AAFCPAs
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Employee Retention Tax Credits

Agenda

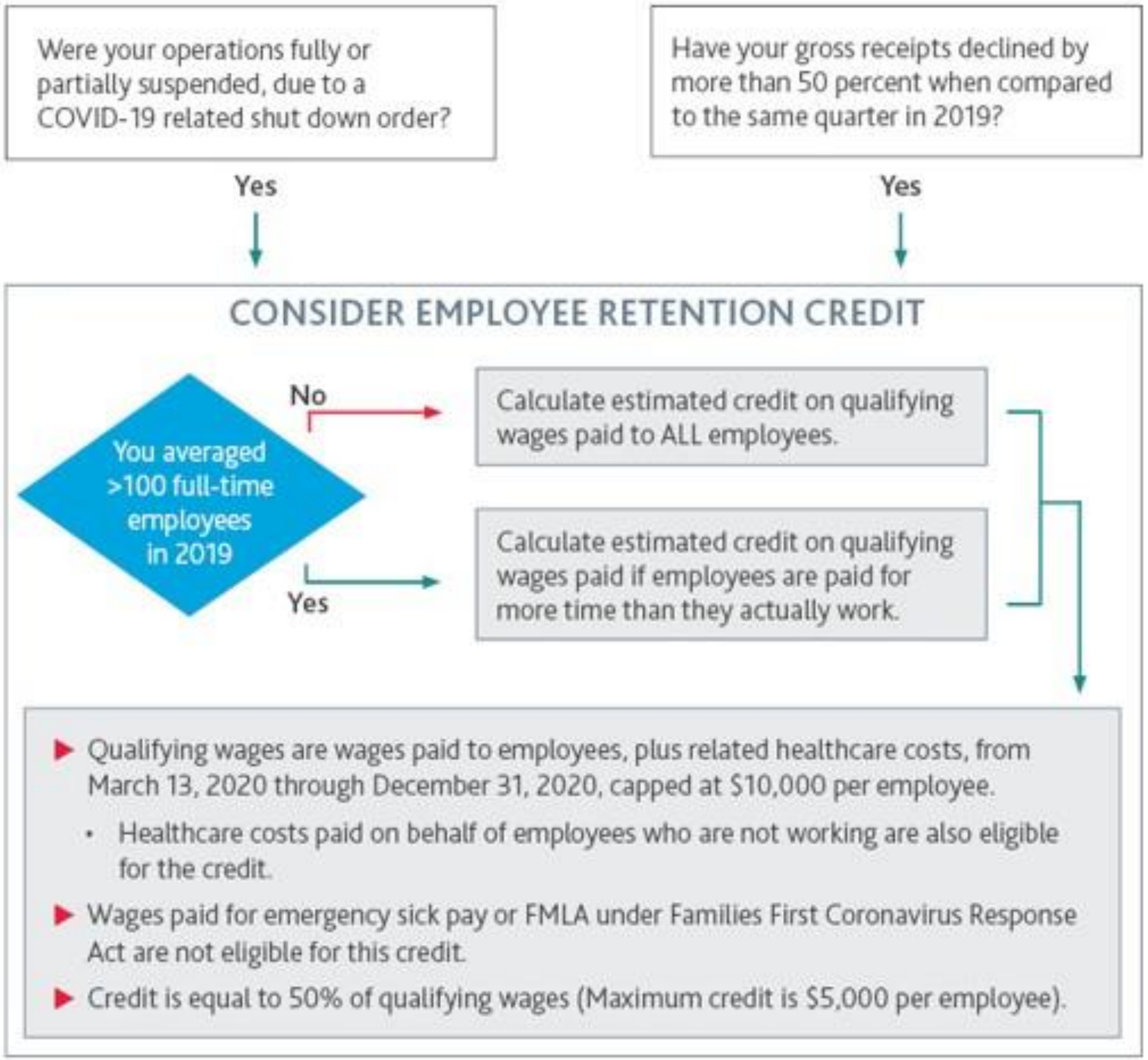
Overview of Employee Retention Tax Credit (ERC)

