



AUSTIN ASSOCIATES

CERTIFIED PUBLIC ACCOUNTANTS

The American Rescue Plan Act of 2021 modified the employee retention credit first created under the Coronavirus Aid, Relief, and Economic Security (CARES) Act then extended and expanded under the Consolidated Appropriations Act, 2021. This employment tax credit is designed to encourage businesses to keep workers on their payroll and support small businesses and nonprofits through the Coronavirus economic emergency.

Qualifications for the credit vary depending on specific time period requirements; however, in general, calendar quarters in 2020 and 2021 may be eligible.

Some Possible Ways for Businesses to be Eligible for the Credit:

1. The business was fully or partially suspended during a calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease (COVID-19);
2. If the business lost 20% revenue in the first 3 quarters in 2021 compared to 2019.
3. If the business lost 50% revenue in any quarter in 2020 compared to 2019.

If the employer was not in existence at the beginning of the same calendar quarter in 2019, then the employer may use the same calendar quarter in 2020. Employers may also elect to determine if they meet the gross receipts test using the immediately preceding calendar quarter compared to the corresponding calendar quarter in 2019.

Qualified Wages

Qualified wages are based on the business's average number of full-time employees in 2019 (or 2020, if not in existence in 2019).

- Small employers, those that had 500 or fewer employees, may receive the credit for wages paid to employees whether or not they are providing services to the employer.
- Large employers, those that had more than 500 employees, may only receive the credit for wages paid to employees for time the employees are not providing services to the employer.
- Severely financially distressed employers, those that are experiencing a minimum 90% decline in gross receipts for the calendar quarter compared to the same quarter in 2019, may receive the credit for wages paid to employees during any calendar quarter.

Credit Amount

In general, the amount of the 2020 credit is 50% of qualified wages paid to an employee up to \$10,000 (therefore a maximum credit of \$5,000 per employee) and for 2021 the maximum credit is 70% of qualified wages paid to an employee up to \$10,000 per quarter. Qualified wages may include amounts paid to provide and maintain a group health plan that are excluded from employees' gross income.

Employers must file payroll tax Form 941X to claim the credit.

No Double Benefit

There are limitations when considering an eligible employer's ability to claim the employee retention credit. A double tax benefit is not allowed. Other credits that impact the employee retention credit include, but are not limited to, the following:

- wages that are paid for with forgiven Payroll Protection Program (PPP) proceeds cannot qualify for the employee retention credit;
- qualifying wages for this credit cannot include wages for which the employer received a tax credit for paid sick and family leave; and
- employees are not counted for this credit if the employer is allowed a work opportunity tax credit.

Timeframe to File for the Credit

In order to claim the credit for 2020, amended payroll tax returns must be filed by April 15, 2024.

Tax Impact of the Credit

The credit results in a reduction of tax-deductible payroll expenses for each quarter claimed in 2020 and 2021. If a credit is received for both 2020 and 2021, both 2020 and 2021 business tax returns will need to be amended to reflect the credit received. Additionally, in the case of flow through entities such as S-Corporations and partnerships, personal tax returns will also need to be amended for each shareholder or partner. Amended returns will likely result in additional income taxes due plus interest and late-payment penalties in addition to the professional fees related to the preparation of the amended payroll and income tax forms.

Who Should File for the Credit if Eligible

Because this is a payroll tax credit, we recommend you contact your payroll tax specialist or accountant. Be aware of businesses posing to be employee retention tax credit specialists promising large refunds and charging fees based on a percentage of the credit. Oftentimes, these businesses are claiming responsibility for the tax forms prepared, not the determination of eligibility or substantiation to support eligibility. The determination of eligibility & retaining documents to substantiate that eligibility is the responsibility of the business or taxpayer. Tax forms are also the responsibility of the business or taxpayer for which they were filed. Due to the number of employee retention tax credit scams brought to the IRS's attention recently, the credit may likely be an area targeted by IRS auditors in the future. Below is a link to a recent IRS warning alert issued in late November 2022, regarding third party scammers.

[Employers: beware of third parties promoting improper employee retention credit claim | Internal Revenue Service \(irs.gov\)](#)

