Straight Outta Congress: How to Maximize the Employee Retention Credit (ERC) & Paycheck Protection Program (PPP)

WRITTEN ON JANUARY 19, 2021. POSTED IN GENERAL BUSINESS, PPP, STATE & LOCAL TAX SERVICES, TAX, TAX ALERTS.

By Travis Miskowitz, Manager, CFO Advisory

This is a developing story; updates will be published as additional information becomes available.

The Consolidated Appropriations Act of 2021 introduced major changes to the Employee Retention Credit and the Paycheck Protection Program. This article provides a comprehensive overview of the **Employee Retention Credit**, and **we cover the PPP updates in this article**. Our focus and concern with this update is centered on the strategy and steps you can take to maximize the benefits available under both the ERC and PPP.

Since there are different eligibility criteria for claiming the ERC in 2020 vs. 2021, let's tackle each separately.

Employee Retention Credit 2020 and PPP 1st Draw Loan

The **ERC is a fully refundable payroll tax credit** for employers that, for 2020, is equal to 50% of qualified wages employers paid beginning March 13th, 2020. Businesses are eligible if:

- Business operations were fully or partially suspended due to an order from an appropriate governmental authority limiting commerce, travel, or group meetings due to Covid-19, or
- The business experiences a significant decline in Gross Receipts during the calendar quarter compared to the prior year (defined as a reduction of 50% or more)

The **Employee Retention Credit** for 2020 is now retroactively available to PPP borrowers. Most companies applied for and received the PPP loan during 2020 as the program was more favorable vs. the ERC at the time. The stimulus bill passed at the end of December 2020 now allows businesses to receive the credit and receive 100% PPP loan forgiveness. However, careful analysis should be completed, in terms of allocating payroll costs to the ERC prior to including them as a forgivable cost on the loan forgiveness application. The mechanism to claim the **ERC is qualified wages, which includes compensation and healthcare costs.** An eligible business cannot use the same qualified wages to claim the ERC that are included as eligible forgivable costs on the 1st Draw PPP loan forgiveness application.

ERC eligibility for 2020 is based on a **Gross Receipts decline of 50%** in any quarter compared to the same quarter in 2019. Gross Receipts is defined to include all revenue in whatever form received or accrued (**in accordance with the Entity's accounting method – Cash or Accrual**) from whatever source, including:

- Sales of products or services
- Interest
- Dividends
- Rents

- Royalties
- Fees
- Commissions
  - Reduced by returns and allowances

Gross Receipts does not include:

- Taxes collected for and remitted to a taxing authority if included in gross or total income
- Sales or other taxes collected from customers
- Taxes levied on the business or its employees
- Proceeds from transactions between a concern and its domestic or foreign affiliates
- Amounts collected for another travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder, or customers broker

All other items may not be excluded from Gross Receipts, such as:

- Subcontractor costs
- Reimbursements for purchases a contractor makes at a customer's requests
- Investment income
- Employee-based costs such as payroll taxes

Additionally, a business is required to aggregate Gross Receipts with those of its affiliates.

Action Required: Prepare 2020 – 2019 Gross Receipts analysis to determine the percentage decline on a quarterly basis. If an eligible business meets the 50% Gross Receipts decline, do not submit the forgiveness application for a 1st Draw PPP loan until we receive revised guidance from the IRS.

Planning Considerations: The definition of **non-payroll costs** has been expanded to include: **Supplier Costs**, **Operations Expenditures**, **Property Damage Costs**, and **Worker Protective Equipment**. We previously advised clients to focus on payroll costs only, since over a 24-week covered period many businesses could achieve 100% loan forgiveness solely using this eligible expense. Using payroll costs only simplified the forgiveness application and required less supporting documentation. With ERC on the table for 2020, an eligible business may want to review their nonpayroll costs available to maximize the 40% nonpayroll cost bucket when applying for loan forgiveness. Payroll dollars are more important to allocate between the ERC and PPP forgiveness.

