

A top-down view of a restaurant table with several plates of food, glasses, and hands of diners. The image is overlaid with a semi-transparent blue filter.

# Restaurant --- MASTERCLASS --- Series

# **The Employee Retention Credit for the Restaurant Industry**

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# Presenters



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## Note

1. This presentation is intended to make participants aware of tax issues that may apply to this audience.
2. Information presented herein is not intended to be tax advice.
3. Please consult with a qualified practitioner for tax advice related to specific transactions.



# Agenda



- What is the ERC?
- Eligible Employer
- Decline in Gross Receipts
- Aggregation Rules
- Qualified Wages
- Interaction with Other Credits
- Claiming the Credit
- What's Next?





**Employee Retention Credit**

# Employee Retention Credit

**What is it?** The ERC is a fully refundable payroll tax credit designed to encourage businesses to retain and compensate employees during periods in which businesses are not fully operational.

**Why have I not taken advantage of this or heard of this?** Under the CARES Act, businesses could take advantage of either the PPP or the ERC, but not both and virtually all restaurants took advantage of the PPP – the Consolidated Appropriations Act enacted on December 27, 2020 retroactively changed those rules and expanded it

**Who is eligible for the ERC?** To claim the ERC in any given calendar quarter, restaurants must meet one of the following criteria during that quarter:

- They experienced a significant decline in gross receipts during the calendar quarter compared to 2019

**OR**

- Their operations were fully or partially suspended as a result of orders from a governmental authority limiting commerce, travel or group meetings due to COVID-19

# Employee Retention Credit

## ERC Basics

- Taxpayers that received PPP loan in 2020 and/or 2021 can claim ERTC, but no “double dipping”
- Qualified wages are wages paid to employees for the time they are ***not providing services***. This aligns with the purpose of the ERC, which is to encourage employers to retain and compensate employees during periods in which businesses are not fully operational
  - Exception: if you are not a “Large Employer” you can claim the credit on all wages
  - Thresholds: 100 FTEs for 2020 & 500 FTEs for 2021 based on 2019 FTEs
- Qualified healthcare expenses count as wages

# Employee Retention Credit

## 2020 ERC Provisions

- Maximum Creditable Wages Per Employee: \$10,000 per year from March 13, 2020 – December 31, 2020
- Maximum Credit: 50% of eligible wages up to \$5,000 per employee for the year
- Threshold to be considered a Large Employer: over 100 FTE's
- Revenue decline threshold: Experienced more than 50% decline in gross receipts during a calendar quarter in 2020 as compared to the same quarter in 2019



# Employee Retention Tax Credit

## 2021 ERC Provisions

- Maximum Creditable Wages Per Employee: \$10,000 per quarter from January 1, 2021 - June 30, 2021
- Maximum Credit: 70% of eligible wages up to \$7,000 per employee per quarter
- Threshold to be considered a Large Employer: over 500 FTE's
- Revenue decline threshold: Experienced more than 20% decline in gross receipts during a calendar quarter in 2021 as compared to the same quarter in 2019. There is also a safe harbor that allows companies to look at the immediately preceding quarter to determine eligibility.

**NOTE: Potential total refundable credit per employee over both 2020 and 2021 is \$19,000**

# Employee Retention Credit

## Who is eligible for the ERC?

- Eligible Employers that are entitled to claim the ERC are private-sector businesses and tax-exempt organizations that carry on a trade or business and either:
  - Experienced a significant decline in gross receipts during the calendar quarter compared to the same quarter in 2019;
- OR**
- Have operations that were **fully or partially suspended** 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.



# Employee Retention Credit

## Who is eligible for the ERC?

**Question:** My restaurant is currently required to close at an earlier hour than its regular closing time due to a statewide government curfew. Is my restaurant considered partially shut down for purposes of determining eligibility for the ERC?

**Question:** Under a government order, my restaurant is required to reduce the seating capacity of our indoor dining room to accommodate for social distancing. However, the indoor dining room is open, and we are still able to offer delivery and carry-out. Is my restaurant considered partially shut down for purposes of determining eligibility for the ERC?





# Employee Retention Credit

## Who is eligible for the ERC?

**Question:** Our company owns restaurants located in California, North Dakota and Utah. The restaurant locations in California were required to shut down due to government order. The ones in North Dakota and Utah were not. Is our company considered to have a suspension of operations due to a government order?



# Employee Retention Credit

## Aggregation Rules

- All members of an aggregated group are treated as a single employer for purposes of the ERC.
- All entities that are treated as a single employer under section 52(a) or (b) of the Internal Revenue Code (the "Code") or section 414(m) or (o) of the Code are considered one employer for purposes of the ERC.
- As a result, these employers must be aggregated for purposes of the following rules applicable to the ERC:
  - Determining whether the employer has a trade or business operation that was fully or partially suspended due to orders related to COVID-19 from an appropriate governmental authority.
  - Determining whether the employer has a significant decline in gross receipts.
  - Determining whether the employer has more than 100/500 full-time employees.

# Employee Retention Credit

## Aggregation Rules

**Question:** Our restaurant, a limited liability company (LLC), is owned 100% by one individual. That individual also owns 100% of two other restaurants that are also LLCs. Are we required to look at the three entities as one single employer for purposes of the ERC?





# Employee Retention Credit

## Qualified Wages

- 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 (or face reduced hours) because operations were suspended or due to the decline in gross receipts.
- 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 or not its employees are providing services.
- ***UPDATE: For 2021, the 100 employee threshold was increased to 500.***

# Employee Retention Credit

## Qualified Wages

**Question:** Is my restaurant required to include part-time employees in the calculation of employees to determine if we are a large employer for calculating qualified wages?

**Question:** When calculating qualified wages, should we include the wages of only the full-time employees or all employees?

**Question:** Are tips included in the calculation of qualified wages?



# Employee Retention Credit

## Other Considerations

**Question:** My restaurant currently claims the Work Opportunity Tax Credit (WOTC). If we claim the ERC, will that impact the calculation of the WOTC?

**Question:** My restaurant utilizes a PEO to report our payroll. Can we still claim the ERC?

**Question:** What information are we still unsure about in regards to the ERC?





# Employee Retention Credit



## How can we help?

- Determining and documenting eligibility
- Preparing or reviewing quarterly calculations of the ERC
- Preparing or reviewing Form 941-X
- Credit maximization planning in conjunction with our PPP loan debt forgiveness team
- General ERC consulting

# Additional Resources

- [Employee Retention Credit FAQs For The Restaurant Industry \(2/3/21\)](#)  
**NEW**
- [New Opportunities For The Employee Retention Credit \(1/21/21\)](#)
- [Extension/Expansion of Employee Retention Tax Credit \(12/29/20\)](#)
- [CARES Act: Employee Retention Credit \(May 18, 2020\)](#)



# Thank you!

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