

There's Still Time to Claim the Employee Retention Tax Credit

Eligible businesses can file retroactive claims for wages paid in prior tax quarters

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Although the Employee Retention Tax Credit (ERTC) is expiring at the end of 2021, there's still time for eligible businesses to claim the credit, if they haven't already.

"Eligible employers are still able to take advantage of the employee retention credit against applicable employment taxes and qualified wages paid to their employees through Dec. 31, 2021," said Allan Smith, senior manager of operating risk and strategic initiatives at Paychex, an HR and payroll services firm.

"Although the program is set to sunset at the end of 2021, the credit can be claimed on amended payroll tax returns as long as the statute of limitations remains open, which is three years from the date of filing," said Brent Johnson, co-founder and CEO of Clarus R+D, a maker of software for claiming tax credits.

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ERTC Basics

The ERTC, also referred to as the Employee Retention Credit (ERC), was created by the Coronavirus Aid, Relief and Economic Security (CARES) Act (www.shrm.org/hr-today/public-policy/Documents/SHRM%20Analysis%20CARES%20Act%20-%20Employer%20Provisions.pdf), signed into law in March 2020, to encourage businesses to keep employees on their payroll. The Consolidated Appropriations Act, 2021 (CAA), enacted in December 2020, and the American Rescue Plan Act (ARPA), enacted in March 2021, amended and extended the credit and the availability of certain advance payments of the credits through the end of 2021.

The ARPA, for instance, allows small employers that received a Paycheck Protection Program (PPP) loan (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/employers-have-more-time-to-apply-for-ppp-loans.aspx) to also claim the ERTC.

"For 2021, an employer can receive 70 percent of the first \$10,000 of qualified wages paid per employee in each qualifying quarter (<https://www.cohnreznick.com/insights/employee-retention-credit-now-available-to-ppp-recipients>)," raised from 50 percent in 2020, wrote Dana Fried, a managing director of law firm CohnReznick's national tax practice. The credit applies to wages paid or incurred from March 13, 2020 through Dec. 31, 2021. The cost of employer-paid health benefits can be considered part of employees' qualified wages.

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Eligible Businesses

There is no size limit on eligibility for the ERTC. However, small and large businesses are treated differently

(https://www.cohnreznick.com/-/media/resources/2021_erc_decision_tree_v4.pdf), Fried noted:

- **For employers with 100 or fewer full-time employees**, all employee wages qualify for the credit, whether the employer is open for business or subject to a shutdown order.
- **For employers with more than 100 full-time employees**, qualified wages are wages paid to employees when they are not providing services due to COVID-19-related circumstances.

Eligible employers are private-sector businesses and tax-exempt organizations that experienced:

- **A full or partial shutdown of operations** as a result of a government order limiting commerce due to COVID-19 during 2020 or 2021.
- **A gross receipts decline of more than 50 percent** during a 2020 or 2021 calendar quarter, when compared to the same quarter in the prior year.
- **A "recovery startup" business** that was launched after Feb. 15, 2020, for which the average annual gross receipts do not exceed \$1 million, subject to a quarterly ERTC cap of \$50,000.

For the gross receipts test, Smith explained, a business must have experienced more than 50 percent decline in 2020 (compared to the same quarterly period in 2019) to be eligible. For 2021, a business must have experienced more than 20 percent decline in gross receipts, compared to the same quarterly period of 2019. New businesses not in existence during a particular quarter in 2019 are permitted to substitute the corresponding quarter of 2020 for the comparison.

"If your business experienced a substantial decline in gross receipts but has since recovered and you didn't claim the credit, you can go back and claim it now," Johnson said.

Eligible businesses, Smith said, can file a claim for a retroactive ERTC refund on previously paid qualified wages for past calendar quarters by filing Form 941-X (<https://www.irs.gov/forms-pubs/about-form-941-x>), Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund.

"For retroactive claims for refunds related to ERTC, there is the potential for significant delays in receiving funds from the IRS due to their current backlog in processing 941-X returns," Smith noted.

Looking Ahead

"If Congress continues to be focused on aiding employers through incentive programs, it will be important for employers to monitor the programs that can potentially benefit them," Johnson said.

In addition to the ERTC, Smith explained, "there are other resources still available. For example, there are paid-leave tax credits that have been extended and are available through the end of September."

While PPP funds have been exhausted, Smith added, several Small Business Administration programs could make sense for eligible businesses, such as the Shuttered Venue Operators Grant program (<https://www.sba.gov/funding-programs/loans/covid-19-relief-options/shuttered-venue-operators-grant>) and Economic Injury Disaster Loans (<https://www.sba.gov/funding-programs/loans/covid-19-relief-options/eidl/covid-19-eidl>).

"The Restaurant Revitalization Fund (<https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund>) is currently oversubscribed, but legislation has been introduced to provide another \$60 billion towards that program," Smith noted, "and several states, including New York, are launching state-based grant programs to help small businesses."

Take Aways for Claiming the ERTC

The final dates for eligible businesses to claim the ERTC is with their quarterly Form 941 (<https://www.irs.gov/pub/irs-pdf/f941.pdf>) tax filings, due July 31, Oct. 31 and Dec. 31, 2021. Business tax filers will need additional payroll data and other paperwork to file for the ERTC with their quarterly returns.

"We are seeing a much quicker turnaround for clients who file an original Form 941 return with the ERTC credit included versus those clients that have us go back after the fact and file an amended Form 941-X (<https://www.irs.gov/pub/irs-pdf/f941x.pdf>) return to claim the credit," said Jessica Hayes, director of finance for payroll, onboarding and business solutions company AccuPay HCM.

"Turnaround time when having to file an amended return from the IRS is 90 to 120 days whereas when filing an original return, the turnaround is 30 to 60 days," she noted.

Hayes advised business that may be eligible to claim the ERTC to take the following steps:

- Determine ASAP if the company's employees meet the ERTC criteria.
- Visit the IRS ERTC website (<https://www.irs.gov/coronavirus/employee-retention-credit>)
- Locate all payroll information for the last few years.
- If a business cannot determine eligibility or prepare the necessary Form 941s, reach out to a business solutions provider.
- Don't delay assembling the required documentation and submitting it to the IRS before the quarterly deadline.

"The faster an eligible business files, the quicker they will receive these vital funds," Hayes said.

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