



Practical, provocative,
food for thought for nonprofits

Does Your Nonprofit Qualify for the Employee Retention Credit (ERC)? – Live Q&A

Joan Leanos, CPA, MST

Tax Director, Strategic Tax Planning

Michael W. Brewer, CPA

Tax Director, Strategic Tax Planning

Host

Julie Bernhard

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Presented by:



Sponsored by:



Today's Presenter:



Joan Leanos, CPA, MST

Tax Director

Strategic Tax Planning

- Certified Public Accountant since 1981
- BS in Finance University of Maryland
- Masters in Taxation from American University
- Just finished her 46th Tax Season
- Non-profit accounting and tax experience
- Served on many Arts and Civic Boards

Throughout her career, Joan has focused on Individual, Small Business, Estate tax preparation and IRS Controversy for her clients. Now she is focusing on Employee Retention Credits for clients.

Today's Presenter:



Michael W. Brewer, CPA

Tax Director

Strategic Tax Planning

- Certified Public Accountant
- Nonprofit experience

Michael Brewer is a Director with 30 years of experience specializing in audit, taxation, and consulting for commercial and not-for-profit entities. He is also a licensed Certified Public Accountant (CPA) in Texas and Maryland.

Does Your Nonprofit Qualify for the Employee Retention Credit (ERC)? – Live Q&A

Agenda

What is the Employee Retention Credit?

History and Legislation

How do nonprofits qualify?

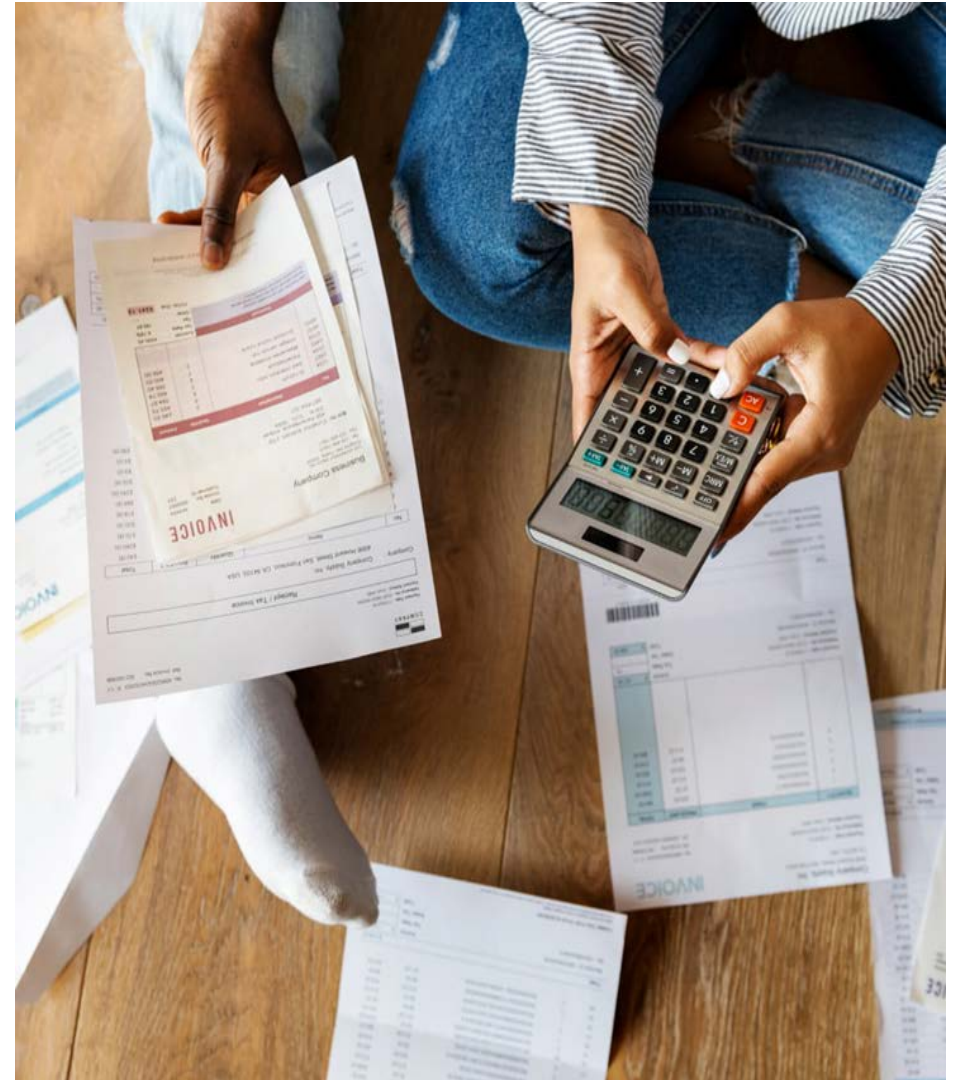
Our process for ERC eligibility evaluations

