

Don't Leave Money on the Table—You May Still Qualify for the Employee Retention Credit for Past Quarters

By Mary Lundstedt Esq.

Even though the Employee Retention Credit (ERC) expired on September 30, 2021 (for all but eligible Recovery Startup Businesses), you may still be able to file an amended Form 941, Employer's Quarterly Federal Tax Return, for prior quarters to utilize the program and obtain a significant cash benefit (up to \$26,000 per employee during 2020 and 2021). Whether you never understood it, or just missed hearing about it altogether, we urge you to contact us now—free of charge—in determining if you qualify for the credit.

In our experience, many CPA firms and other professionals are missing this issue and wrongly advising their clients that they are ineligible for the credit. We would be happy to provide a first or second opinion to you on your business's eligibility for the credit. Bear in mind that you can get this credit even if you received Paycheck Protection Program (PPP) funding. However, before you apply for PPP forgiveness, it is important that you speak with a professional regarding maximizing PPP forgiveness and maximizing the ERC, as the two are interrelated.

The early ERC termination caused real concern for those employers (other than Recovery Startup Businesses discussed below) already taking advantage of the relief. This week the IRS issued much needed guidance providing conditional penalty relief (both failure to pay and failure to deposit) for those employers that: (1) either received an advance payment of the ERC for the fourth quarter of 2021, or (2) stopped making payroll tax deposits in anticipation of the ERC for the fourth quarter of

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2021. We can assess your eligibility for this relief and assist you with timing and reporting requirements. We encourage you to act fast given the December 20, 2021, deadline after which the IRS will no longer waive failure to deposit penalties for those employers that reduced deposits in anticipation of the ERC.

What is the ERC?

Introduced in the CARES Act, and intended to incentivize employee retention during the pandemic, the ERC is: A refundable payroll tax credit.

- Claimed quarterly.
- Reduces payroll taxes or produces cash refunds.
- Available to eligible for-profit and not-for-profit employers.

How Do You Qualify for the Credit?

First, if your business was affected by a mandated full or partial suspension of business then you automatically qualify for the ERC. This includes any actual closures, as well as restrictions on hours or capacity. **It is important to note that this provision may also extend to suppliers of the business.** If the facts and circumstances indicate that the business's operations were/are fully or partially suspended as a result of the inability to obtain critical goods or materials from its suppliers because they were required to suspend operations, then the business would be considered an eligible employer for calendar quarters during which its operations are fully or partially suspended and may be eligible to receive the employee retention credit. Our comprehensive analysis of your situation will include a

consideration of all facts and circumstances related to any suppliers.

The second way to qualify, is based on a significant reduction in gross receipts. In 2020 your business gross receipts must be down 50% compared to the same quarter of 2019 in order to qualify. In 2021 this requirement is even easier to meet, because you only need a 20% reduction in gross receipts to meet the test.

Finally, **Recovery Startup Businesses remain eligible for the ERC in the fourth quarter of 2021.** Briefly, a Recovery Startup Business is a business which was started after February 15, 2020 and has gross receipts under \$1 million. If you own/operate a Recovery Startup Business—you may still be eligible for ERC through the fourth quarter of 2021!

If you would like to learn more please watch this video hosted by Rebecca Sheppard and Matt Eddleman of Frost Law. <https://youtu.be/HX6pmnMdIYY>

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