

**CARES Act
Employee Retention Credit and
Employer Payroll Tax Deferral**

Updated on June 2, 2020
(Original prepared on April 26)

Employee Retention Credit Overview

- The Employee Retention Credit (“ERC”) is a fully refundable tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that eligible employers pay their employees. This ERC applies to qualified wages paid after March 12, 2020 and before January 1, 2021. The maximum amount of qualified wages with respect to each employee which may be taken into account by eligible employers for all calendar quarters is \$10,000. Therefore, the maximum credit for an eligible employer for qualified wages paid to any employee is \$5,000 (50% of \$10,000.)
- The credit is claimed by offsetting the amount of payroll taxes deposited. If the amount of the credit exceeds the total amount of deposit, the employer can choose to receive an advance payment for the excess amount.
- ERC eligibility and qualified wages depend on the economic impact of government orders and the number of full-time equivalent employees.
- Companies that have already received a loan through the Paycheck Protection Program (“PPP”) are not able to take advantage of the ERC.
- Any wages that have been paid in relation to the Family First Coronavirus Response Act (“FFCRA”) are not qualified for ERC.
- The application for the ERC is completed along with the quarterly payroll tax returns. As an exception, the ERC for the first quarter is to be submitted with the second quarter payroll tax returns, due July 31, 2020.

【Notes】

- The material presented here is based on the most recent information available at the time this document was prepared. When applying for the ERC, please refer to most updated information available at that time.
- This document is based on our interpretation of the CARES Act and is not intended or written to be used as tax advice. For specific questions regarding the ERC, please contact an HLS representative.

ERC Eligibility Requirements

Eligibility requirements for the ERC are as follows:

- Employers who due to COVID-19 concerns have been restricted by government order that have suffered complete or partial suspension of business activity (commerce, travel, group meetings, etc.); or
- Employers who experience a significant decline in gross receipts. A significant decline in gross receipts begins with the first quarter in which an employer's gross receipts for a calendar quarter in 2020 are less than 50 percent of its gross receipts for the same calendar quarter in 2019. The significant decline in gross receipts ends with the first calendar quarter that follows the first calendar quarter for which the employer's 2020 gross receipts for the quarter are greater than 80 percent of its gross receipts for the same calendar quarter during 2019.

〈Ex. Q1 and Q2 are eligible for the ERC, but since Q2 was more than 80%, Q3 is not eligible〉

Year	Q1	Q2	Q3
2019	\$210,000	\$230,000	\$250,000
2020	\$100,000	\$190,000	\$230,000
Ratio	48%→ERC Eligible	\$83%→ERC Eligible	Greater than 80% in previous quarter →ERC Ineligible

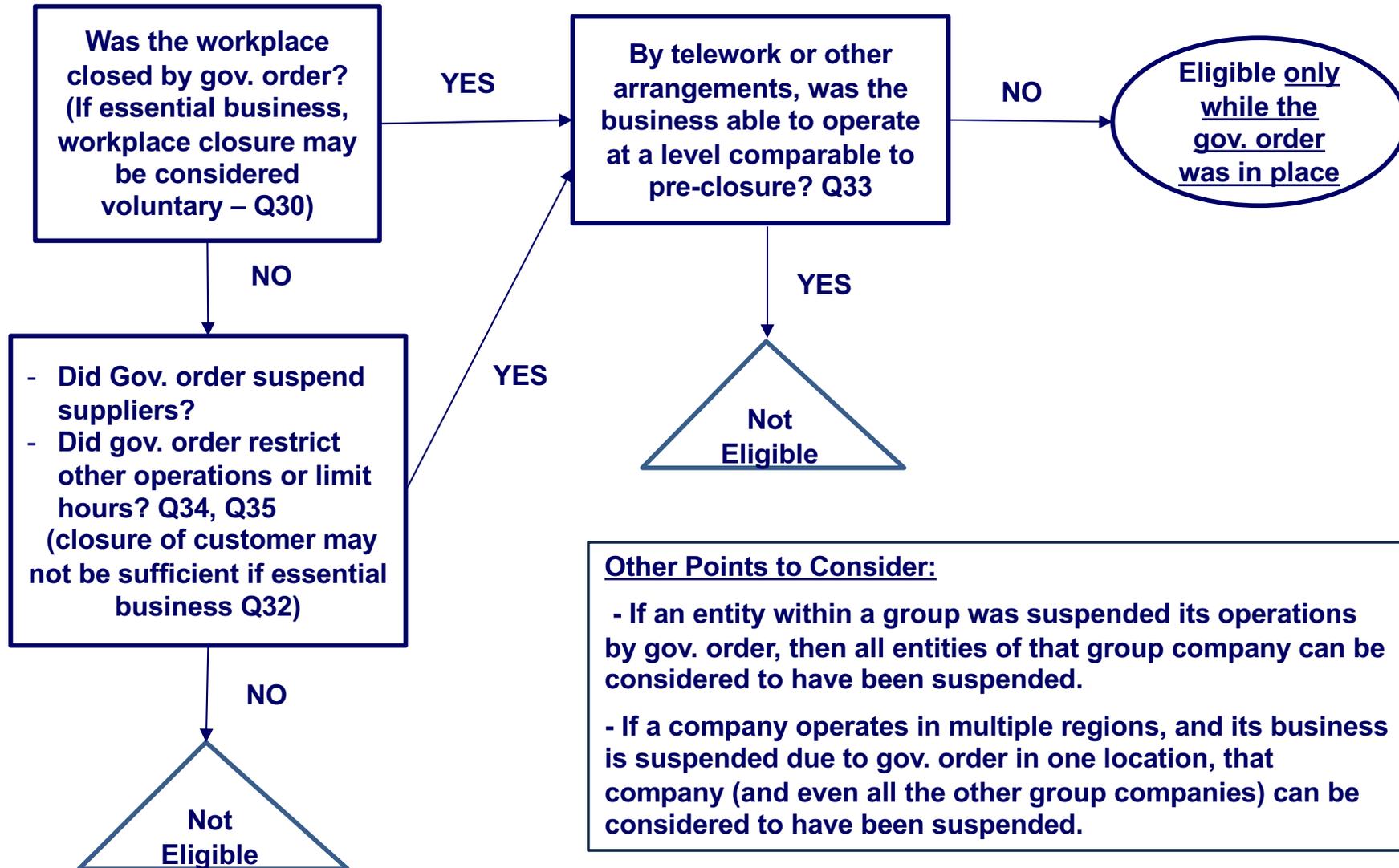
- Employers who received a PPP loan are not eligible for this ERC credit.

