

# The Employee Retention Credit for Nonprofits



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# Presenter – Randy Crabtree, CPA

**Randy Crabtree**, co-founder and partner of Tri-Merit Specialty Tax Professionals.

President of the Nonprofit Stroke Survivors Empowering Each Other (SSEEO) [sseeo.org](http://sseeo.org)

He is a widely followed author, lecturer and podcast host for the accounting profession.

Listed in Accounting Today as Someone to Watch in the 2021 Most Influential People in Accounting list.

Since 2019, he has hosted the bi-weekly The Unique CPA podcast, which ranks among the world's 5% most popular programs (Source: Listen Score).

A frequent contributor to Accounting Today's Voices and the AICPA Tax Adviser, he is a regular presenter at accounting conferences and virtual training events hosted by CPA associations, state CPA societies, industry associations and top 400 CPA firms across the country.



Randy Crabtree, CPA  
Partner, Tri-Merit

# About Tri-Merit



- ▶ **Tri-Merit supports CPAs** by serving as an extension of their advisory team to **lessen the tax burden and increase cash flow for their clients.**
- ▶ We work with companies to uncover the engineering, manufacturing and product development data needed to support claiming tax incentives and planning strategies including:  
**R&D tax credit, cost segregation, WOTC** – The Work Opportunity tax Credit, **179D** – the energy efficient commercial building deduction and **45L** – a credit for developers of energy efficient residential property and **ERC.**
- ▶ We are comprised of **engineers, scientists, CPAs** and **attorneys.**
- ▶ We have offices in **11 states** and serve clients in every state.

## Employee Retention Credit for Nonprofits

- ▶ The ERC basic facts
- ▶ Eligible requirements
- ▶ Nonprofit eligibility
- ▶ Nonprofit example
- ▶ Claiming the benefit
- ▶ [tri-merit.com/erc](https://tri-merit.com/erc)



# The Employee Retention Credit

## ▶ **ERC Guidance**

- Coronavirus Aid, Relief, and Economic Security (CARES)
- Consolidated Appropriations Act (CAA)
- American Rescue Plan Act of 2021 (ARP)
- FAQs ERC Under The CARES Act (FAQs)
- IRS Notice 2021-20 (21-20)
- IRS Notice 2021-23 (21-23)
- IRS Notice 2021-49 (21-49)
- Revenue Procedure 2021-33 (21-33)
- Infrastructure Investment and Jobs Act

# ERC Legislative History



# The Employee Retention Credit

- ▶ **CARES - March 27, 2020**
  - Defined ERC.
  - Could take either PPP or ERC not both
  - Set to expire 12/31/2020
  
- ▶ **CAA - December 27, 2020**
  - Remove the exclusion with PPP
  - Extended and enhanced the ERC until 6/30/21
  - Enhanced the benefit

# The Employee Retention Credit

- ▶ **ARP - March 11, 2021**
  - Extended the ERC until 12/31/21
  - Defined to new ways to qualify beginning 7/1/21
    - » Severely Financially Distressed Employers
    - » Recovery Startup Businesses
  - Extended the audit period from 3 to 5 years
- ▶ **Infrastructure Investment and Jobs Act – Nov 15, 2021**
  - Eliminates the 4<sup>th</sup> quarter 2021 ERC
    - » Except for RSB

# Qualifying Businesses



# The Employee Retention Credit

## Qualifying Business

Any private-sector business or **tax-exempt** organization that carries on a trade or business and that meets EITHER of the following:

**The business had a significant decline in gross receipts during any quarter.**

**50% in 2020**

**20% in 2021**

**Compared to 2019**

**The business was fully or partially suspended due to orders from the federal, state or local government limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19.**

# The Employee Retention Credit

## ▶ **Qualifying Businesses**

- For purposes of the ERC, a tribal government is treated as “carrying on trade or business activities” and thus eligible for the credit.
- Beginning in 2021, the credit can be claimed by a governmental employer that is:
  - » A Section 501(c)(1)[12] tax-exempt organization.
  - » A public college or university.
  - » A public entity whose principal purpose or function is providing medical or hospital care.

# The Employee Retention Credit

- ▶ **IRS Notice 2021-20**

- For purposes of the employee retention credit, a tax-exempt organization described in section 501(c) of the Code that is exempt from tax under section 501(a) of the Code is deemed to be engaged in a “trade or business” with respect to all operations of the organization.

