

A top-down view of a restaurant table with various dishes, glasses, and hands, overlaid with a semi-transparent blue filter.

Restaurant
MASTERCLASS
Series

**Updated Guidance on Employee Retention
Credit and Navigating the Restaurant
Revitalization Fund**

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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.

The background is a collage of various restaurant dining scenes. It shows people's hands holding forks and knives, plates of food, glasses of wine and water, and a wooden table. The scenes are arranged in a grid-like pattern, with some images overlapping. The overall tone is warm and inviting, representing a diverse dining experience.

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Restaurant Revitalization Fund

Eligibility

- Foodservice and drinking establishments
- Must certify current uncertain economic conditions
- Can have PPP loan, EIDL, and ERC
- Excludes:
 - Chains with more than 20 locations as of March 13, 2020
 - Affiliation rules apply
 - Publicly traded companies
 - State or local government operated businesses
 - Permanently closed businesses

Calculation of Grant

- Big picture – 2019 revenues less 2020 revenues less PPP1 and PPP2 = RRF grant
 - Opened 2018 or earlier
 - Opened during 2019
 - Opened in 2020
 - Not yet open

- Example:

2019 Gross receipts	\$1,000,000
2020 Gross receipts	<u>(750,000)</u>
YOY Decrease	250,000
Less PPP1	(62,500)
Less PPP2	<u>(87,500)</u>
Grant Amount	<u>\$ 100,000</u>

Covered Period Spending

- Period starts 2/15/20 through 12/31/21
 - Retrospective use of funds
- Uses of funds
 - Payroll Costs
 - Mortgage Payments
 - Rent
 - Utilities
 - Maintenance
 - Supplies
 - Food and beverage
 - Supplier costs
 - Operational expenses
 - Paid sick leave

Other Important Questions

- When does the application process begin?
- How will the grant be disbursed?
- Is the grant taxable?
- Will there be enough funding for all eligible?
- What if my business was closed during the pandemic?
- Should I delay on applying for PPP2 and just apply for RRF?



Employee Retention Credit

Where are we now?

- IRS Notice 2021-20 released on March 1, 2021
- Provides guidance on the ERC for 2020 only
- Further guidance to be released on the ERC for 2021
- IRS FAQs are no longer applicable per note on the IRS website
- American Rescue Plan Act of 2021 signed into law on March 11, 2021

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
- 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 - December 31, 2021
- Maximum Credit: 70% of eligible wages up to \$28,000 per employee
- 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. For 2021, there is also a safe harbor election under which some companies may qualify.

NOTE: Potential total refundable credit per employee over both 2020 and 2021 is \$33,000

Employee Retention Tax Credit

Notice 2021-20

- Officially confirms that taxpayers who received Paycheck Protection Program (PPP) loans are now eligible for ERC retroactive to March 2020.
- Provides guidance on the interaction of the ERC with a PPP loan.
- When calculating the ERC retroactively, taxpayers must analyze the amount of qualified wages utilized to obtain the PPP forgiveness and reduce the qualified wages paid by that amount. Previously, this fact wasn't clear.
- Defines the word "nominal" as it relates to a full or partial shutdown of operations.
- Provides examples of the types of modifications that a government order may require that could have a more than a nominal effect on business operations.
- Provides additional clarifications on topics such as claiming and substantiating the ERC, as well as several new detailed examples.

ERC and PPP Interaction Example #1

- For example: Employer A received a PPP loan of \$100,000. Employer A is an eligible employer and paid \$100,000 in qualified wages that would qualify for the employee retention credit during the second and third quarters of 2020. In order to receive forgiveness of the PPP loan in its entirety, Employer A was required to report a total of \$100,000 of payroll costs and other eligible expenses (and a minimum of \$60,000 of payroll costs).
- Employer A submitted a PPP Loan Forgiveness Application and reported the \$100,000 of qualified wages as payroll costs in support of forgiveness of the entire PPP loan. Employer A received a decision in the first quarter of 2021 for forgiveness of the entire PPP loan amount of \$100,000.
- Employer A is deemed to have made an election not to take into account \$100,000 of the qualified wages for purposes of the employee retention credit, which was the amount of qualified wages included in the payroll costs reported on the PPP Loan Forgiveness Application. It may not treat that amount as qualified wages for purposes of the employee retention credit.

ERC and PPP Interaction Example #2

- Example 2: Employer C received a PPP loan of \$200,000. Employer C is an eligible employer and paid \$200,000 of qualified wages that would qualify for the employee retention credit during the second and third quarters of 2020. Employer C also paid other eligible expenses of \$70,000. In order to receive forgiveness of the PPP loan in its entirety, Employer C was required, under the SBA rules, to report a total of \$200,000 of payroll costs and other eligible expenses (and a minimum of \$120,000 of payroll costs).
- Employer C submitted a PPP Loan Forgiveness Application and reported the \$200,000 of qualified wages as payroll costs in support of forgiveness of the entire PPP loan, but did not report the other eligible expenses of \$70,000. Employer C received a decision under section 7A(g) of the Small Business Act in the first quarter of 2021 for forgiveness of the entire PPP loan amount of \$200,000.
- Employer C is deemed to have made an election not to take into account \$200,000 of qualified wages for purposes of the employee retention credit, which was the amount of qualified wages included in the payroll costs reported on the PPP Loan Forgiveness Application.