【Notes】

- In general, all members of a controlled group are required to be aggregated and treated as a single employer for the purpose of the gross receipts test described above. Whether a specific entity should be included will depend on the group's circumstances such as shares owned and whether there is effective control in place. Please contact an HLS representative if you have any questions.

ERC Eligibility Requirements – **NEW!**

The IRS issued a series of FAQs on April 29th that clarified the conditions related to government order (“Gov. Order Test”) The FAQ was further updated on May 7th.



ERC Qualified Wages

ERC qualified wages include wages paid after March 12, 2020 and before January 1, 2021. Certain health plan expenses (both employer and employee portions) can also be included in the ERC qualified wages. Qualified wages differ based on the number of full-time equivalent employees as follows:

- If the average number of full-time equivalent employees during 2019 were greater than 100:
 - Wages paid to employees for the time “not providing service” are qualified wages.
- If the average number of full-time equivalent employees during 2019 were not greater than 100:
 - Wages paid to all employees are qualified wages.
- For the ERC purpose, full-time employees generally refer to any employee who works more than 30 hours per week on average. This is the same way full-time equivalent employees are calculated under the Affordable Care Act. (If you have any questions, we recommend first speaking with your HR personnel.) Part-time employees who meet the above definition of full-time employment will also be counted as full-time employees. Working hours outside of the United States are excluded.
- Qualified wages paid or incurred by an eligible employer cannot not exceed the amount the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period.
- Any wages that have been paid in relation to the Family First Coronavirus Response Act (“FFCRA”) cannot be claimed as qualified wages for the ERC.

【Notes】

- If an employer’s full-time equivalent employees are greater than 100, only the wages paid to employees for the time not providing service are eligible for the ERC. Employees such as line workers and shop employees would be considered employees not providing service for manufacturing and retail businesses. When business activity is carried out by working from home, only hours not performing services should be counted. If the company is part of an affiliated group, both domestic and foreign companies will have to be included for the calculation of full-time employees; however, any working time spent outside of the United States is excluded.
 - The IRS has not provided a clear guidance on whether wages of employees who are not required to pay social security tax can be included in qualified wages.
 - Health plan expenses for laid off or furloughed employees may also be included in qualified wages.
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How to Apply for the ERC

- The ERC is claimed by offsetting employment taxes (including federal income tax withholdings, the employees' share of Social Security and Medicare taxes, and the employer's share of Social Security and Medicare taxes for all employees).
- If the amount of the credit exceeds the deposit of payroll taxes, the employer may either choose to carryover the excess amount to the next quarter's payroll tax liability or receive an advance payment.
- The ERC process is completed alongside Form 941, which is used for quarterly payroll tax reporting. As a special exception, the ERC for the first quarter will be reported on the second quarter Form 941, due July 31, 2020. (Information [here](#))
- The request of an advance payment should be filed using Form 7200. (Information [here](#))

Employer Payroll Tax Deferral

- The Employer Payroll Tax Deferral (“EPTD”) gives employers the option to defer payment of employer Social Security taxes (6.2%) for the period between March 27, 2020 and December 31, 2020. Employers may defer 50% of its 2020 tax payments to December 31, 2021, with the remaining 50% due December 31, 2022.
- EPTD can be used in conjunction with the ERC.
- Self-employed individuals may defer 50% of their self-employment taxes (50% of 12.4%=6.2%) in the same manner.
- Both employers and self-employed individuals who have received loan forgiveness through the PPP program may not utilize the EPTD. (However, employers can defer payroll tax up until the loan is forgiven.)
- Medicare taxes and the employee portion of Social Security taxes may not be deferred.
- The deferral is interest/penalty free.

Preparing for the ERC

Preparing for the ERC Calculation:

- Understand how the government order affected the company's business operations and restricted employees' working conditions.
- Calculate the average number of full-time equivalent employees during 2019 based on the method consistent with the Obama care.
- Allocate health plan expenses to employee wages.
- If the employer had full-time equivalent employees greater than 100 employees, estimate the amount of time the employees were not provide services.
- Based on the above information, calculate the ERC.
- Consider whether applying for an advance of the ERC is necessary for cash flow purposes.