



# Paycheck Protection Program and Employee Retention Credit

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# INTRODUCTIONS



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# Agenda:

- Where We Are Now
- PPP Updates
- PPP Forgiveness
- 2020 Employee Retention Credit
- 2021 Employee Retention Credit
- Special Issues Surrounding the Employee Retention Credit
- Claiming the Employee Retention Credit
- Questions

# Where We Are Now



- Consolidated Appropriations Act of 2021
  - Signed by President Trump on December 27<sup>th</sup>
  - Second draw PPP loans available with expanded eligibility
  - Extended ERC into Q2 2021
  - PPP borrowers eligible for ERC

# Where We Are Now



- American Rescue Plan Act:
  - Signed by President Biden on March 12<sup>th</sup>
  - \$7.25b added to PPP
  - Expanded nonprofit eligibility
  - Enabled PPP borrowers to also receive Shuttered Venue Operators Grant
  - Extended ERC through Q4 2021



# PAYCHECK PROTECTION PROGRAM



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# Current PPP Status



- Applications available to be submitted through May 31<sup>st</sup>
  - Dependent on availability of funding
- 2020 Statistics
  - \$521.2 billion in PPP loans approved
  - \$209.1 billion forgiven with \$83.8 billion under review
- 2021 Statistics
  - \$232.8 billion in PPP loans approved

# PPP Schedule C Filers



- Separate Schedule C Filer application
  - Based on 2019 or 2020 Schedule C Gross Income
    - Form 1040 Schedule C Line 7
  - Monthly average multiplied by 2.5
  - Cannot exceed \$20,833



# Who Is Eligible for Second Draw?

- Previously received a First Draw PPP loan and has or will use full amount of loan,
- Under 300 employees, and
  - Multiple locations – not more than 300 employees per location
- 25% drop in gross receipts in any quarter in 2020 compared to 2019

# General Forgiveness Rules

- Minimum 60% used for payroll
- Be aware of expenses claimed under other funding sources
- Application is due 10 months after the end of your covered period
- Loans in excess of \$2m will be audited by the SBA in the future

# Covered Period

- Between 8 and 24 weeks
  - Can use a time period in between, but many banks calculate this based on date input for loan proceeds
- Begins the day funds were deposited

# Eligible Expenses

## Payroll Costs



- Costs paid and costs incurred during covered period
- Includes:
  - Wages
  - Employer portion of health, dental, life, disability insurance, 401k
  - Employer state and local taxes (SUTA)
- Capped at \$15,385 (8 weeks) or \$46,154 (24 weeks)
- Exclude grant funded wages, employee retention credit or Families First Coronavirus Relief Act wages
  - No double dipping!!

# Eligible Expenses

## Payroll – Owner Employees

- Capped at \$15,385 (8 weeks) or \$20,833 (24 weeks)
- Limited to 2.5 month equivalent of 2019 compensation
  - This includes health insurance and 401k contributions

# Eligible Expenses

## Nonpayroll Costs

- Includes:
  - Business mortgage interest payments (no prepayments)
  - Rent or lease payments
    - Specific rules for related party rents
  - Utilities
  - Covered operational expenses
    - Software or cloud computing services
  - Covered property damage
  - Covered supplier costs
  - Covered PPE
- Includable only if established before 2/15/20

# PPP Forgiveness Applications



- Three different SBA Forgiveness Application options
  - Form 3508S – Simplified forgiveness application
  - Form 3508EZ – Easier application for qualified borrowers
  - Form 3508 – Full detailed forgiveness application

# Form 3508S

- Only for loans under \$150,000
- Simplified checklist and certifications
- Note amount spent on payroll
- No required documentation



# Form 3508EZ

- Two Qualifications
  - Did not reduce annual salary or hourly wages by more than 25% **AND** did not reduce number of employees or average paid hours
  - Did not reduce annual salary or hourly wages by more than 25% **AND** could not operate at the same level of business due to regulations and mandates

# Form 3508

## Schedule A

- Table 1 includes new employees in 2020 or employees that did not make the equivalent of \$100,000 in any pay period in 2019
- Table 2 is those that did make over the limit above
  - Not required to calculate the salary/wage reduction