Resources



Background: CARES Act

- Paycheck Protection Program
- Families First Coronavirus Response Act (“FFCRA”)
- Deferral of employment tax payments - first payments were due on 12-31-2021
- Employee Retention Credit
- Restaurant Revitalization Fund
- Shuttered Venue Operators Grant
- Economic Injury Disaster Loan (“EIDL”) - ended 12-31-2021



ERC Legislation

- Coronavirus Aid Relief, and Economic Security Act (“CARES Act”) 3-27-2020
- Taxpayer Certainty and Disaster Tax Relief Act of 2020 (“Relief Act”) 12-27-2020
- American Rescue Plan Act of 2021 (“ARP”) 3-11-2021
- Infrastructure Investment and Jobs Act (“Infrastructure Act”) 11-15-2021

ERC Guidance

- Notice 2021-20
- Notice 2021-23
- Notice 2021-49
- Notice 2021-65
- Rev. Proc. 2021-33
- Rev. Proc. 2021-48



So, What is ERC Anyway?

ERC is a fully refundable tax credit filed against employment tax. ERC is part of the CARES Act & designed to reward employers who kept W-2 employees on payroll during the pandemic.

IMPORTANT:

- ✓ Not a loan
- ✓ Funds can be used at the owner's discretion
- ✓ Paid via check for each eligible quarter



Current Status of the ERC – Temporary Processing Pause

The IRS announced a temporary moratorium on processing of new claims through year's end will allow IRS to add more safeguards to prevent future abuse, protect businesses from “predatory tactics, aggressive marketers and unscrupulous actors”

IMPORTANT NOTES FROM THE IRS REGARDING THE PAUSE :

- ✓ Processing new claims is on hold until Dec 31st
- ✓ IRS will focus on review of abuses and improperly filed or fraudulent claims, as well as pursue scammers and dishonest marketers
- ✓ IRS urges businesses to work with a trusted tax professional – avoid tax promoters or marketing firms
- ✓ IRS reminds anyone who improperly claims the ERC that they must pay it back
- ✓ The “credit is real” but is a complex tax credit for businesses and tax-exempt organizations that kept paying employees during the COVID-19 pandemic. A qualified tax professional can help to understand it.
- ✓ While processing is on a temporary hold, the credits are still available to those filing legitimate claims – File 2020 by April 15, 2024 and 2021 by April 15 2025

Visit [IRS.gov/erc](https://www.irs.gov/erc) for details on the program

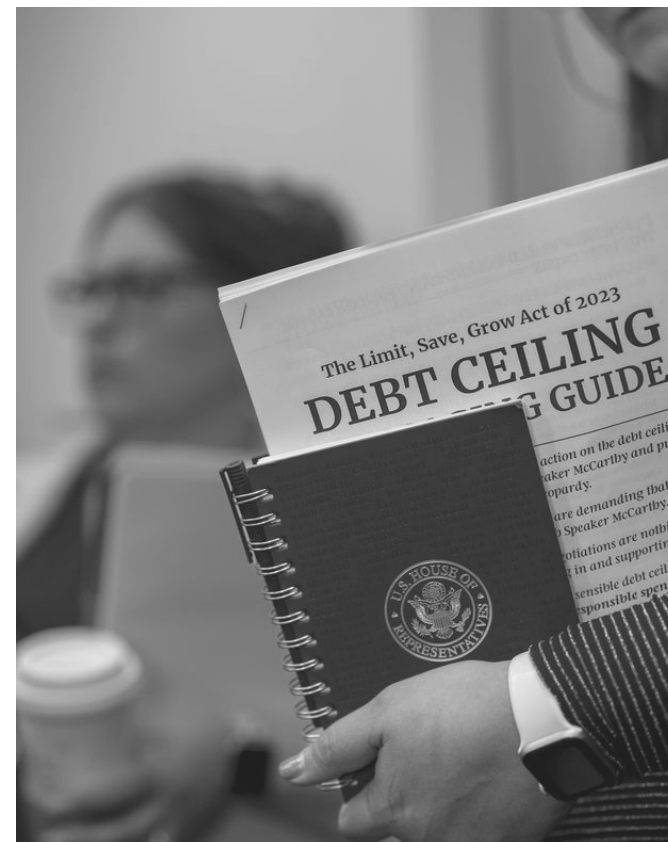
Debt Ceiling & Government Aid Impact

Unobligated COVID Relief Funds Stripped:

