



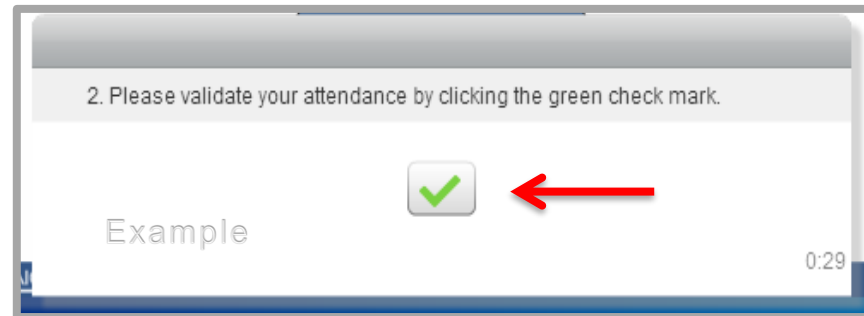
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# The New Employee Retention Credit: More for Eligible Employers

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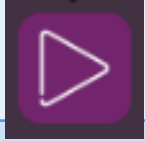
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# Today's Speakers



**Jeff Martin, CPA**  
Partner  
Washington National  
Tax Office  
Grant Thornton LLP



**Deb Walker, CPA**  
National Director  
Compensation and  
Benefits  
Cherry Bekaert



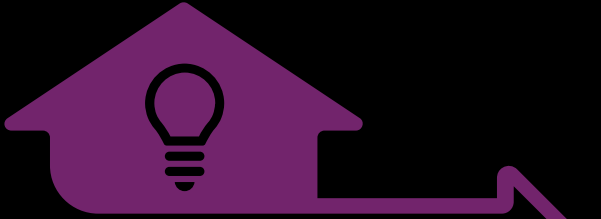
**Kristin Esposito, CPA**  
Director  
AICPA Tax Policy & Advocacy



# Today's Topics

- 2020 ERC
  - ✓ What's New for 2020
  - ✓ Eligibility Requirements
  - ✓ Qualified Wages
  - ✓ Interaction of ERC and PPP loan forgiveness
- 2021 ERC
  - ✓ Summary of Changes
  - ✓ Changes to Eligibility Requirements
  - ✓ Changes to Qualified Wages and Credit Amount
  - ✓ Interaction of ERC and PPP loan forgiveness
- How to Claim the Credit