Employee Retention Credit 2021 and PPP 2nd Draw Loan

ERC eligibility for 2021 is significantly improved in favor of business owners and calls for a 20% Gross Receipts **decline** instead of 50%. The **ERC is a fully refundable payroll tax credit** for employers that, for 2021, is equal to 70% of qualified wages employers paid beginning January 1st, 2021 through June 30th 2021. Businesses are eligible if:

- Business operations were fully or partially suspended due to an order from an appropriate governmental authority limiting commerce, travel, or group meetings due to Covid-19, or
- The business experiences a significant decline in Gross Receipts during the calendar quarter (defined as a reduction of 20% or more)
- For Q1 2021, an eligible business may use Q4 2020 – Q4 2019 to determine the Gross Receipts decline

For 2021, the maximum credit is increased to $7,000 per employee, and is calculated on a per quarter basis. The credit is based on qualified wages which includes compensation and healthcare costs. Any employee that earns $10,000 in a quarter will max out this credit at $7,000 per employee. We are waiting on updated guidance from the IRS, but an eligible business will likely be able to claim the credit on Form 7200 "Advance Payment of Employer Credits Due to Covid-19" or on the quarterly Form 941.

Action Required: Prepare 2020 – 2019 Gross Receipts analysis to determine the percentage decline on a quarterly basis. If an eligible business meets the 20% Gross Receipts decline in the 4th QTR 2020, do not submit the 2nd Draw PPP loan application until the ERC is maximized for this quarter. An eligible business should anticipate applying for a 2nd Draw loan closer to the application deadline of March 31st, 2021. This is to preserve the 24 week covered period a borrower has to spend the PPP funds on eligible expenses, and the clock starts the day the loan proceeds are disbursed to the borrower. As a practical point, a PPP borrower may be able to slightly delay their receipt of PPP funds, by maximizing the timeframe a business has to sign the loan documents. A borrower must generally provide all required documentation including a signed promissory note within 20 days of loan approval. If the borrower fails to meet this deadline, the loan will be cancelled and the borrower must re-apply.

Planning Considerations: The definition of **non-payroll costs** has been expanded to include: **Supplier Costs**, **Operations Expenditures**, **Property Damage Costs**, and **Worker Protective Equipment**. We previously advised clients to focus on payroll costs only, since over a 24-week covered period many businesses could achieve 100% loan forgiveness solely using this eligible expense. Using payroll costs only simplified the forgiveness application and required less supporting documentation. With ERC on the table for Q1 and Q2 2021, an eligible business may want to review their nonpayroll cost available to maximize the 40% nonpayroll cost bucket to maximize loan forgiveness. Payroll dollars are more important to allocate between the ERC and PPP forgiveness. If an eligible business can claim the ERC for the 1st and 2nd QTR 2021, the 2nd Draw PPP funds may be used starting July 2021. If a business applies for the 2nd Draw PPP loan at the end of March, and receives the PPP proceeds the first week of April, the 24-week should allow for 100% loan forgiveness. However, careful planning will be necessary to allocate payroll dollars to the ERC, in addition to maximizing the 40% non-payroll cost bucket for the 2ndDraw forgiveness application.

PPP 2nd Draw

Eligibility is based on a Gross Receipts decline of 25% in any quarter of 2020 compared to the same quarter 2019. An eligible business can use 2019 or 2020 payroll when determining average monthly payroll, which determines the 2nd Draw Loan amount.

The above guidance is based on what we know today about the ERC and PPP programs. While we believe the strategy discussed above is sound, additional guidance from the IRS is required for the following:

- How does a business claim the ERC retroactively to 2020 if the company received a PPP loan?
- Allocations of payroll costs between the ERC and PPP loan forgiveness. It appears an eligible business may be required to allocate payroll costs to the ERC and then the excess wages can be used as an eligible expense for PPP loan forgiveness
- If a business already submitted their forgiveness application, what is the process to claim the ERC retroactively?
- Will an eligible business be required to amend their quarterly payroll returns or can the credit be claimed retroactively?

Please contact Travis Miskowitz (tmiskowitz@wiss.com) or Tricia Meola (tmeola@wiss.com) to help assess eligibility for a PPP loan. Please contact Ilya Brodetskiy (ibrodetskiy@wiss.com) to determine ERC eligibility for 2020 and 2021.

Any other questions or concerns regarding ERC or PPP? Click here to leave us a message.

CONTACT US

COVID, Employee Retention Credit, ERC, Ilya Brodetskiy, Paycheck Protection Program, PPP, Travis Miskowitz, Tricia Meola

PREVIOUS

Leave a Reply

Your email address will not be published. Required fields are marked *

COMMENT