# Significant Decline in Gross Receipts Qualifying Businesses



# The Employee Retention Credit

## ▶ **Gross Receipts For Tax-Exempt**

- Contributions, gifts, grants, and similar amounts
- Dues or assessments from members or affiliated organizations
- Gross receipts from sale of products or services
- Gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale
- Gross amount received as investment income, such as interest, dividends, rents, and royalties

# The Employee Retention Credit

- ▶ **Not Gross Receipts For Tax-Exempt**
  - PPP loans
  - ERC
  - EIDL
  - Unrealized gains and losses
  - In-kind contributions of services and rent

# The Employee Retention Credit

- ▶ **Significant Decline in Gross Receipts**

- 2020

- » Gross receipts declined by at least 50% (safe harbor) of what they were for the same calendar quarter in 2019.
    - » Once a company qualifies, it automatically qualifies for the next quarter and continues to qualify until the first quarter *after* the quarter in which the 2020 quarterly gross receipts are greater than 80 percent of its gross receipts for the same calendar quarter in 2019.

- ▶ **Significant Decline in Gross Receipts**

- 2021

- » Gross receipts declined by at least 20% (safe harbor) of what they were for the same calendar quarter in **2019**. Or you can use the previous quarter's gross receipts compared to the same quarter in 2019.

# Fully or Partially Suspended Qualifying Businesses



# The Employee Retention Credit

## ▶ Fully or Partially Suspended

- Orders, proclamations, or decrees from the federal, state or local government if they limit commerce, travel, or group meetings due to COVID-19 and have “more than a nominal” impact.
  - » The business must cease all operations **OR**
  - » A portion of its normal operations are suspended or affected by a government order.
- The credit can be calculated during the term of the suspension.
- CDC Recommendations are not a government order.

- ▶ **Partial Suspension Secondary Safe Harbor**
  - Business operations will be deemed to constitute more than a nominal portion if either:
    - » The gross receipts from that portion of the business affected is at least 10 percent of the total gross receipts in 2019 or
    - » The hours of service performed by employees in that portion of the business is at least 10 percent of the total number of hours of service performed by all employees in 2019.
    - » Nominal - Insignificant

# The Employee Retention Credit

- ▶ **FAQ #30**

- ...an employer may be considered to have a partial suspension of operations if, under the facts and circumstances, more than a **nominal portion** of its business operations are suspended by a governmental order.

# The Employee Retention Credit

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- FAQ #30 Continued
  - » Restriction on services
  - » Reduction of hours
  - » Reduction in capacity
  - » Sanitation requirements restrict the ability to reuse space timely
  - » Social distancing requirements

# The Employee Retention Credit

- ▶ **FAQ # 34**

- If a governmental order requires an employer to close its workplace for certain purposes, but the workplace may remain operational for limited purposes, the employer considered to have a suspension of operations.

## ▶ **Partial Suspension Analysis**

- Determine the term of the suspension
- Analyze financial statements to see if the affect is supported by a change in revenue or expenses.
  - Look at revenue broken down by service or product.
- Have new services/products been introduced?

# The Employee Retention Credit

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- ▶ **FAQ #31**

- » ...suppliers are unable to make deliveries of critical goods or materials due to a governmental order that causes the supplier to suspend its operations.

# Qualifying Wages



# The Employee Retention Credit

- Can Include wages paid from **3/13/20 through 12/31/20** for the 2020 credit and **1/1/21 and 12/31/21** for the 2021 credit:
  - » Salary and wages
  - » Bonuses
  - » Tips (if included on the W-2)
  - » Health insurance costs
  - » Do not subtract pre-tax deductions
  - » Do not include severance pay
  - » Self-employment income is not included

# The Employee Retention Credit

## ▶ **Wages – Health Insurance**

- The amount of health plan expenses taken into account includes both:
  - » The portion of the cost paid by the eligible employer; **and**
  - » The portion of the cost paid by the employee with pre-tax salary reduction contributions.
- The health plan expenses do not include amounts that the employee paid for with after-tax contributions.

# The Employee Retention Credit

- ▶ **Small Employer or Large Employee Designation**
  - Determines which employees can be used in the calculation of the ERC.
    - » Small employers all employees can be used
    - » Large employers only employees paid while not providing services can be used.

# The Employee Retention Credit

## ▶ Qualified Wages

### ○ 2020

- » If FTE is 100 or less, then all employees can be used in the credit calculation.
- » If FTE is greater than 100 (large employer), then only employees “not providing services” can be used in the credit calculation.

### ○ 2021

- » If FTE is 500 or less, then all employees can be used in the credit calculation.
- » If FTE is greater than 500 (large employer), then only employees “not providing services” can be used in the credit calculation.

# The Employee Retention Credit

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- ▶ **Qualified Wages**
  - “Not Providing Services”
    - » Can be paid for not working at all.
    - » Can be wages paid for time above what they are actually working.
    - » Furloughed and being paid wages and/or health insurance.

# The Employee Retention Credit

- ▶ **Qualified Wages**
  - IRS FAQ 54
    - » Reduced wages while not working.
      - Employees stay home during suspension and receive partial pay. This is included in ERC.
    - » Full pay for reduced hours.
      - Employees work 60% of normal hours but receive full pay. 40% of the pay is eligible for ERC.