# Overview



Enacted by CARES Act



Enhanced & Extended by Taxpayer  
Certainty and Disaster Relief Act



PPP Loan Borrowers can  
Retroactively Claim the Credit





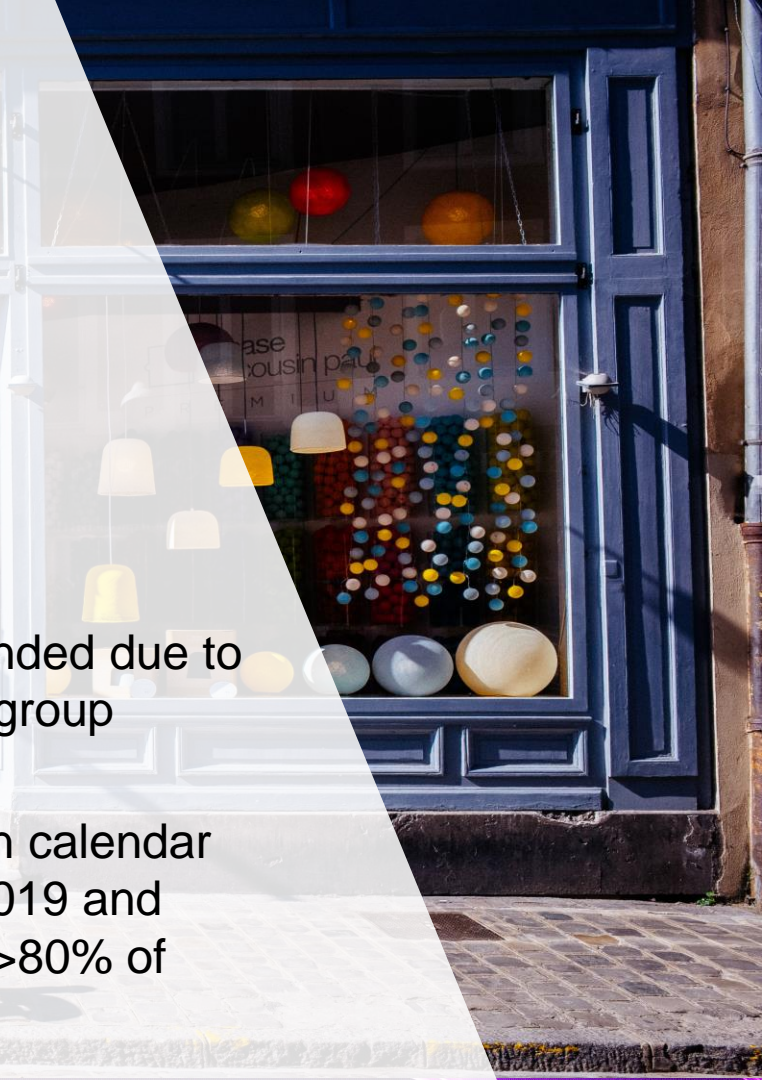


# Employee Retention Credit 2020



## Eligible Employer

- Employers of any size, including tax-exempt organizations, but not government entities
- Engaged in a trade or business
- Wages paid in calendar quarter in which:
  - Business operations are fully or partially suspended due to government order limiting commerce, travel or group meetings due to COVID-19; or
  - Business has > 50% decline in gross receipts in calendar quarter in 2020 compared to same quarter in 2019 and each successive quarter in 2020 until they are >80% of gross receipts in same quarter in 2019





# Aggregation Rules for Related Employers

- Identify members of aggregated group
- Aggregated employers treated as single employer for all aspects of ERC
- Aggregated 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



# Full or Partial Suspension

- For partial suspension, eligible employer continues some, but not all of a trade or business operation
  - A supply concept, not a demand concept
  - If able to telework, no suspension
  - Operations must not be able to be continued “in manner comparable to operations before COVID”
  - Modifications to operations must have more than a nominal effect on business operations
- All members of aggregated group are eligible employers if one member of the group has business operations fully or partially suspended due to government order





# What is a Government Order?

- Order from city mayor requiring non-essential businesses to close
- State emergency proclamation that residents must shelter in place, other than those working for essential business that must travel to and from the workplace
- Order from local official imposing curfew on residents that impact the operating hours of a business
- Order from local health dept. mandating workplace closure for cleaning or disinfecting





# Full or Partial Suspension of Operations?

Car dealership is open for business. Its customers are under a stay-at-home order causing a significant decline in the sale of automobiles.

Does car dealership have a full or partial suspension of operations?

**No.** Car dealership is not considered to have a full or partial suspension of operations even though they may have little to no customers.



# Full or Partial Suspension of Operations?

Restaurant has closed its in-room dining due to government order. Restaurant is permitted to provide take-out or delivery service.

Does restaurant have a full or partial suspension of operations?

**Yes.** Restaurant has a partial suspension of operations since its in-room dining service is closed due to government order.





# Full or Partial Suspension of Operations?

Accounting firm's office, a non-essential business is closed due to government order. All of Accounting firm's employees are teleworking.

Does accounting firm have a full or partial suspension of operations?

**No.** Although closed due to government order, the business has continued in a comparable manner since all of its employees are able to telework.





# Full or Partial Suspension of Operations?

Meat packing plant normally operates in 3 shifts per day. Local health officials require cleaning and disinfecting procedures each day, necessitating a reduction to 2 shifts per day.

Does meat packing plant have a full or partial suspension of operations?

**Yes.** Meat packing plant has a partial suspension of operations.



# Significant Decline in Gross Receipts

- For this test there is a focus on demand as reflected in gross receipts, with the Statute setting the standard
- Employer eligible for ERC in first quarter in 2020 that gross receipts decline by  $> 50\%$  of gross receipts of same quarter in 2019
- Eligibility continues until first day of the quarter after the quarter that gross receipts rebound to  $> 80\%$  of gross receipts of same quarter in 2019, but not later than Jan. 1, 2021
- Does not have to be COVID-19 related



# Gross Receipts For-Profit Entity

- Total sales (less returns and allowances)
- Plus: Investment income
  - Interest
  - Dividends
  - Rents
  - Royalties
  - Annuities
- Less:
  - Adjusted basis in assets sold





A woman with a red scarf and headphones is sitting at a desk, looking at a laptop. A man in a grey sweater is standing next to her, looking at the laptop. The background is a blurred office setting.