Updates and Changes to the Program

Resources for Information

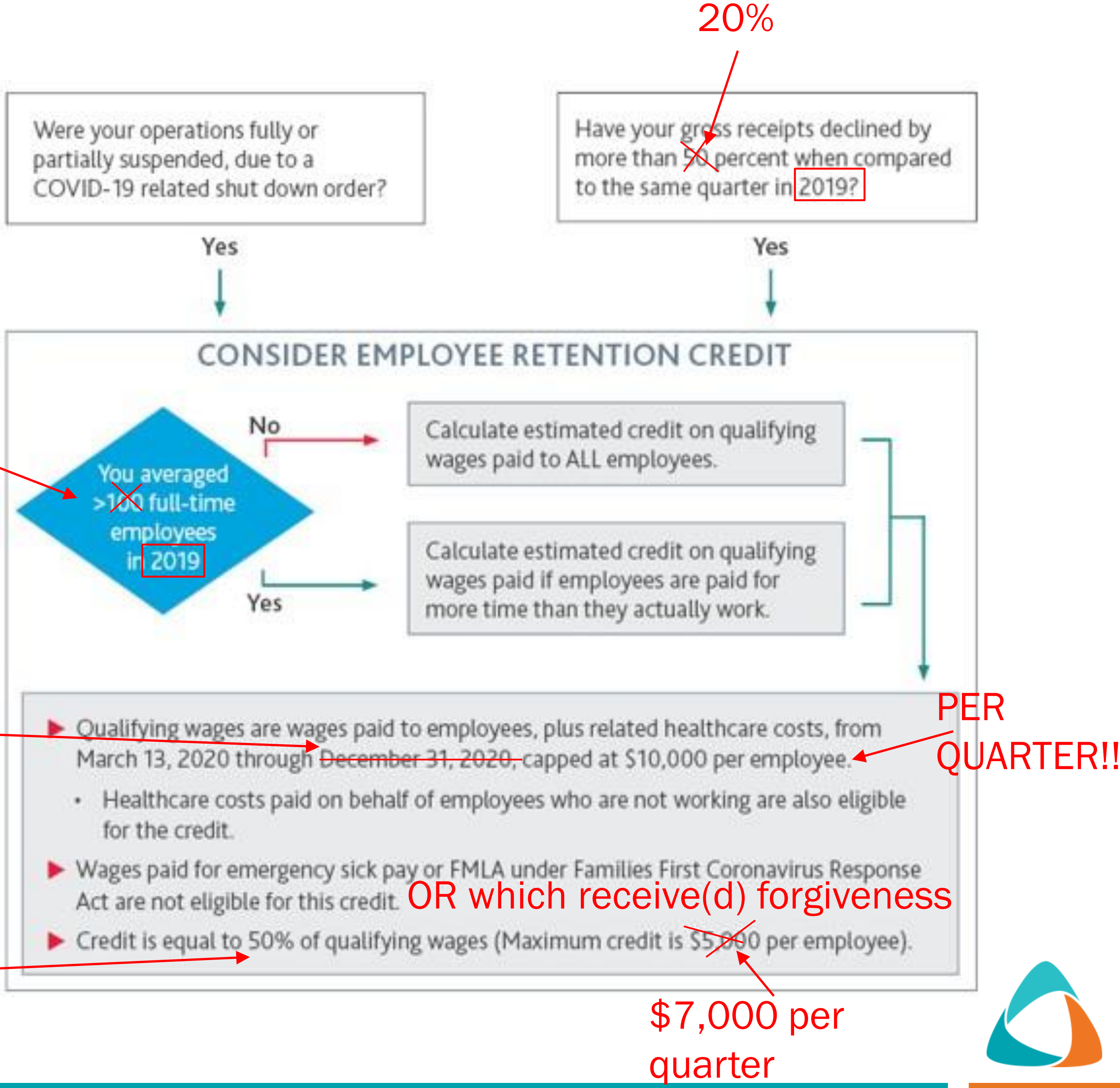
Questions

Employee Retention Credit - 2020 Version



IRS FAQs: https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act

Employee Retention Credit - 2021 Version



	CARES ACT	CONSOLIDATED APPROPRIATIONS ACT, 2021 & ARPA
TIME PERIOD CREDIT COVERS	Qualified Wages paid after March 12, 2020 but before Jan 1, 2021	Qualified Wages paid after March 12, 2020 but before Dec 31, 2021
ELIGIBILITY	1. Business with operations that were fully or partially suspended by a COVID-19 governmental order and only during the period the order is in force; or 2. Gross receipts were less than 50% of gross receipts for the same quarter in 2019 until the end of such quarter as gross receipts are 80% of the same quarter in 2019.	1. Business with operations that were fully or partially suspended by a COVID-19 governmental order and only during the period the order is in force; or 2. Gross receipts were less than 80% of gross receipts for the same quarter in 2019. Also stated a 20% DROP in gross receipts.
ELIGIBILITY FOR ORGS NOT IN BUSINESS IN 2019	Businesses not in in existence in 2019 are eligible to use a comparison to 2020.	Businesses not in in existence in 2019 are eligible to use a comparison to 2020.
% OF QUALIFIED WAGES	50% if the qualified wages paid to an employee, plus the cost of health benefits.	Beginning Jan 1, 2021 - 70% if the qualified wages paid to an employee, plus the cost of health benefits.