ERC and PPP Interaction Example #3

- Example 3: Same facts as Example 2, except Employer C submitted a PPP Loan Forgiveness Application and reported the \$200,000 of qualified wages as payroll costs, as well as the \$70,000 of other eligible expenses, in support of forgiveness of the PPP loan. Employer C received a decision under section 7A(g) of the Small Business Act in the first quarter of 2021 for forgiveness of the entire PPP loan amount of \$200,000.
- In this case, Employer C is deemed to have made an election not to take into account \$130,000 of qualified wages for purposes of the employee retention credit, which was the amount of qualified wages included in the payroll costs reported on the PPP Loan Forgiveness Application up to (but not exceeding) the minimum amount of payroll costs, together with the \$70,000 of other eligible expenses reported on the PPP Loan Forgiveness Application, sufficient to support the amount of the PPP loan that was forgiven. As a result, \$70,000 of the qualified wages reported as payroll costs may be treated as qualified wages for purposes of the employee retention credit.

Employee Retention Credit

Partial Suspension of Operations

- An employer that operates an essential business 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.

What does the word “nominal” mean?

- (i) The gross receipts from that portion of the business operations is not less than 10 percent of the total gross receipts (both determined using the gross receipts of the same calendar quarter in 2019), **OR**
- (ii) The hours of service performed by employees in that portion of the business is not less than 10 percent of the total number of hours of service performed by all employees in the employer’s business (both determined using the number of hours of service performed by employees in the same calendar quarter in 2019).

Employee Retention Credit

Partial Shutdown – Example #1

- Employer F, a restaurant business, must close its restaurant to onsite dining due to a governmental order closing all restaurants, bars, and similar establishments for sit-down service. Employer F is allowed to continue food or beverage sales to the public on a carry-out, drive-through, or delivery basis.
- On-site dining is more than a nominal portion of Employer F's business operations. Employer F's business operations are considered to be partially suspended because, under the facts and circumstances, more than a nominal portion of its business operations—its indoor and outdoor dining service—is suspended due to the governmental order

Employee Retention Credit

Partial Shutdown – Example #2

- Same facts as Example 1, except that two months later, under a subsequent governmental order, Employer F is permitted to offer sit-down service in its outdoor space, but its indoor dining service continues to be closed. During this period, Employer F is allowed to operate only its outdoor sit-down and carry-out service in accordance with the order.
- Indoor dining is more than a nominal portion of Employer F's business operations. Employer F's business operations are considered to be partially suspended because, under the facts and circumstances, more than a nominal portion of its business operations – its indoor dining service – is suspended due to a governmental order.

Employee Retention Credit

Partial Shutdown – Example #2 continued

- The following month, under a further governmental order, Employer F is permitted to offer indoor dining service, in addition to outdoor sit-down and carry-out service, provided that all tables in the indoor dining room must be spaced at least six feet apart. This spacing constraint has more than a nominal effect on Employer F's business operations.
- During this period, even though Employer F resumed all categories of its business operations, Employer F's business operations continue to be partially suspended because, under the facts and circumstances, the governmental order restricting its indoor dining service has more than a nominal effect on its operations.

Employee Retention Credit

Partial Shutdown

- Notice 2021-20 Question #18 provides examples of the types of modifications required by a governmental order as a condition of reopening a physical space for business or service to the public:
 - Limiting occupancy to provide for social distancing
 - Requiring services to be performed only on an appointment basis
 - Changing the format of a service (for example, restrictions on buffet or self-serve, but not prepackaged or carry-out)



Employee Retention Credit

American Rescue Plan Act of 2021

- Extends the ERC to **December 31, 2021**, so now includes qualified wages paid after June 30, 2021 and before January 1, 2022.
- The amount of the credit remains the same at 70% of qualified wages up to \$10,000.
- The definitions of eligible employer and qualified wages (including full-time employee count) did not change.
- For Q3 and Q4 2021, the ERC is claimed only against the employer's share of Medicare tax. However, the excess remains refundable.
- The Act increases the amount of ERC available to "severely financially distressed employers" (gross receipt reduction of more than 90%).
- The Act adds a "recovery startup business" as an eligible employer.
- Establishes a 5 year statute of limitations for the ERC.

Employee Retention Credit

What are we seeing and hearing?

- Commonly-owned groups of restaurants must be aware of the aggregation rules.
- Be aware of the no “double dipping” provisions between PPP, ERC, RRF, FFCRA and WOTC.
- Taxpayers also should keep in mind that expense disallowance relating to the ERC may impact their wage limitation for purposes of the qualified business income (QBI) deduction under section 199A.
- Healthcare costs paid for furloughed employees may still be included in the calculation of qualified wages.
- We are hearing that the wait time for receiving ERC refunds is 6-8 weeks.



Employee Retention Credit

Common Questions

- Are tips included in the calculation of qualified wages?
- If one location was closed due to governmental order, do all locations qualify?
- How do we calculate full time employees for the ERC?
- What if I use a PEO as my payroll provider?
- What is the income tax impact of 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

Questions



Resources

- [Stimulus Bill Provides Direct Aid To Eligible Restaurants Up To \\$10 Million](#) - March 11, 2021
- [Employee Retention Credit: New IRS Guidance And Updates](#) – March 5, 2021
- [Employee Retention Credit FAQs For The Restaurant Industry](#) – February 3, 2021
- [New Opportunities For The Employee Retention Credit](#) – January 21, 2021



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