## Gross Receipts – Not-for-Profit Entity

- Total sales\*\* (less returns and allowances)
- Plus: Investment & Other income
  - Interest
  - Dividends
  - Rents
  - Royalties
  - Annuities
  - Contributions
  - Gifts
  - Grants
  - Member dues

\*\* Related to all activities / not only those related to exempt org. status

# Significant Decline in Gross Receipts: 2020 ERC

	Jan - March	April - June	July - Sept	Oct - Dec
2019	200,000	250,000	290,000	210,000
2020	180,000	100,000	140,000	180,000
	90%	<b>40%</b>	<b>48%</b>	86%

*Significant decline in gross receipts begins April 1, 2020 and ends Jan. 1, 2021*



# Significant Decline in Gross Receipts: 2020 ERC

	Jan - March	April - June	July - Sept	Oct - Dec
2019	200,000	250,000	290,000	210,000
2020	180,000	100,000	250,000	180,000
	90%	<b>40%</b>	86%	86%

*Significant decline in gross receipts begins  
April 1, 2020 and ends Oct. 1, 2020*



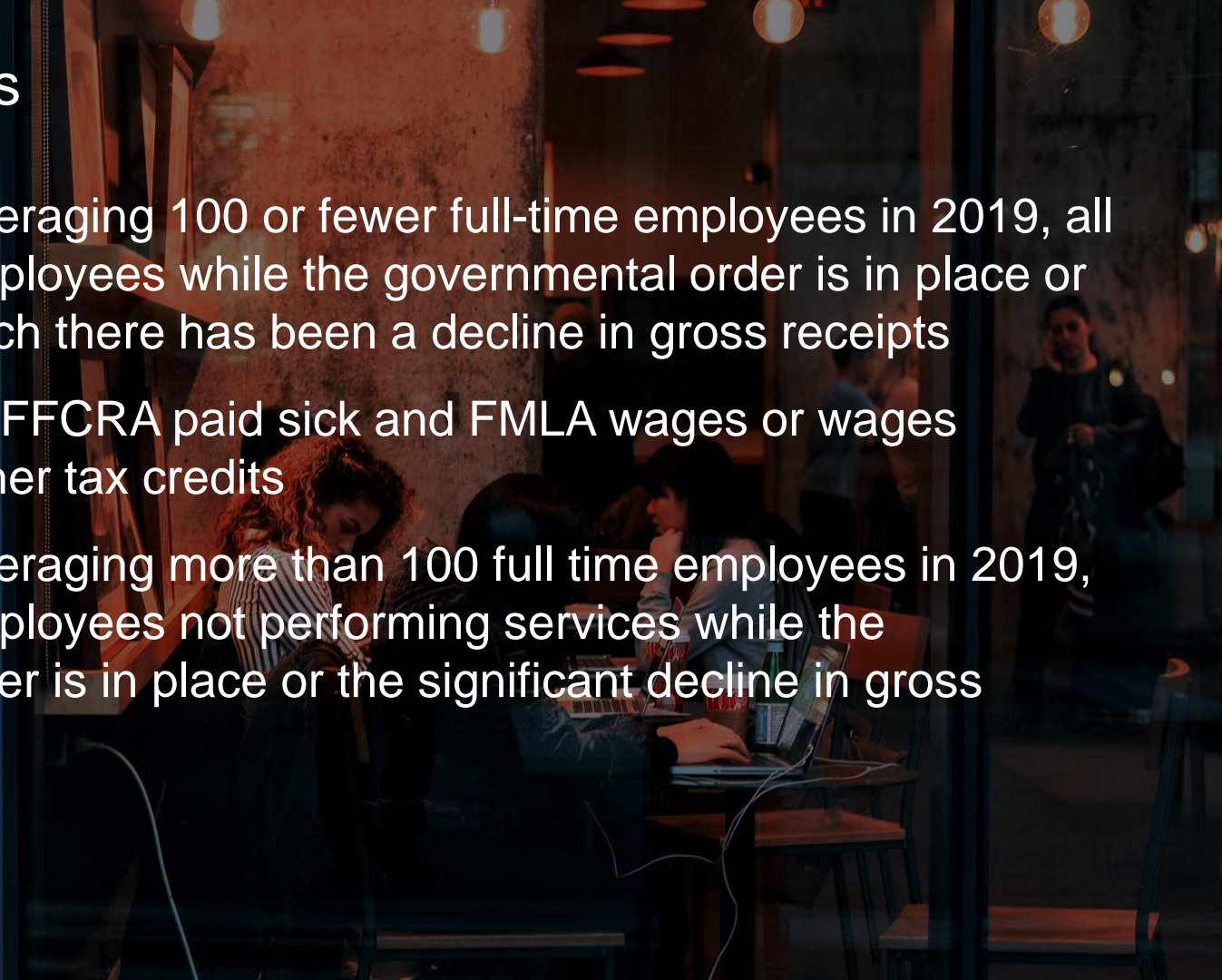
## Qualified Wages

- Includes gross wages subject to social security taxes and allocable group health care benefits
  - Includes HDHPs, HRAs, FSAs
  - Not HSAs or QSEHRAs
- Credit = 50% of qualified wages
- Wages paid on or after March 13, 2020 – Dec. 31, 2020
- Max wages = \$10,000 per employee for the year
- Max credit = \$5,000 per employee