- Example: Remaining Provider Relief Funds not yet disbursed
- ERC instead is a tax refund issued by Department of Treasury

Employee Retention Credit:

- Not Impacted by Debt Ceiling Deal



Available ERC Quarters

ERC Availability by Year:

2020

Q1 Through Q4

2021

Q1 Through Q3

Recovery Startup:

Q4 2021 | Applicable to businesses founded after
February 15th 2020



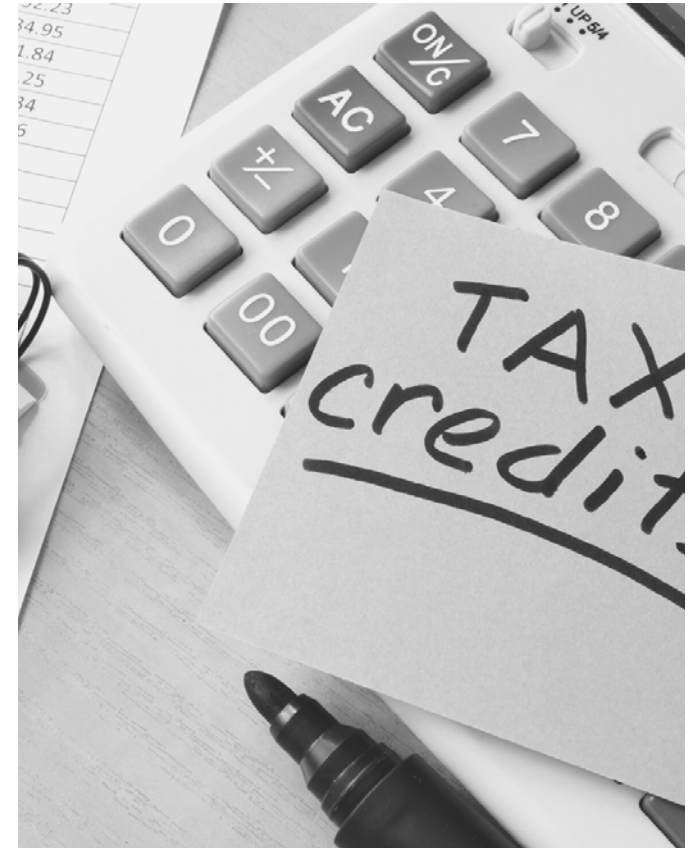
Who is ERC for?

The term “eligible employer” means an employer which was carrying on a trade or business during the calendar quarter for which the credit is determined, and...

THIS INCLUDES NONPROFITS.

Eligible Employer Defined

The operation of the trade or business is fully or partially suspended during the 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 2019 (COVID-19).



Are You Eligible?

1

DECLINE IN GROSS RECEIPTS

(50% in 2020 quarters & 20% in 2021 quarters)

OR

2

GOVERNMENT MANDATE TEST

*****Both rules need to be evaluated*****



ERC: Are You Eligible?

DECLINE IN GROSS RECEIPTS

For those who experienced **revenue declines** during the pandemic

RULE 1: Decline in Gross Receipts

QUARTERLY GROSS RECEIPTS IN 2019 COMPARED TO THE SAME QUARTERS OF 2020 & 2021

REQUIREMENTS FOR 2020:

- 50% decline in gross receipts

REQUIREMENTS FOR 2021:

- 20% decline in gross receipts

COMMON MISS:

- Alternate Quarter Rules

YEAR	Q1	RULE
2019	250,000	
2020	120,000	50% Decline in Revenue
2021	199,000	20% Decline in Revenue

ERC: Are You Eligible?

GOVERNMENT MANDATE TEST

For those who experienced **operational disruptions** during the pandemic

RULE 2: Government Mandate Test

Government Mandate Test: (Very Misunderstood)

If your organization experienced operational disruptions as a result of governmental orders that you were required to follow which **limited commerce, travel, or group meetings** due to COVID 19 mandates

Examples of Partial Suspension for Nonprofits:

- Social Distancing** – Reduced operational efficiency because of inability to work in teams
- Prohibition on Large Gatherings** – Cancelled fundraising and networking events
- Capacity Restrictions** – Even when gatherings allowed to resume, size of events restricted due to capacity res
- Cancelled Galas & Fundraisers
- Closed Stores and Marketplaces
- Cancelled Concerts and Performances
- Unable to Attend Local and National Conferences
- Business Development Limited
- Unable to Execute the Mission of the Organization

RULE 2: Government Mandate Test | Three Pillars

1

APPROPRIATE GOVERNING BODY

- City, County, State & Federal Governments
- CMS Directives (Circumstantially), OSHA (State Dependent), CDC (Circumstantially)

