employee was performing services or has been furloughed.

> 100 FTE in 2019 - limited to wages paid to employees not working.

### 2021

Base period still 2019.

Employee threshold increased to 500.



# Expanded Incentives



## Gross Receipts Test

### 2020

Decline of at least 50% of gross receipts in a 2020 calendar quarter compared to the same 2019 calendar quarter for the controlled group.

Credit ends in quarter following quarter in which gross receipts reach 80% compared to a 2020 calendar quarter to the same 2019 quarter for the controlled group.

### 2021

Decline of at least 20% of gross receipts in a 2021 calendar quarter compared to the same 2019 calendar quarter for the controlled group.

Election to use prior quarter gross receipts to determine eligibility.

# American Rescue Plan



 **DoerenMayhew**  
CPAs AND ADVISORS

# American Rescue Plan



- Extended ERC to December 31, 2021
- Credit applied against Medicare, instead of Social Security, with any excess credit refundable
- Applies to tax quarters after June 30, 2021 (Q3 and Q4 2021)
- New provisions for 2020 startups

# American Rescue Plan



- Recovery Startup Business
  - Business started after February 15, 2020 and annual gross receipts under \$1M.
  - Does not have to demonstrate a loss in gross receipts to qualify.
  - Credit is still 70% of \$10,000 in wages per employee.
  - Maximum credit is \$50,000 per quarter.
  - Only available for third and fourth quarters of 2021.

# American Rescue Plan



- Severely Financially Distressed Employer
  - Experienced over 90% loss in gross receipts in the third and fourth quarter of 2021 (compared to same quarter in 2019)
  - Not subject to caps or maximums when claiming ERC
    - May treat all wages paid to employees as qualified wages, regardless of the size of the employer and number of employees.
  - May elect to use previous quarter to qualify

# Infrastructure Investment and Jobs Act



# Infrastructure Investment and Jobs Act



- Retroactively ended the Employee Retention Credit as of September 30, 2021.
- Reduction to Q4 Employment Tax Deposits:
  - The Credit Union will not be penalized for failure to deposit for deposits made on or before December 20, 2021.
- Repayment of Q4 Employee Retention Credit
  - Due by the due date of the applicable employment tax return.

# How to Claim ERC





# How to Claim ERC



- Form 941: Employer's Quarterly Federal Tax Return
- Form 941-X: Adjusted Employer's Quarterly Federal Tax Return

# Key Considerations



# Key Considerations



- Statute of Limitations Period to Review Credit Claimed on Return
  - Q1 – Q4 2020: 3 Years
  - Q1 & Q2 2021: 3 Years
  - Q3 2021: 5 Years

# Key Considerations



- Audit Implications
  - Basis for Qualification
  - Tax Uncertainty
  - Timing of Credit

# Questions?



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**Thank You!**