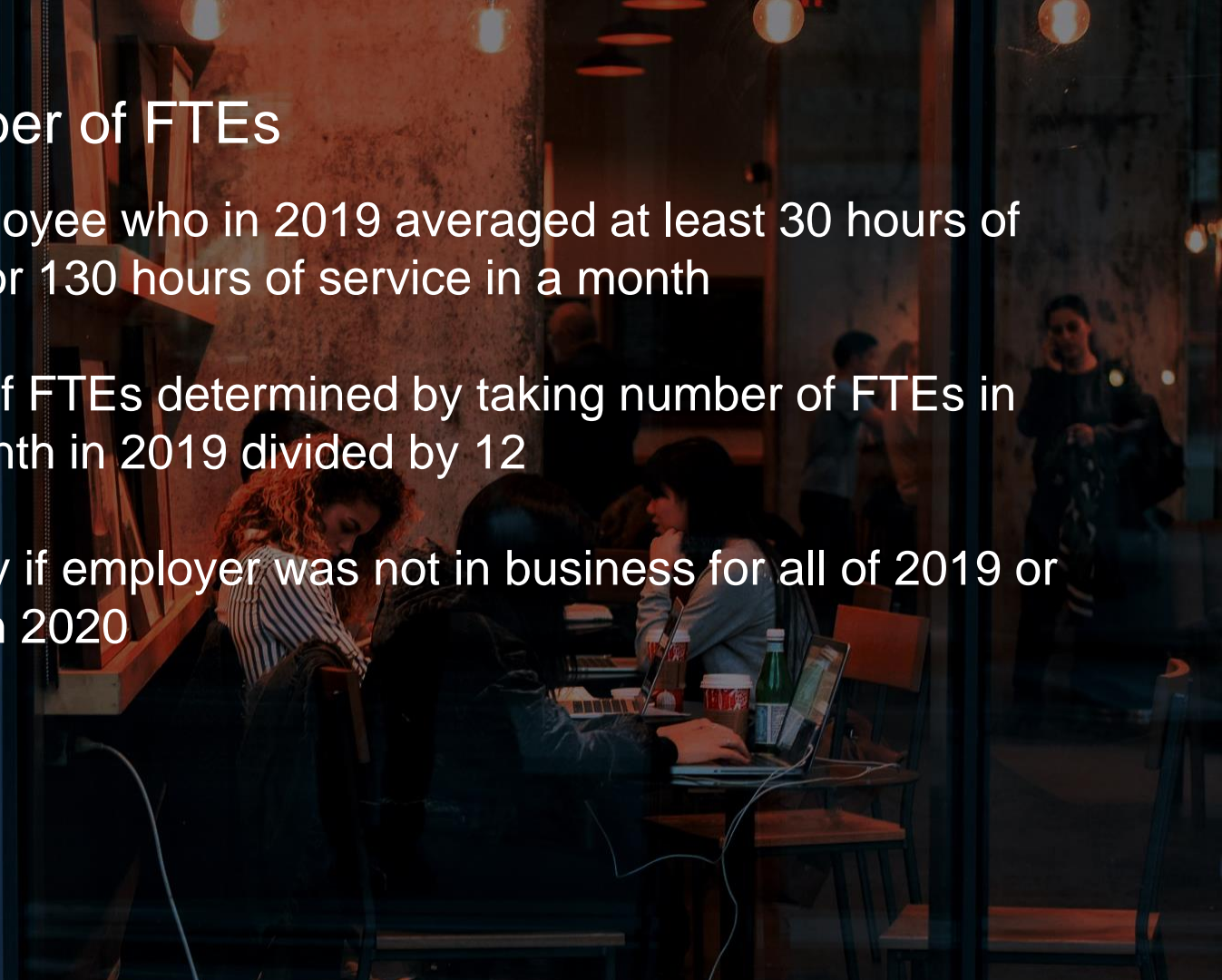
## Qualified Wages

- For employers averaging 100 or fewer full-time employees in 2019, all wages paid to employees while the governmental order is in place or the quarter in which there has been a decline in gross receipts
  - Not including FFCRA paid sick and FMLA wages or wages eligible for other tax credits
- For employers averaging more than 100 full time employees in 2019, wages paid to employees not performing services while the governmental order is in place or the significant decline in gross receipts



# Calculating Number of FTEs

- An FTE is an employee who in 2019 averaged at least 30 hours of service per week or 130 hours of service in a month
- Average number of FTEs determined by taking number of FTEs in each calendar month in 2019 divided by 12
- Special rules apply if employer was not in business for all of 2019 or started business in 2020





## Allocable Health Plan Expenses for Large Employers

- *Include*: health plan expenses for employees laid off or furloughed with no pay, but employer continues to cover employees' health insurance costs
- *Exclude*: health plan costs allocable to the period of time the employee is providing services and amounts paid by employees with after-tax dollars
- Costs determined actuarially, by premiums paid or by using COBRA costs
- Any reasonable allocation method can be used

