

# EMPLOYEE RETENTION TAX CREDIT

Powered by CLV & Associates, PLLC





# Attorney Cedric D. Pitts, Jr.

## Managing Partner

Filed over 2500 ERC Claims  
Worked over 50 IRS ERC Inquires  
94% Credit Sustention

# Content

## 1. Understanding the Employee Retention

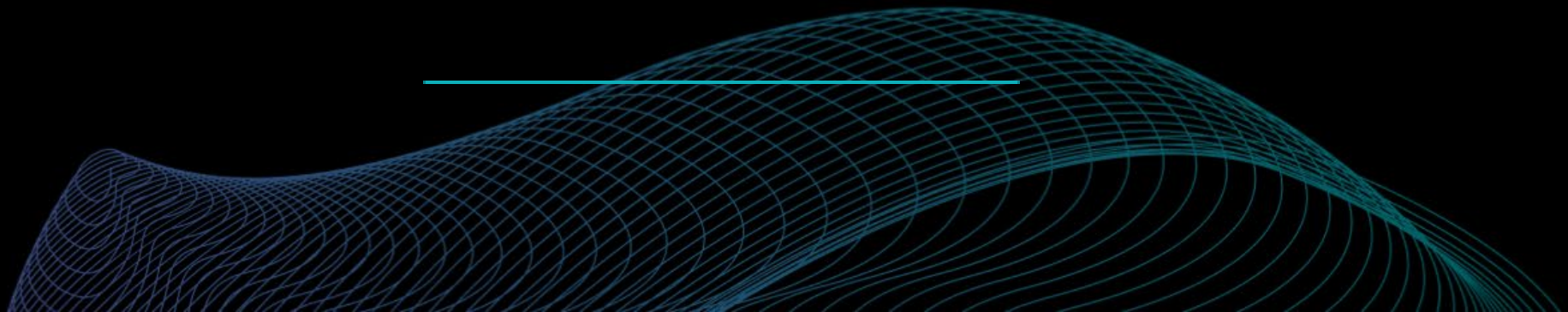
Credit and IRS Updates

## 2. Case Studies and Success Stories



# Section 1

## Understanding the Employee Retention Credit



# Employee Retention Credit Overview



## Employee Retention Credit Overview

Refundable Tax Credit: The Employee Retention Credit (ERC) is a refundable tax credit against certain employment taxes, providing financial relief to eligible employers.



## Qualified Wages

Qualified Wages: The credit equals 50% (2020) and 70% (2021) of the qualified wages paid to employees during qualified periods, to support businesses during the economic strain caused by COVID-19.



## Eligibility Criteria

Eligibility Criteria: Employers must meet specific eligibility requirements to claim the credit, including experiencing a significant decline in gross receipts or facing a “more than nominal” impact caused by a governmental order.

# Revenue Reduction Rules

- 50% or more reduction in revenue when comparing 2020 with 2019
- 20% or more reduction in revenue when comparing 2021 with 2019
- Alternate quarter qualification; Q1 2021 qualified by a 20% reduction in revenue in Q4 of 2020 compared to Q4 2019

## Full or Partial Suspension (Notice 2021-23, Notice 2021-33 & Notice 2021-49)

- Full government mandated closures.
- Partial government mandated closures. (FAQ 13-20; Notice 2021-20)
  - a government restriction may have had a direct impact on the Client's operations even though that shutdown order wasn't given to them directly. This qualification only applies during the period of the actual government order. Since there were very few government shutdown orders during 2021, the actual shutdown type of this qualification mainly applies to 2020 quarters. However, if the impact of shutdowns affected your business beyond the actual shutdown period, this qualification may apply.

# More than Nominal Portion vs More than Nominal Impact

- More than Nominal Portion
  - A test to determine which portion of the business can be used to qualify a business.
  - Determined by the revenue in a segment of the business or the hours worked in that portion of the business.
- More than Nominal Impact
  - A test to determine if a business' impacts reach the 10% threshold
  - Determined by "Facts & Circumstances"



# W2 Employee

- Employee Count
- Full time – important with regard to eligibility
- Full time means an average of 30 hours per week or 130 hours per month
  - Less than 100 FTE employees to be eligible in 2020
  - Less than 500 FTE employees to be eligible in 2021
- Subject to ownership attribution
- Part time and Seasonal Workers wages are counted
- All W2 paid employees count in the calculation of the credit
- Owners and their relatives don't count

# ERC Qualifications

2020 – Quarters 2, 3, 4

- Start with data on a pay date by pay date basis starting with March 13, 2020
- March 13 – 31, becomes part of the Q2 refund
- Allocate PPP funds reducing each pay period wage for each person
- Allocation is over either an 8 week or 24 week period
- ERC is 50% of remaining wage for the quarter
- Annual cap is \$5,000 for the year (adjusted for PPP)
- Exempt owners and their relatives
- Amend 941 form
- First reduce employer payroll tax to zero using the ERC
- Remainder is allocated as “refundable portion of ERC”

# ERC Qualifications

2021 – Quarters 1, 2, 3

- Start with data on a pay date by pay date basis starting with January 1, 2021
- Allocate PPP funds reducing each pay period wage for each person
- Allocation is over either an 8 week or 24 week period
- ERC is 70% of remaining wage for the quarter
- Quarterly cap is \$7,000 per quarter (adjusted for PPP)
- Exempt owners and their relatives
- Amend 941 form
- First reduce employer payroll tax to zero using the ERC
- Remainder is allocated as “refundable portion of ERC”