# Interaction with Other Credits



## ▶ Interaction With Other Credits and Incentives

- Wages used for the ERC cannot also be used for 2020:
  - » PPP forgiveness
    - You can have both PPP & ERC you just need to segregate out the wages.
  - » FFCRA & FMLA
  - » Work Opportunity Tax Credit (WOTC)

# The Employee Retention Credit

- ▶ **Interaction With Other Credits and Incentives**
  - Wages used for the ERC cannot also be used for 2021:
    - » R&D credit
    - » Indian employment credit
    - » Military differential wage payment credit
    - » Family and medical leave credit Code Sec 45S
    - » Sick leave credit Code Sec 3131
    - » Family leave credit under Code Sec 3132

# The Employee Retention Credit

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## ▶ Interaction With Other Credits

- Wages used for the ERC cannot also be used for 2021:
  - » Work Opportunity Tax Credit (WOTC)
  - » Empowerment zone credit
  - » Shuttered venues grant
  - » Restaurant revitalization grant (defined in ARP)

# Nonprofit Examples



# The Employee Retention Credit

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## ▶ Example

- An advocate for education options for students
- Qualified based on gross receipts drop in quarters 2 and 3
- Had PPP1 and PPP2
  - » Were able to maximize PPP1 forgiveness and get full ERC for all 6 employees
  - » Have not applied for ERC in 2021 yet. Waited for 24 week forgiveness period to end
    - Estimating Q1-Q3 qualifying for a total of \$126,000 in ERC

# Example

Qualified Wages and Employer Paid Healthcare Expenses (Up to 10,000 per Year)								
2020 Q1		2020 Q2		2020 Q3		2020 Q4		
Wages Q1	Health Q1	Wages Q2	Health Q2	Wages Q3	Health Q3	Wages Q4	Health Q4	Total Qualified
\$-	\$-	\$7,752.06	\$-	\$2,247.94	\$-	\$-	\$-	\$10,000.00
\$-	\$-	\$8,944.69	\$1,055.31	\$-	\$-	\$-	\$-	\$10,000.00
\$-	\$-	\$10,000.00	\$-	\$-	\$-	\$-	\$-	\$10,000.00
\$-	\$-	\$10,000.00	\$-	\$-	\$-	\$-	\$-	\$10,000.00
\$-	\$-	\$10,000.00	\$-	\$-	\$-	\$-	\$-	\$10,000.00
\$-	\$-	\$10,000.00	\$-	\$-	\$-	\$-	\$-	\$10,000.00

# Example

	2020 Q1	2020 Q2	2020 Q3	2020 Q4
Gross Receipts	\$394,545.55	\$61,001.86	\$217,947.87	\$183,693.98
GR Change from 2019	28%	-89%	-11%	-16%
Qualification Criteria	Not Qualified	GR Decline	GR Decline	Not Qualified
Total Wages	\$40,435.24	\$123,305.72	\$122,339.06	\$130,915.73
Total Employer Paid HC	\$4,998.96	\$14,996.88	\$12,239.81	\$15,858.60
Forgiven PPP Applied to Wages	\$-	\$49,280.31	\$72,750.96	\$24,352.73
Qualified Wages	\$-	\$56,696.76	\$2,247.94	\$-
Qualified Healthcare Expenses	\$-	\$1,055.31	\$-	\$-
Total Qualified Expenses	\$-	\$57,752.06	\$2,247.94	\$-
Employee Retention Credit	\$-	<b>\$28,876.03</b>	<b>\$1,123.97</b>	\$-

Total 2020 Tax Credit **\$30,000.00**

# Claiming the Credit



- ▶ **Claiming and Receiving the Credit**
  - Form 941X
    - » The X needs to be filed within 3 years of the original due date.
    - » Amended refunds are taking at least 9 months.

# American Rescue Plan



- ▶ **Severely Financially Distressed Employers**
  - Employers that have experienced at least a 90% decline in gross receipts compared to the same quarter in 2019 may take all wages paid during those quarters into account for the ERC.
  - The limitation for large employers on wages paid to employees for not working does not apply to severely financially distressed employers.
  - Available for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2021

## ▶ **Recovery Startup Businesses**

- Began operations after February 15, 2020 and has an average annual gross receipt amount up to \$1,000,000.
  - » Eligible for a \$50,000 credit per calendar quarter.
  - » Do not need to meet either the reduction in gross receipts test or have been subject to a government shutdown in order to claim the credit.
  - » Available for the 3rd and 4th quarters of 2021

- ▶ **Statue of Limitations**

- Extends the normal three-year statute of limitations to five years during which the IRS can audit, and issue assessments related to the ERC.



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**Thank you for your  
time and attention.**