# Qualified Wages for Large Employers

The background of the slide is a photograph of a dimly lit interior space, likely a cafe or office. Several people are seated at tables, some working on laptops. The lighting is warm and low, with visible ceiling lights. The overall atmosphere is quiet and focused.

- Exclusions
  - Pre-existing paid time off
  - Severance & other post-termination payments
  - Wages for which FFCRA leave credits taken
  - Wages for which work opportunity tax credit or paid family medical leave taken
  - Employer payroll taxes
- At wage rate paid for 30 days immediately preceding suspension or significant decline in gross receipts



## 2020 ERC: Example 1

- Employer, a restaurant, has  $\leq$  100 FTEs in 2019  
All wages paid are considered qualified wages
- Business operations partially suspended due to government order April 6, 2020 – May 31, 2020 (8 weeks)
- Take-out service available
- Restaurant pays employees 60% of wages
- Restaurant pays 100% of health premiums of \$150/week/employee





## 2020 ERC: Example 2

- Employer, a restaurant, has  $\leq 100$  FTEs in 2019
  - All wages paid are considered qualified wages
- Restaurant has 60% decline in gross receipts for Q2 2020 as compared to Q2 2019
- Restaurant has a 15% decline in gross receipts for Q3 2020 as compared to Q3 2019
- Employer pays employees 60% of wages in Q2
- Employer pays 100% of health premiums of \$150/week/employee
- Assuming that the restaurant has only 2 employees in this example





