



Enhancements to the Employee Retention Credit

On December 21, 2020, Congress passed its spending bill, the "Consolidated Appropriations Act (CAA), 2021 (New Law)" which includes Division N — Additional Coronavirus Response and Relief (ACRR). This second round of relief enhances and extends the Employee Retention Credit (ERC). Below is a summary of ERC changes provided by the CAA.

- **Period of credit availability:**

Old Law (CARES Act): The ERC was available for qualified wages paid after March 12, 2020, and before January 1, 2021.

New Law: The new law extends the availability of the ERC to qualified wages paid after March 12, 2020 and before July 1, 2021.

- **Eligibility of employers who have received PPP loans:**

Old Law: Under the CARES Act, an employer that received a PPP loan was not eligible for the ERC.

New Law: The new law allows for employers that receive a PPP loan to claim the ERC. **This change is retroactive to the effective date under the original law (wages paid after March 12, 2020).** However, a credit may not be claimed for wages paid with the proceeds of a PPP loan that has been or will be forgiven.

- **Eligibility in general:**

Old Law: To be eligible for the ERC under the CARES Act, an employer's business operations were required to be either fully or partially suspended by a COVID-19 lockdown order, or the employer must show a reduction in gross receipts of 50% for any quarter in 2020 as compared to the same quarter in 2019. This requirement still applies to ERC claimed in 2020.

New Law: The credit remains available to any employer whose business operations are required to be either fully or partially suspended by a COVID-19 lockdown order. However, the new law also provides eligibility for employers who experience a 20% decrease in gross receipts in a quarter in 2021, compared to the same quarter in 2019, **OR** a 20% decrease in gross receipts comparing the previous quarter with the same calendar quarter of 2019 (i.e. for Q1 2021 compare Q4 2020 vs Q4 2019). This requirement applies to ERC claimed in 2021.

- **Eligibility for wages paid to working employees:**

Old Law: Under the CARES Act, for small employers (100 or fewer employees), the credit was allowed for all wages paid to employees, including wages for employees still providing services to the company. For employers with more than 100 employees, the credit was allowed **ONLY** for wages paid to employees who were not providing services to the company.

New Law: The new law increases the small employer threshold to 500 employees. When calculating this threshold, employees of all affiliated companies sharing more than 50% common ownership are required to be aggregated.

- **Maximum Credit Amount:**

Old Law CARES Act: Under the CARES Act, the maximum amount of the ERC was \$5,000 per employee (\$10,000 in qualified wages x 50% tax credit rate) for the entire year.

New Law: The new law increases the maximum credit to \$7,000 per employee (\$10,000 in qualified wages x 70% tax credit rate) for each of the first two quarters of 2021.

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