

# Arrow Point Tax Services

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- **Employee Retention Credit (ERC)** – Benefit; Offers a refundable Payroll Tax Credit for businesses that were materially impacted by Covid-19
  - **Post American Recovery Plan (March 2021 Stimulus), businesses now may take BOTH Paycheck Protection Program (PPP) loan forgiveness and apply for the ERC. Prior to this it was either one or the other**
  - The credit is calculated based on wages paid from March 12<sup>th</sup>, 2020 to October 1<sup>st</sup>, 2021, as well as healthcare costs covered during that period
    - May NOT double count any wages that were used to apply for PPP loan forgiveness
    - Other eligible expenses include:
      - Healthcare costs paid for employees
  - Credit amount
    - 2020 credit
      - Max credit is \$5,000 per employee for all of 2020, but need \$10,000 in qualifying wages and expenses to reach this level
        - Otherwise it is 50% of qualifying wages
    - 2021 credit
      - Max credit is \$7,000 per employee PER QUARTER, but need \$10,000 in qualifying wages and expenses to reach this level
        - Otherwise it is 70% of qualifying wages
        - \$14,000 theoretically available if meet qualification in 2021
  - Qualifying for the credit
    - 2020 credit
      - Business must have experienced a 50% or more decline in gross receipts in any calendar quarter from 2019 versus 2020
      - Business experienced a 20% or more decline in gross receipts in Q4 2019 versus Q4 2020
      - Operations were fully or partially suspended due to orders from appropriate government
        - *DK Comment: I read this as the credit looks to the quarter, so if you were impacted via shutdown for a month period, the wages*

*paid for that month would qualify assuming they were not already tied to PPP loan forgiveness. More information on how California businesses might qualify in endnote<sup>i</sup>*

- 2021 credit
  - Business experienced a 20% or more decline in gross receipts when comparing current quarter to same quarter in 2019
    - If the business did not exist in the same quarter in 2019, you may substitute 2020 instead
    - If the business did not exist in that quarter you may substitute the “immediate” preceding quarter
- 500 employee threshold
  - Any business with 500 or less full-time employees (FTEs) may apply the ERC towards all qualified wages paid to employees whether or not the employees were working at the time
  - Above 500 employees may only apply the ERC towards employees who were not working
- Refund process
  - The credit is a payroll tax credit that applies towards Social Security taxes and is fully refundable
    - Essentially the credit acts like the qualifying amount was used as an overpayment and therefore becomes refundable
  - For 2020, if taxes have already been filed, file [Form 941-X](#) to amend the payroll tax paid in previous quarter and add the credit
    - If you are a small employer (Under 500), you may use [Form 7200](#) to request an advance of the credit
- If the business has taken a Work Opportunity Tax Credit, they are ineligible for the ERC
- <https://www.claconnect.com/resources/articles/2021/newest-guidance-on-ppp-and-the-employee-retention-credit>
- <https://gusto.com/blog/taxes/employee-retention-credit>
- <https://www.irs.gov/pub/irs-drop/n-21-20.pdf>

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<sup>i</sup> "Orders, proclamations, or decrees from the Federal government or any State or local government may be taken into account by an employer as "orders from an appropriate governmental authority" only if they limit "commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the 25 coronavirus disease 2019 (COVID-19)" and relate to the suspension of an employer's operation of its trade or business. Orders that are not from the Federal government must be from a State or local government that has jurisdiction over the employer's operations. These orders are referred to as "governmental orders." Whether orders, proclamations or decrees are governmental orders is determined without regard to the level of enforcement of the governmental order. Statements from a governmental official, including comments made during press conferences or in interviews with the media, do not rise to the level of a governmental order for purposes of the employee retention credit. Additionally, the declaration of a state of emergency by a governmental authority is not sufficient to rise to the level of a governmental order if it does not limit commerce, travel, or group meetings in any manner. Further, such a declaration that limits commerce, travel, or group meetings, but does so in a manner that does not relate to the suspension of an employer's operation of its trade or

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*business does not rise to the level of a governmental order for purposes of the employer's determination of its eligibility for the employee retention credit. Governmental orders include: • An order from the city's mayor stating that all non-essential businesses must close for a specified period; • A State's emergency proclamation that residents must shelter in place for a specified period, other than residents who are employed by an essential business and who may travel to and work at the workplace location; 26 • An order from a local official imposing a curfew on residents that impacts the operating hours of a trade or business for a specified period; • An order from a local health department mandating a workplace closure for cleaning and disinfecting. Whether the operations of a trade or business are considered essential or nonessential will often vary from jurisdiction to jurisdiction. An employer should determine whether it is operating an essential or non-essential business by referring to the governmental order affecting the employer's operation of its trade or business." IRS Notice 2021-20*