## 2020 ERC: Example 3

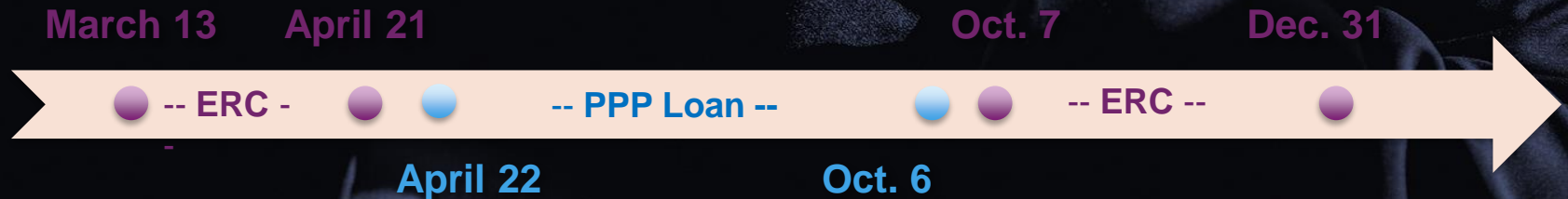
- Employer, a restaurant, has > 100 FTEs in 2019
- Only wages for time services are not provided are considered qualified wages
- Business operations partially suspended due to government order April 6, 2020 – May 31, 2020 (8 weeks)
- Take-out service available
- Employees working 60% of time
- Restaurant pays 100% of health premiums of \$150/week/per employee





# Interaction of ERC and PPP Loan Forgiveness

- Wages cannot be used for both PPP loan forgiveness and ERC
  - Forgiveness applications often include payroll costs and other expenses in excess of what is needed for loan forgiveness
- Example: Timeline for 2020 Wages



## Example 1 – Forgiveness Application Filed

- *Facts:* Employer X received a \$1,000,000 PPP loan and reported \$1,500,000 of payroll costs for the covered period April 15, 2020 to September 29, 2020 on PPP loan forgiveness application. The entire loan was forgiven.
- *Question:* Should Employer X be permitted to claim the ERC for any qualified wages paid from March 13, 2020 through December 31, related to the \$500,000 of wages reported on the loan forgiveness application in excess of the amount needed for forgiveness?
- AICPA recommended to IRS and Treasury that the answer should be yes.

## Example 2 – Forgiveness Application Filed

- *Facts:* Employer X received a \$1,000,000 PPP loan and reported \$1,500,000 of payroll costs for the covered period April 15, 2020 to September 29, 2020 on PPP loan forgiveness application. Employer X incurred \$100,000 of rent expenses during the covered period which was not reported on the loan forgiveness application. The entire loan was forgiven.
- *Question:* Should Employer X be permitted to claim the ERC for any qualified wages paid from March 13, 2020 through December 31, related to the \$500,000 of wages reported on the loan forgiveness application and the \$100,000 of rent expenses not reported on the loan forgiveness application since these amounts are in excess of expenses needed for loan forgiveness?
- The AICPA recommended to IRS and Treasury that the answer should be yes.



# Employee Retention Credit 2021



# Summary of 2021 Credit Enhancements

- PPP loan borrowers can claim the credit in 2020 & 2021
- Public colleges, universities, public health care entities can claim the credit
- Credit extended through June 30, 2021
- Qualified wages per employee increased from \$10K for the year to \$10K per qtr.
- Eliminate 30-day look-back period that limits qualified wages
- Credit calculation increased from 50% to 70% of qualified wages
- Significant decline in gross receipts based on 20% versus 50% of 2019 gross receipts
- Election to use prior qtr. gross receipts to determine eligibility (e.g., use Q4 2020)
- All wages qualify if employer  $\leq$  500 employees. For employers  $>$  500 employees only wages paid to employees not rendering services vs not rendering services. In 2020 the litmus test was 100 employees
- Employers not in existence in 2019 can claim the credit
- Employers  $\leq$  500 employees qualify for advance payment of the credit

# Eligible Employer

- **2020 Review**

- Employers of any size, including tax-exempt organizations, but not government entities

- **2021**

- Employers of any size, including tax-exempt organizations, colleges, universities, hospitals and medical care providers
- PPP Loan recipients



# Gross Receipts Test

- **2020 Review**

- Decline of at least 50% of gross receipts comparing a 2020 calendar quarter to the same 2019 quarter for the controlled group
- Credit ends in quarter following quarter in which gross receipts reach 80% comparing a 2020 calendar quarter to the same 2019 quarter for the controlled group

- **2021**

- Decline of at least 20% of gross receipts for the controlled group
- Compare a 2021 calendar quarter to the same 2019 quarter
- Compare the preceding calendar quarter to the same 2019 quarter