EXAMPLES:

- Full or Partial Shutdown
- Social Distancing
- Occupancy Restrictions
- Cleaning & Sanitization



RULE 2: Government Mandate Test | Three Pillars

2

DURING WHAT PERIOD OF TIME WAS THE GOVERNMENTAL ORDER IN AFFECT & REQUIRED VS RECOMMENDED

- You can only claim for a period in which an applicable governmental order was in effect & causing disruptions
- Language in orders must be authoritative (Recommended vs Required)
- Many providers are doing this incorrectly

	All Phase I, II, III, and IV enterprises are required to comply with general and, where applicable, sector-specific COVID-19 workplace safety rules administered by DPL, DPH, and local boards of health. Workplace safety rules include a variety of mandatory context-specific COVID-19 safety measures such as occupancy limitations, operational modifications, social distancing rules, and specialized cleaning requirements.
Phase I	As specified in COVID-19 Order No. 33: <ul style="list-style-type: none">• Businesses and other organizations providing products and services identified as "COVID-19 Essential Services" in COVID-19 Order No. 13



RULE 2: Government Mandate Test | Three Pillars

3

GOVERNMENTAL ORDER CAUSES OPERATIONAL DISRUPTION

- As a result of these governmental orders, was there more than a nominal disruption to the way you provide your goods and services



ERC: Are You Eligible?

GOVERNMENT MANDATE TEST SUMMARIZED SIMPLY

1. Were there governmental mandates imposed and were they required?
2. Over what period of time were they enforced?
3. Was the normal course of business more challenging as a result of complying with the directives?

What's ERC Worth To You?

QUALIFIED WAGES:

	2020	2021
Credit Amount	50% of qualified wages/employee per quarter	70% of qualified wages/employee per quarter
Max qualified wages	\$10,000	\$10,000
Max annual credit per employee	\$5,000	\$21,000 <small>**UNLESS RECOVERY STARTUP**</small>

INELIGIBLE WAGES:

Owner & blood relatives

PPP WAGES:

Must be 'backed out'

but does not disqualify you

When you add the potential amount available from both years, that's up to \$26,000 per employee.

Large Employers

Employee Count Limits:

2020

Business cannot exceed 100 full-time employees

2021

Business cannot exceed 500 full-time employees

Aggregation:

Complexities surrounding business owners who own additional entities

Businesses Who Exceed the Employee Count Limits:

- **Large Employer:** Only those wages paid to an employee for **not** providing services are qualified wages.



Quick Recap

- ✓ WHAT IS ERC
- ✓ WHO IT APPLIES TO
- ✓ RULES FOR ELIGIBILITY
- ✓ WHAT'S IT WORTH



Recent IRS Bulletins & The Bad Actors

ERC MILLS

- ❗ Double-dipping PPP
- ❗ Preparers not signing 941Xs
- ❗ No documentation for eligibility
- ❗ Negligent overclaims
- ❗ Self-qualifying questionnaire

“Improperly claiming the ERC could result in taxpayers being required to repay the credit along with penalties and interest.”

- **DOUG O'DONNELL** *Acting IRS Commissioner*



ERC DONE RIGHT with Strategic Tax Planning

STEP 1

Provide your documents

STEP 2

Speak with a Licensed Tax Professional

STEP 3

Eligibility Determined, Estimate Received

STEP 4

File your ERC Claims

Get started today:

<https://info.smartertaxplanning.com/blue-avocado>

Client Outcomes

Illinois Local Chamber	Nevada Charity – Large Employer	Small Washington State Chamber
Number of Employees: 21	Number of Employees: 843	Number of Employees: 6
Total credits claimed: \$252,351	Total credits claimed: \$1,043,534	Total credits claimed: \$39,236

Resources

- FAQs on the Employee Retention Tax Credit

<https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit>

- Warning Signs for Misleading Employee Retention Scams

<https://www.irs.gov/newsroom/irs-alerts-businesses-tax-exempt-groups-of-warning-signs-for-misleading-employee-retention-scams-simple-steps-can-avoid-improperly-filing-claims>

- Eligibility Checklist

<https://www.irs.gov/newsroom/employee-retention-credit-eligibility-checklist-help-understanding-this-complex-credit>

Question & Answer Session



Joan Leanos, CPA, MST
Joan.Leanos@strategictaxplanning.net



Michael W. Brewer, CPA
Michael.Brewer@strategictaxplanning.net

Get in Touch!

410-340-1067-Joan
410-227-9452-Mike
www.StrategicTaxPlanning.net

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