Examples - 2020 Version

Situation 1	Quarter 1	Quarter 2	Quarter 3	Quarter 4
2019 Gross Receipts	175,000	150,000	230,000	200,000
2020 Gross Receipts	150,000	74,000	200,000	105,000
% Increase (Decrease)	(14%)	(51%)	(13%)	(48%)
Eligibility	**NOT QUALIFIED**	**QUALIFIED**	**QUALIFIED**	**NOT QUALIFIED**

Situation 2	Quarter 1	Quarter 2	Quarter 3	Quarter 4
2019 Gross Receipts	175,000	150,000	200,000	230,000
2020 Gross Receipts	150,000	74,000	105,000	200,000
% Increase (Decrease)	(14%)	(51%)	(48%)	(13%)
Eligibility	**NOT QUALIFIED**	**QUALIFIED**	**QUALIFIED**	**QUALIFIED**

Polling Question #1

	CARES ACT	CONSOLIDATED APPROPRIATIONS ACT, 2021 & ARPA
MAX CREDIT	Annual cap of $5,000 per employee ($10,000 in qualified wages x 50%)	Beginning Jan 1, 2021 the cap is increased to $7,000 per employee per quarter ($10,000 in qualified wages x 70%)
EMPLOYER SIZE	• Employers over 100 employees only take the credit for wages paid to an employee who is NOT providing services to the employer • Employers under 100 employees take the credit for all wages paid to all employees (so long as they aren't taking another credit i.e. FFCRA)	Starting Jan 1, 2021 • Employers over 500 employees only take the credit for wages paid to an employee who is NOT providing services to the employer • Employers under 500 employees take the credit for all wages paid to all employees (so long as they aren't taking another credit i.e. FFCRA)
HOW TO COUNT EMPLOYEES (NOT THE SAME AS PPP)	Ave monthly # of Full-time employees (as defined in Section 4980H of the IRC) employed during 2019. 4980H considers any employee over 30 hours a week or 130 hours a month Full-Time (note special rules for seasonality, etc)	Ave monthly # of Full-time employees (as defined in Section 4980H of the IRC) employed during 2019. 4980H considers any employee over 30 hours a week or 130 hours a month Full-Time (note special rules for seasonality, etc) Include all employees of all affiliated companies sharing more than 50% of common ownership.

	CARES ACT	CONSOLIDATED APPROPRIATIONS ACT, 2021
PPP Interaction	REAPEALED – A company that received a Paycheck Protection Program loan was ineligible to claim this credit. This disallowance extended to all affiliated companies under 50% common ownership, meaning an affiliated entity who didn't take the PPP might be ineligible.	RETROACTIVE CHANGE – A company that received or receives a PPP loan is no longer prohibited from claiming the employee retention tax credit. The credit, however, may not be claimed for wages paid with the proceeds of a PPP loan that have been forgiven. A company that received a PPP loan in 2020 and paid qualified wages in excess of the amount of the forgiven PPP loan used to pay wages, and is otherwise eligible to claim the credit, can claim the credit retroactively. The IRS is expected to issue guidance on how to claim the credit retroactively. Companies related to a PPP borrower that did not claim the credit because of the affiliation rules should be able to claim the credit retroactively, if they are otherwise eligible for the credit.

	CARES ACT	CONSOLIDATED APPROPRIATIONS ACT, 2021
ADVANCE PAYMENTS	In 2020 there is no provision to receive the credit before the qualified wages are paid (irrelevant now).	Guidance is expected but there is an advance payment allowance based on 70% of the average quarterly payroll for the same quarter in 2019. If the amount of the actual credit at the end of the quarter is less, the company will need to repay the excess.
HAZARD PAY	No credit for pay rate increased.	Credit is allowed for any hazardous duty pay raises.
GOVERNMENTAL ENTITIES	Not available to any federal, state, or local governments, or any agency or instrumentality thereof.	Effective January 1, 2021, the following entities are eligible for the credit: • Public colleges or universities • Organizations whose principal purpose is providing medical or hospital care • Certain Federal instrumentalities, such as federal credit unions

ERC Aggregation Rules

- Section 2301(d) of the CARES Act provides that all persons treated as a single employer under section 52(a) or (b) of the Code, or section 414(m) or (o) of the Code, will be treated as a single employer for purposes of the employee retention credit.
- Parent-Subsidiary & Brother-Sister organizations.
- The amount of the employee retention credit with respect to a member of the aggregated group is based on the member's proportionate share of the qualified wages giving rise to the credit for each calendar quarter (or other prescribed period for which a tax return is required to be filed) for which the credit is claimed.