# Form 3508

## Salary and Wage Reduction

- Salary and Wage Reduction
  - Compares average annual salary or hourly wage for 1/1/20 – 3/31/20 to covered period
  - Only applies if in excess of 25%
- Safe Harbor
  - If the wage rate is restored to February 15<sup>th</sup> level by December 31<sup>st</sup> or the end of covered period (PPP2), there is no reduction of forgiveness

# Form 3508

## FTE Reduction

- Compare reference period (2/15/19 – 6/30/19 OR 1/1/20 – 2/29/20) to covered period
- Exceptions exist for offers to rehire or restore hours and terminations for cause
- Safe harbors available if you were unable to operate at the same level of business compared to 2/15 or FTEs were restored by 12/31 (PPP1) or end of covered period (PPP2)



# EMPLOYEE RETENTION CREDIT - 2020



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# Eligibility - 2020



- Business must be partially or totally shut down due to COVID-19 during any calendar quarter in 2020, or
- Gross receipts are less than 50% of gross receipts in the same quarter as 2019
  - An entity continues to qualify until the first calendar quarter where gross receipts are greater than 80% of its gross receipts for the same calendar quarter in 2019
- Federal or State governments or any governmental agencies were not eligible employers for the ERC

# 2020 Gross Receipts Test Example



## Facts

- 2020 Gross Receipts
  - Q1 - \$100,000 (48% 2019)
  - Q2 - \$190,000 (83% 2019)
  - Q3 - \$230,000 (92% 2019)
- 2019 Gross Receipts
  - Q1 – \$210,000
  - Q2 - \$230,000
  - Q3 - \$250,000

## Eligibility

- The employer is eligible beginning with Q1 2020
- Eligibility ends on the 1<sup>st</sup> day of Q3 (the quarter following the quarter in which gross receipts were 80% or more of 2019)
- The employer is eligible for the ERC for Q1 & Q2

# Maximum Amount of Credit Allowed - 2020

- Credit is equal to 50% of qualified wages (including health plan expenses) per employee up to \$10,000 wages per employee per year
  - Wages paid from March 13, 2020 to December 31, 2020
- Max credit per employee is \$5,000
- Qualified Wages
  - Wages including health care costs
  - Salary increases/bonuses are not qualified wages
  - Wages cannot be claimed for any other credit/program (PPP, WOTC, PML, FFCRA)
  - Self Employed earnings/wages are not eligible



# Restriction For More Than 100 Full-Time Employees

- If an employer averages more than 100 full-time employees in 2019, qualified wages are wages paid to employees who were not providing services (not working)
  - Full-time = 30 hours per week or 130 hours in the month
  - Qualified wages may not exceed what the employee would have been paid 30 days prior to when they were not performing services



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# Eligibility - 2021

- Business must be partially or totally shut down due to COVID-19 during any calendar quarter in 2021, or
- Gross receipts are less than 80% of gross receipts in the same quarter as 2019
- Safe harbor is available to elect to use the previous quarter
  - Q1 2021:
    - Q4 2020 to Q4 2019
    - Q1 2021 to Q1 2019
  - Q2 2021:
    - Q1 2021 to Q1 2019
    - Q2 2021 to Q2 2019

# Eligibility – 2021 Continued

- Bonuses/salary increases can now be included in the qualified wage calculation
- Governmental entities allowed in 2021:
  - Public colleges or universities
  - Organizations with a principal purpose of providing medical/hospital care

# Maximum Amount of Credit Allowed - 2021

- Credit is equal to 70% of qualified wages (including health plan expenses) per employee up to \$10,000 wages per employee per quarter
- Max credit per employee is \$7,000 per quarter

# Restriction For More Than 500 Full-Time Employees



- If an employer averages more than 500 full-time employees in 2019, qualified wages are wages paid to employees who were not providing services (not working)
  - Full-time = 30 hours per week or 130 hours in the month