# Qualified Wages & Credit Rate

- **2020 Review**

- \$10,000 annual limit
- Employer with 100 or fewer full-time employees, **all** wages
- Other employers, wages paid to individuals not rendering services
- Credit rate of 50% of qualified wages

- **2021**

- \$10,000 per quarter limit
- Employer with 500 or fewer full-time employees, **all** wages
- Other employers, wages paid to individuals not rendering services
- Credit rate of 70% of qualified wages

# 2021 ERC Example

- Employer, a restaurant, has  $\leq$  500 FTEs in 2019  
All wages paid are considered qualified wages
- Business operations partially suspended due to government order January 1 – June 30, 2021 (26 weeks)
- Take-out service available
- Restaurant pays employees 100% of wages
- Restaurant pays 100% of health premiums of \$150/week/employee



# 2021 ERC Example

Employee	A Q1 2021 Wages	B (\$150*13) Health Ins \$150/week	C (A+B) Qualified Wages & Health Ins.	D Limit \$10,000	E (D*70%) Credit
Kris	\$7,000	\$1,950	\$8,950	\$8,950	\$6,265
Deb	\$15,000	\$1,950	\$16,950	\$10,000	\$7,000
<b>Total ERC</b>					<b>\$13,265</b>

# 2021 ERC Example

Employee	A Q2 2021 Wages	B (\$150*13) Health Ins \$150/week	C (A+B) Qualified Wages & Health Ins.	D Limit \$10,000	E (D*70%) Credit
Kris	\$16,000	\$1,950	\$17,950	\$10,000	\$7,000
Deb	\$6,000	\$1,950	\$7,950	\$7,950	\$5,565
<b>Total ERC</b>					<b>\$12,565</b>



# How to Claim the Credit



# How to Claim the Credit

- Reduce payroll tax deposits for federal income taxes withheld from employees, SS and Medicare taxes of employees and employer
- Claim on Form 941
- File Form 7200
  - Only file for refunds over \$25.
  - True-up on Form 941

Employer identification number (EIN) <input type="text"/> - <input type="text"/> Name (not your trade name) <input type="text"/> Trade name (if any) <input type="text"/> Address <input type="text"/> Number Street Suite or room number City State ZIP code Foreign country name Foreign province/county Foreign postal code	<b>Report for this Quarter of 2020 (Check one)</b> <input type="checkbox"/> 1: January, February, March <input type="checkbox"/> 2: April, May, June <input type="checkbox"/> 3: July, August, September <input type="checkbox"/> 4: October, November, December Go to <a href="http://www.irs.gov/Form941">www.irs.gov/Form941</a> for instructions and the latest information.
--	---

Read the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1: Answer these questions for this quarter.**

1	Number of employees who received wages, tips, or other compensation for the pay period including: Sept. 12 (Quarter 3) or Dec. 12 (Quarter 4)	1	<input type="text"/>
2	Wages, tips, and other compensation	2	<input type="text"/>
3	Federal income tax withheld from wages, tips, and other compensation	3	<input type="text"/>
4	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/> Check and go to line 6.	
		Column 1	Column 2
5a	Taxable social security wages	<input type="text"/> × 0.124 =	<input type="text"/>
5a (i)	Qualified sick leave wages	<input type="text"/> × 0.062 =	<input type="text"/>
5a (ii)	Qualified family leave wages	<input type="text"/> × 0.062 =	<input type="text"/>
5b	Taxable social security tips	<input type="text"/> × 0.124 =	<input type="text"/>
5c	Taxable Medicare wages & tips	<input type="text"/> × 0.029 =	<input type="text"/>
5d	Taxable wages & tips subject to Additional Medicare Tax withholding	<input type="text"/> × 0.009 =	<input type="text"/>
5e	Total social security and Medicare taxes. Add Column 2 from lines 5a, 5a(i), 5a(ii), 5b, 5c, and 5d	5e	<input type="text"/>
5f	Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions)	5f	<input type="text"/>
6	Total taxes before adjustments. Add lines 3, 5e, and 5f	6	<input type="text"/>
7	Current quarter's adjustment for fractions of cents	7	<input type="text"/>
8	Current quarter's adjustment for sick pay	8	<input type="text"/>
9	Current quarter's adjustments for tips and group-term life insurance	9	<input type="text"/>
10	Total taxes after adjustments. Combine lines 6 through 9	10	<input type="text"/>
11a	Qualified small business payroll tax credit for increasing research activities. Attach Form 8974	11a	<input type="text"/>
11b	Nonrefundable portion of credit for qualified sick and family leave wages from Worksheet 1	11b	<input type="text"/>
11c	Nonrefundable portion of employee retention credit from Worksheet 1	11c	<input type="text"/>

