

There is a lot of confusion surrounding the topic of ERC. CCI prepared this document as a service to help you make an informed decision about claiming or not claiming your refund. Any time you see content in **CCi green** then you know it came from us – otherwise, it came directly from the IRS!

***Our goal is to help as many people as possible file legitimate claims for their ERC Refund.***

Here's the link to this IRS Update (from 7/31/2023) so you can do your own comparison:  
<https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit>



# Frequently asked questions about the Employee Retention Credit

The Employee Retention Credit (ERC) – sometimes called the Employee Retention Tax Credit or ERTC – is a refundable tax credit for businesses and tax-exempt organizations. The requirements are different depending on the time period for which you claim the credit.

These frequently asked questions (FAQs) provide general information about eligibility, claiming the credit, scams and more. For technical guidance, see notices, forms and instructions on the [Employee Retention Credit](#) page. **This FAQ is divided into the following sections:**

- [Eligibility](#)
- [Qualifying orders](#)
- [Decline in gross receipts](#)
- [Recovery startup business](#)
- [Claiming the ERC](#)
- [ERC scams](#)
- [Recordkeeping](#)
- [Timing](#)

## Eligibility

**Q1. Is every business eligible for the Employee Retention Credit? (added July 27, 2023)**

A1. No.

**Q2. Who is eligible to claim the Employee Retention Credit? (added July 27, 2023)**

A2. Some promoters tell taxpayers that every employer qualifies for ERC. This is not true. Eligibility for the ERC depends on your specific facts and circumstances.

**We Agree!** This is why we always tell our clients they *might* qualify – and while most of our clients seeking a *2<sup>nd</sup> Opinion* actually do qualify there are a few (10% to 12% in our experience) who will not qualify ... but, at least you will know for sure of your status.

There are very specific eligibility requirements for claiming the ERC. [Eligible employers](#) can claim the ERC on an original or amended employment tax return for qualified wages paid between March 13, 2020, and December 31, 2021. However, to be eligible, employers must have:

- Sustained a full or partial suspension of operations [due to an order from an appropriate governmental authority](#) limiting commerce, travel or group meetings because of COVID-19 during 2020 or the first three quarters of 2021,
- Experienced a [significant decline in gross receipts during 2020 or a decline in gross receipts during the first three quarters of 2021](#), or
- Qualified as a [recovery startup business](#) for the third or fourth quarters of 2021.

### **Q3. Who is not eligible to claim the ERC? (added July 28, 2023)**

A3. You don't qualify for the ERC if you didn't operate a business or tax-exempt organization with employees.

Some examples of taxpayers who are not eligible to claim the ERC and are often targeted by ERC scam promoters include:

- Individual taxpayers who are not business owners
- Employees
- Retirees
- People who do not have employees
- Household employers
- Employers that didn't pay wages to employees during the qualifying time periods
- Employers who experienced supply chain disruptions but did not experience a full or partial suspension of operations by a qualifying order
- Government agencies

Some other limitations or exceptions apply in certain quarters for certain types of employers. See [comparison chart](#).

## **QUALIFYING ORDERS**

### **Q1. What kind of government orders qualify my business or organization for the ERC? (added July 28, 2023)**

A1. To qualify for ERC, you need to have been subject to a qualifying government order related to COVID-19 that caused a full or partial suspension of your trade or business operations. The government order may be at the local, state or federal level.

Examples of governmental orders:

- An order from the city's mayor stating that all non-essential businesses must close for a specified time period;
- A state's emergency proclamation that residents must shelter in place for a specified period, except for essential workers;

- An order from a local official imposing a curfew on residents that impacts the operating hours of your trade or business for a specified time period;
- An order from a local health department mandating a workplace closure for cleaning and disinfecting.

**Q2. Can I rely on a recommendation, bulletin or statement issued by a government authority to qualify for ERC? (added July 28, 2023)**

A2. No. To qualify for the ERC, you must have been subject to a government order that fully or partially suspended your trade or business.

Recommendations or statements encouraging you to take certain actions are not orders.

If you use a third party to calculate or claim your ERC, you should ask them to give you a copy of the government orders – not a generic narrative about an order. Read the order carefully and make sure it applied to your business or organization.

Just as the IRS warns you can't rely upon a statement that you qualify for ERC – you should not rely upon a statement saying you don't qualify for ERC! We provide you with a very detailed qualification report stating exactly why you qualify for ERC. This report can easily be 100-or-more pages in length – because we want to make sure you only claim what you should claim concerning your ERC refund.

**Q3. Is being subject to a government order enough to make me eligible for ERC? (added July 28, 2023)**

A3. No. You need to demonstrate that the government order was related to COVID-19 and that it resulted in your trade or business being fully or partially suspended.

**Q4. What does it mean to be fully or partially suspended? (added July 28, 2023)**

A4. Whether your business or organization was fully or partially suspended depends on your specific situation. For examples, see [Notice 2021-20](#), Part III, Section D.