# Credit Computation – 2021 Example (Quarter 1)

Employee Name	Qualified Wages	FFCRA Wages (eligible for credit)	ERC Wages	PPP Wages (eligible for forgiveness)	ERC Credit (ERC Wages x 70%)
Cory	30,000	0	0	20,883	0
Megan	5,000	1,000	4,000	0	2,800
Jenna	12,000	0	10,000	2,000	7,000
Matt	20,000	0	10,000	10,000	7,000
Total	67,000	1,000	24,000	32,883	16,800

- Possible benefit: \$50,683 on \$67,000 worth of wages paid ( \$1,000 FFCRA + \$32,883 PPP Forgiveness + \$16,800 ERC)

# 2020 and 2021 Differences Summary

	2020	2021
% Qualified Wages	50%	70%
Maximum Wages	\$10,000 per employee per year	\$10,000 per employee per quarter
Maximum Credit	\$5,000 per employee	\$7,000 per employee per quarter
Gross Receipts Eligibility	50% decline in gross receipts compared to the same quarter in 2019	20% decline in gross receipts compared to the same quarter in 2019 + safe harbor to use prior quarter
Employee threshold for Limited Qualified Wage Eligibility	100 full-time employees	500 full-time employees





# SPECIAL ISSUES REGARDING THE ERC



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# ERC For Controlled Groups



- Eligibility for ERC and the credit is computed on a controlled group basis
    - Under Section 52(a) / (b) & section 414 (m)/(o)
  - Could impact parent-subsidary controlled group, brother-sister controlled group, or combined groups of corporations
  - These aggregation rules apply to partnerships, trusts, estates, corporations, or sole proprietors
-

# Partially/Fully Shutdown for the ERC



- Full/partial shutdown due to Federal, state, or local government orders
- Partial suspension – impacts more than a nominal portion of business activities (more than 10%)
- All members of an aggregated group are treated as a single employer
- Only Qualified Wages while shut down are eligible

# Factors to Review for a Full/Partial Shutdown

- Employer's Telework Capabilities
- Portability of Employee's Work
- Is the physical workspace necessary for employees?
- Impact of transition to telework operations
- Impact of occupancy restrictions

# Shutdown Examples



## Qualifying

- Essential business is unable to obtain materials from any suppliers so it can't operate
- A company began teleworking and does not have the ability to complete all operations or services in a comparable manner (laboratory research/access to specific equipment)
- Restaurants – limiting capacity for indoor/outdoor dining

## Non-Qualifying

- An essential business has stayed open, but business has declined due to stay at home orders
- A company began teleworking & business operations continued in a comparable manner
- Essential business can remain open with a small component of its business that is suspended

# Wages paid to Related Individuals



- Related Individual Wages are not eligible for the Employee Retention Credit
- Related Individuals Include:
  - Child or descendant of a child
  - Brother, sister, stepbrother, or stepsister
  - Father or mother, or ancestor of either
  - Stepfather or stepmother
  - Aunt or Uncle/Niece or nephew
  - Son in law, Daughter-in-law, Father-in-Law, Mother-In-law, Brother-in-law, Sister-in-Law

# Interaction of PPP & ERC



- You can receive the ERC and a PPP loan
- Wages claimed for the ERC are not eligible for PPP Forgiveness
- If you have already filed for PPP forgiveness, this will impact what you can claim for ERC

# Tax Treatment of ERC



- There will be an addback to taxable income for the amount of credit received (reduction of wage expense)
- Wages claimed for the ERC could not be used for the R&D credit or Work Opportunity Tax Credit
  - Important to maximize health plan expenses for employees with R&D activity





# CLAIMING THE CREDIT



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# Claiming the Credit

- Eligible employers must report total qualified wages and health benefits on a quarterly basis
  - Using Form 941
- Refundable if the credit is larger than employment taxes paid
- Payroll providers have been claiming this credit and should be able to help you
- Advance claims of the credit are possible through reduction of deposits or Form 7200

# Claiming the Credit Retroactively - 2020

- File an Amended Form 941
  - File by 90 days before the statute of limitations expires (3 years from when the 941 was filed)
- Important to consider your PPP Forgiveness Application
  - Has Forgiveness been received yet?
  - Was your application approved in full?
  - What wages were claimed for forgiveness?

# QUESTIONS?



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