# Interplay with Other Provisions

- *FFCRA Sick and Medical Leave Credits:*  
Employer can take both leave and retention credits but not for the same wages
- Ordering of deferral and credits for optimal outcome
  - 1) Leave credits
  - 3) Retention credit
- Same wages can't be used for PPP and ERC



# COVID-19 Resources



# AICPA Town Hall Series

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- Next live webcast: January 28<sup>th</sup> @ 3:00 PM ET
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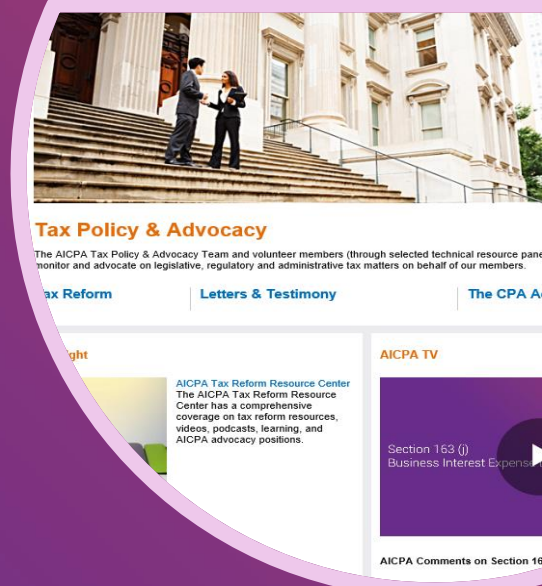
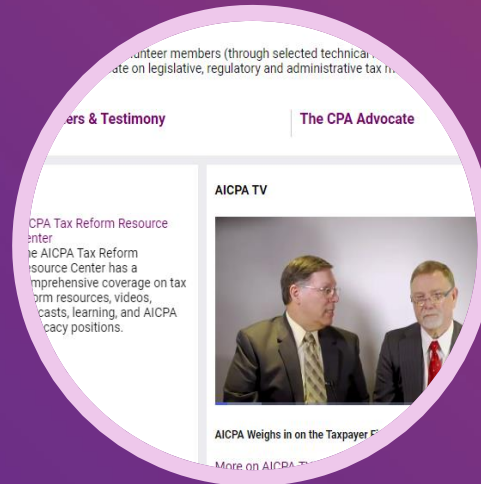
**Register now**

**[aicpastore.com/townhallseries](https://aicpastore.com/townhallseries)**



# AICPA Coronavirus (COVID-19) Resource Center

Visit our website for more  
information,  
[www.aicpa.org/covid19](http://www.aicpa.org/covid19)



[www.aicpa.org/advocacy/tax](http://www.aicpa.org/advocacy/tax)

# AICPA Tax Policy & Advocacy Webpages

[www.aicpa.org/advocacy/tax/2020taxadvocacycommentletters.html](http://www.aicpa.org/advocacy/tax/2020taxadvocacycommentletters.html)





# Coronavirus Tax Resource Center

[aicpa.org/covid19tax](https://aicpa.org/covid19tax)

- CARES Act stimulus calculator
- Client letters
- Client snapshot
- FAQs
- Federal due dates chart
- Legislative summaries
- State due dates chart



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[aicpa.org/tax](https://aicpa.org/tax)

- Engagement letters
- Tax preparer checklists
- Due diligence checklists
- IRS response templates
- Casualty loss guide
- International tax resources
- Tax practice quality control guide





# Key Government Resources

- **IRS FAQs:** <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>
- **Form 7200, Advance Payment of Employer Credits Due to COVID-19:** <https://www.irs.gov/pub/irs-pdf/f7200.pdf>
- **Form 941, Employers QUARTERLY Federal Tax Return:** <https://www.irs.gov/pub/irs-pdf/f941.pdf>





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Q & A