



# Employee Retention Credit

- **Summary**

- The **Employee Retention Credit** is a refundable payroll tax credit for businesses impacted by the COVID-19 lockdown or had significant declines in gross receipts (as compared to 2019) to encourage them to retain their employees through the COVID-19 pandemic.
  - This credit was initially established with the **CARES Act** signed on March 27, 2020 and initially not available to businesses receiving Payroll Protection Program (PPP) loan.
  - With the signing of **Consolidated Appropriations Act, 2021** signed December 27, 2020 businesses receiving PPP loan are now eligible
- Credit can be as much as:
  - **50%** of each employees qualified wages, up to \$10k for **all quarters in 2020**, and
  - **70%** of employees qualified wages, up to \$10k **per quarter for first two quarters of 2021**





# Employee Retention Credit

## 2020 Eligibility and Qualified Wages

- Operations fully/partially suspended due to COVID-19 government order and only during order is in force OR gross receipts were less than 50% from the prior year until receipts reach 80% of prior year.
- Wages not included in the PPP forgiveness calculation and paid March 12 –December 31, 2020
- For Employers with more than **100** employees – wages and allocable health benefits paid to employees not performing services qualify.
- For Employers with **100 or fewer** employees, all wages and allocable health benefits qualify.
- Credit up to 50% of the first \$10,000 wages for the year



# Employee Retention Credit

## 2021 Eligibility and Qualified Wages

- Operations fully/partially suspended due to COVID-19 government order and only during order in force OR gross receipts were less than 80% compared to the same 2019 quarter
- Wages not included in the PPP forgiveness calculation in Round 2 and paid January 1 – June 30, 2021
- For Employers with more than **500** employees – wages and allocable health benefits paid to employees not performing services qualify.
- For Employers with **500 or fewer** employees, all wages and allocable health benefits qualify.
- Credit up to 70% of the first \$10,000 wages in **each** qualifying quarter



# Employee Retention Credit

- **Qualified wages defined:**

- Qualified wages paid to employees includes the cost of qualified health plan expenses that are allocable to the wages.
- Health benefits for furloughed employees qualify
- The maximum qualified wages (including qualified health plan expenses) taken into account for each eligible employee is:
  - \$10,000 for all calendar quarters in 2020, resulting in a **maximum credit (50%) for 2020** of \$5,000 per employee.
  - \$10,000 per quarter for 1st two quarters of 2021, resulting in **maximum credit (70%) for 2021** of \$14,000 per employee.
- Qualified wages are those that are subject to FICA taxes, without regard to social security wage limitation (i.e. wages contributed to dependent care plan don't count)
- Wages paid by an Employer for either emergency paid sick leave or expanded family leave do not qualify for the Employee Retention Credit



# Employee Retention Credit

## Full-time employee Count

Under the existing IRS FAQ's:

*Full-time employee means an employee who, with respect to any calendar month in 2019, had an average of at least 30 hours of service per week or 130 hours of service in the month (130 hours of service in a month is treated as the monthly equivalent of at least 30 hours of service per week), as determined in accordance with section 4980H of the Internal Revenue Code. An Employer that operated its business for the entire 2019 calendar year determines the number of its full-time employees by taking the sum of the number of full-time employees in each calendar month in 2019 and dividing that number by 12.*

*All entities are considered a single Employer for purposes of determining the Employer's average number of employees if: they are aggregated as a controlled group of corporations under section 52(a) of the Internal Revenue Code (the "Code"); are partnerships, trusts or sole proprietorships under common control under section 52(b) of the Code; or are entities that are aggregated under section 414(m) or (o) of the Code.*



# Employee Retention Credit

## PPP Loan Impact

- Although Employers who received the PPP loan are now eligible for the Employee Retention Credit under the new law, there is no double dipping.
  - Any wages paid with a PPP loan that are forgiven aren't eligible to be claimed for the Employee Retention Credit.
- Companies that are affiliated with a company that received a PPP loan that previously didn't claim the Employee Retention Credit due to the affiliation rules (50% common ownership) under the old law are now eligible to claim the credit retroactively.



# Employee Retention Credit

## Limitation on pay increases

- Under the new law, the credit is allowable for employees who received hazardous duty pay increases.
- *Under the old law, no credit was available if there were pay rate increase.*



# Employee Retention Credit

## Advance payments

- For eligible businesses with 500 or fewer employees, the Treasury Department is drafting guidelines to allow an advanced payment of the credit based on 70% of the average quarterly payroll for the same quarter in 2019.
  - This allows businesses to monetize the credit before the wages for which the credit are being claimed are even paid, although if at the end of the quarter it is determined excess amounts were received, they will need to be repaid.
- *Under the old law, no advanced payments were available.*





# Employee Retention Credit

## Claiming the credit

- Employers who didn't previously claim the Employee Retention Credit since they had a PPP loan and are now eligible to retroactively claim the credit for any quarter in 2020.
  - Amend the qualifying quarter to claim the credit(s) OR
  - The retroactive credit for all quarters in 2020 can be claimed in Q4 2020, although the IRS still needs to issue guidance