Polling Question #2

Employee Retention Credit – ARPA Changes

- ARPA Provisions effective June 30, 2021
  - Expands availability of the credit from the current deadline of June 30, 2021, to those wages paid in 2021. Potential credit value per employee is now $28,000 (assuming you paid $10k of wages per quarter).
  - The employee retention credit would be allowed against the Sec. 3111(b) Medicare tax.
  - IRS can take up to 5 years to assess the claim.
  - Increases the availability and value of credit to those employers who "severely financially distressed" (i.e., those who experienced a severe decline in gross receipts) by allowing such employers to take all wages into account, regardless of the number of full-time employees.
  - Expands credit availability to employers who qualify as a "recovery startup business" (i.e., those employers who began a trade or business after Feb. 15, 2020, and whose gross receipts average less than $1 million)

IRS Notice 2021-20: 2020 Employee Retention Credit

Addresses:

- Taxability of ERC
- Definition of "nominal" for partial suspension
- Counting FTE's
- Coordination with PPP
- Coordination with SS Tax Deferral

- Misc. Answers:
  - Who are eligible employers
  - What constitutes full or partial suspension
  - Telework impact
  - Aggregation Rules
  - What is a significant decline in Gross Receipts
  - Max amount of ERC
  - Qualified Wages
  - Qualified Health Plan Expenses
  - How do you claim the credit; and
  - How do you substantiate the credit?

What Does It Mean to Be Partially Shut Down?

- IRS Released 10 (maybe more) of their 94 FAQs on this issue alone;
- Facts and Circumstances – *A lawyers dream but a CPA’s nightmare;*
- More than nominal (10% test);
- Essential Businesses get special rules;
- Not “just” less clients.

What are Gross Receipts for ERC purposes?

For Profit Entity	Non-Profit Entity
“Gross receipts” for purposes of the Employee Retention Credit for an employer other than a tax-exempt organization has the same meaning as when used under section 448(c) of the Internal Revenue Code (the “Code”). Under the section 448(c) regulations, “gross receipts” means gross receipts of the taxable year and generally includes total sales (net of returns and allowances) and all amounts received for services. In addition, gross receipts include any income from investments, and from incidental or outside sources. For example, gross receipts include interest (including original issue discount and tax-exempt interest within the meaning of section 103 of the Code), dividends, rents, royalties, and annuities, regardless of whether such amounts are derived in the ordinary course of the taxpayer's trade or business. Gross receipts are generally not reduced by cost of goods sold but are generally reduced by the taxpayer’s adjusted basis in capital assets sold. Gross receipts do not include the repayment of a loan, or amounts received with respect to sales tax if the tax is legally imposed on the purchaser of the good or service, and the taxpayer merely collects and remits the sales tax to the taxing authority.	The new law defines gross receipts for tax exempt entities by reference to Section 6033 of the Internal Revenue Code. Gross receipts include the following: contributions, gifts, grants, dues or assessments, sales or receipts from unrelated business activities, sale of assets, and investment income (e.g., interest, dividends, rents, and royalties). Gross receipts are not reduced for any associated costs or expenses. **KEY:** Under 6033, receipts is defined as RECEIVED and makes no mention to accounting basis leading us to believe this is **CASH BASIS**

Employee Retention Credit
The Procedure

Reduce	Form	Contact
Reduce deposits of payroll taxes on Form 941	Form 7200 for refundable portion	Contact your payroll provider

Polling Question #3

Resources

AAFCPAs COVID Resource Page

- https://www.aafcpa.com/covid-19-business-resources/

IRS FAQs (94 on ERC alone)

- https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act

IRS Notice 2021-20

- https://www.irs.gov/pub/irs-drop/n-21-20.pdf

MA COVID Orders

- https://www.mass.gov/info-details/covid-19-state-of-emergency

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