Under the Consolidated Appropriations Act, 2021, the employee retention credit, a provision of the CARES Act, is available for to claim for all quarters of 2021 for eligible employers who retained employees during the COVID-19 pandemic. This tax credit is now available to businesses that took a loan under the Paycheck Protection Program (PPP), including borrowers from the initial round of PPP who originally were ineligible to claim the tax credit. The credit can only be taken on wages that are not forgiven or expected to be forgiven under PPP or other programs as per IRS guidance allows.

Please check with the IRS for the most up to date guidance as this changes frequently.

EMPLOYEE RETENTION CREDIT:

RETRO 2020:
Employers who qualify can claim the credit (50% of qualified wages paid, per employee, for the year 2020, up to $10,000 in wages for a $5,000 credit). This is an annual cap for wages paid between March 13 and December 31, 2020. The credit must be calculated by quarter and claimed by amending the 941.

2021:
Employers who qualify can claim the credit (70% of qualified wages paid, per employee, up to $10,000 in wages for a $7,000 credit). This is a quarterly limit and available only during quarter 1 and quarter 2 of 2021. Credits may be applied against the employer's tax liability during the quarters in which the credit is claimed.

ELIGIBILITY:

Two factors exist to determine whether an employer will qualify for these credits:

1. For 2020 Retro Retention Credits, a business will qualify if:
    a. A business or trade that was fully or partially suspended or had to reduce business hours due to a government order. The credit applies only for the portion of the quarter the business is suspended, not the entire quarter.
    b. An employer that has a significant decline in gross receipts. Under the original CARES Act, if gross receipts in a calendar quarter are below 50% of gross receipts when compared to the same quarter in 2019, an employer would qualify. The employer will no longer qualify if in the calendar quarter immediately following their quarter gross receipts exceed 80% compared to the same calendar in 2019

2. 2021 Retention Credits: Effective January 1, 2021, employers are eligible if the operate a business during 1/1/21 – 12/31/21 and experience either:
    a. A full or partial suspension of operations due to governmental orders limiting commerce due to COVID-19, or
    b. A decline in gross receipts in a calendar quarter in 2021 where the gross receipts of that calendar quarter are less than 80% of the gross receipts in the same calendar quarter in 2019 (to be eligible based on a decline in gross receipts in 2020 the gross receipts were required to be less than 50%)

***WAGES THAT QUALIFY?**

Wages that are subject to FICA taxes, as well as qualified health expenses qualify when calculating the employee retention credit. These must have been paid after March 12, 2020 and qualify for the credit if paid through June 30, 2021. The thresholds on these wages and the percentage of credit increases on 2021. When determining the qualified health expenses, the IRS has multiple ways of calculating depending on circumstances. Generally, they include the employer and employee pretax portion and not any after-tax amounts.

When determining the qualified wages that can be included, an employer must first determine the number of full-time employees they had in 2019. Employers with more than 100 full-time employees (based on the employer shared responsibility provision in the Affordable Care Act) use different qualified wages than those with 100 or fewer full-time employees. Under the new law, the employee limit for determining which wages are applicable to the credit increases to 500 in 2021.

For the purposes of the employee retention credit, a full-time employee is defined as one that in any calendar month in 2019 worked at least 30 hours per week or 130 hours in a month (this is the monthly equivalent of 30 hours per week) and the definition based on the employer shared responsibility provision in the ACA. Employers who were in business the entire calendar year in 2019 would take the sum of the number of full-time employees in each calendar month and divide by 12.

An employer who started a business during 2019 determines the number of full-time employees by taking the sum of the number of full-time employees in each full calendar month in 2019 in which the business operated and divide by that number of months.

An employer who started a business in 2020 determines the number of full-time employees by taking the sum of the number of full-time employees in each full calendar month in 2020 that the business operated and divides by that number of months.

Once full-time employees are determined, employers will know which qualified wages to use. Those who have more than 100 full-time employees (this threshold increases to 500 beginning in 2021) can only use the qualified wages of employees not providing services because of suspension or decline in business. Furthermore, any wages paid for vacation, sick or other days off based on the employer's current policy cannot be included in qualified wages for the larger employers. Basically, employers can only use this credit on employees who are not working.

Employers with 100 or fewer full-time employees (this threshold increases to 500 beginning in 2021) can use all employee wages — those working, as well as any time paid not being at work with the exception of paid leave provided under the Families First Coronavirus Response Act.

Employers who take the employee retention credit cannot take credit on those same qualified wages for paid family medical leave. If an employee is included for the Work Opportunity Tax Credit, they may not be included for the employee retention credit.

Shuttered Venue Grants: These may affect ERC's or PPP Loans. Please check with your CPA on interactions and how to best handle multiple grant or tax credits if you believe to qualify.

The employee retention credit is allowed against the employer's share of Social Security taxes. However, the credit is fully refundable. So, if the credit exceeds the employer's total liability of the portion of Social Security in any calendar quarter, the excess is refunded to the employer. At the end of the quarter, the amounts of these credits will be reconciled on the employer's Form 941.

A member of controlled or affiliated service groups are considered a single employer, so they must aggregate their gross receipts to determine when and if they qualify.

IRS.GOV, FAQ's EE Retention Credits