# ERC Qualifications

Start Up Businesses: Started business after February 15, 2020

- 2020 or 2021 Gross Receipts did not exceed \$1,000,000
- Are not otherwise eligible under revenue reduction, full or partial suspension
- Eligible for ERC for Quarters 3, 4 of 2021
- Using the same calculation methods
- Quarterly Cap - \$50,000

# Special Rules

## Ownership

- 51% or more owners, their wages are not eligible in the calculation
- Family attribution
- Husband and wife co-own (50% each), even though neither owns 51% or more, the wages of neither are eligible by family attribution
- Excluded Family Members list:
  - A child or a descendant of a child; A brother, sister, stepbrother, or stepsister; The father or mother, or an ancestor of either; A stepfather or stepmother; A niece or nephew; An aunt or uncle; A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; An individual who, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

## Other Programs That Impact The ERC Calculation

- SVOG (shuttered venue operators grant),
- RR (restaurant revitalization)
- WOTC (Work Opportunity Tax Credit)
- R&D (research and development) grants/credits.
  
- Must remove wages paid by these government grants from the ERC calculation .

# Tax Implications of the ERC

- The actual Employee Retention Credit – not taxable income
- Interest paid with the tax refund – taxable in the year of receipt
- ERC accounting fees are deductible in the year the fees are paid
- Corporate tax returns (as well as any personal tax returns that recognize pass through income) need to be amended
  - Deducted Payroll expenses must be disclaimed because they were refunded
  - Retroactively through the amendment process, because the ERC refund technically means the original filing was incorrect
  - Not prospectively in the current year

# ERC Guidance and Deadlines



## IRS Guidance

IRS Guidance: IRS Notice 2021-20, 2021-23, 2021-49

- Qualification Guidance (IRS relies heavily on these notices in IRS Inquiry proceeding)

## ERC Filing Deadlines

2020 ERC Claim: Filing Deadline April 15, 2024.

2021 ERC Claim: Filing Deadline April 15, 2025.

## Federal Tax Return Amendment

Federal Tax Amendment Deadline: March 15, 2024

- IRS has not added any insight on the date conflict between the ERC filing deadline and amendment deadline



# Scams and Fraudulent Claims

## 01

### Scam Alerts

Scam Alerts: The Better Business Bureau and other authorities have flagged numerous fraudulent claims related to the Employee Retention Credit, highlighting the importance of vigilance and compliance with IRS regulations.

## 02

### Tax Fraud Impact

Tax Fraud Impact: The IRS has taken measures to address tax fraud and scams associated with the ERC, emphasizing the need for accurate and legitimate credit claims. *ERC Processing Moratorium\*\*\**

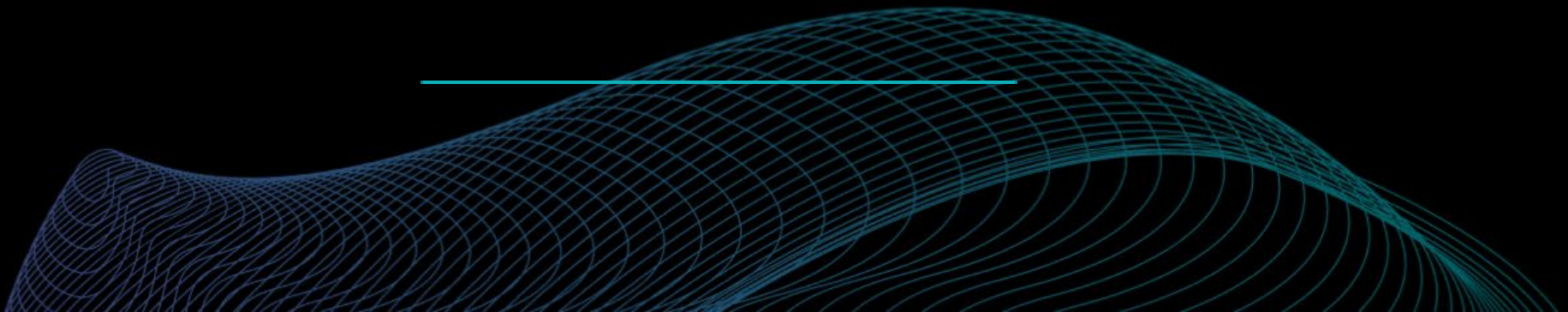
## 03

### Compliance and Verification

Compliance and Verification: Employers are advised to ensure compliance with ERC regulations and to verify the authenticity of any claims to avoid potential legal and financial repercussions.

# Section 2

Case Examples | Q & A



# Types of companies that can qualify

Companies can qualify on:

- 1) Revenue reduction
- 2) Full or partial shutdown order
- 3) Supply-chain disruption

- Plumbing Contractors
- Retail stores
- Landscapers
- HVAC companies
- Video production companies
- Law firms
- Insurance carriers and agencies
- Restaurants
- Private schools and universities
- Doctors and dentists
- Gyms
- Aviation companies
- Startups (special provisions apply)
- Small hotels
- Construction companies



Q&A

Feel Free to Ask Question

# EMPLOYEE RETENTION TAX CREDIT

Powered by CLV & Associates, PLLC