This “Notice” is 102 pages long and uses the term “nominal” 32 times! You can find this PDF on our website. **Nominal** is another way to say – here are other ways to qualify for ERC. Can it be confusing? Absolutely. This is why we engage our team of specialists to compare your unique situation to the law so that you will know for sure whether or not you pass the test!

Some examples of who **doesn't** qualify under this eligibility factor:

- If all your employees were able to telework during the pandemic and your business continued to operate, your business wasn't suspended.
- If your customers were affected by a stay-at-home order, but no orders applied to your business operations, you weren't suspended.
- If you voluntarily closed your business or reduced hours of operation, you weren't ordered to suspend.

You could still qualify for ERC based on a decline in gross receipts even if you don't qualify under suspension of operations due to government order.

**Q5. Was my business or organization fully or partially suspended if I had a supply chain issue? (added July 28, 2023)**

A5. A supply chain issue, by itself, does not qualify you for the ERC.

The IRS provided a narrow, limited exception if an employer was not fully or partially suspended but their supplier was. However, it applied only when the employer absolutely could not operate without the supplier's product and the supplier was fully or partially suspended themselves.

In addition to having the supplier's governmental order, you will need to show that:

- The government order caused the supplier to suspend operations,
- You couldn't obtain the supplier's goods or materials elsewhere (regardless of cost), and
- It caused a full or partial suspension of your business operations.

You should be wary of anyone who says you qualify for ERC based on supply chain issues without asking for specific information about how your business or organization was affected, your supplier's situation and documentation. For more information and examples see legal memo [AM-2023-005](#) PDF.

Our supplier goes through multiple internal audits before presenting you with your amended 941's. Why? Because we want to make sure you fully comply with the law.

We affectionately call the last auditor *Attila the Hun!* They start with a "prove it to me" attitude to ensure the logic used to claim a refund actually meets legal requirements.

ERC is complex, it requires understanding hundreds if not thousands of pages of laws and bulletins that have changed every six-to-nine months since the spring of 2020.

Which makes it a wise decision to hire our team of specialist to manage this complexity for you!

**DECLINE IN GROSS RECEIPTS**

**Q1. How do I tell if I have the required decline in gross receipts to claim the ERC? (added July 28, 2023)**

A1. You may qualify for ERC if your business or organization experienced a significant decline in gross receipts during 2020 or a decline in gross receipts during the first three quarters of 2021.

Generally, this test is met by comparing the gross receipts of the calendar quarter in which ERC is considered to the gross receipts of the same calendar quarter in 2019.

- For 2020, you begin qualifying in the quarter when your gross receipts are less than 50% of the gross receipts of the same quarter in 2019. You no longer qualify in the quarter after the quarter in which your gross receipts are more than 80% of the same quarter in 2019.

For example: Your gross receipts were \$100 in each quarter of 2019. They were \$45 in the second quarter of 2020, \$85 in the third quarter and \$75 in the fourth quarter. Under these facts, you would qualify for the second and third quarter.

- For 2021, the gross receipts for the quarter must be less than 80% of the gross receipts for the same quarter in 2019.
- For calendar quarters in 2021, you can also use the alternative quarter election rule, which gives employers the ability to look at the prior calendar quarter and compare to the same calendar quarter in 2019 to determine whether there was a decline in gross receipts.

For example: Your gross receipts were \$100 in each quarter of 2019. They were \$75 in the first quarter of 2021 and \$85 in the second quarter. Under these facts, you would qualify for the first quarter using the regular gross receipts test and for the second quarter using the alternative quarter election rule.

Be sure to keep thorough records and consider whether you need to coordinate with another part of your business, such as if you're part of an aggregated group. For more information about aggregation rules, see [Notice 2021-20](#), Part III, Section B.

## **RECOVERY STARTUP BUSINESS**

### **Q1. What is a recovery startup business? (added July 28, 2023)**

A1. A recovery startup business can claim ERC only for the third and fourth quarters of 2021.

A [recovery startup business](#) is a business or organization that began carrying on a trade or business after February 15, 2020, and had average annual gross receipts of \$1 million or less for the three years preceding the quarter for which they are claiming the ERC.

The business can't be eligible for ERC under the full or partial suspension test or the gross receipts test.

A recovery startup business may claim a maximum of \$50,000 of ERC.

You should consider whether you need to coordinate with another part of your business, such as if you're part of an aggregated group. For more information about aggregation rules, see [Notice 2021-20](#), Part III, Section B.

*Do you see [Notice 2021-20](#) popping up as a reference? This is an important document which is why we put it on our website for you to look at!*

## **CLAIMING THE ERC**

### **Q1. How do I claim the ERC? (added July 27, 2023)**

A1. Eligible businesses that didn't claim the credit when they filed their original employment tax return can claim the credit by filing an amended employment tax return. For example, businesses that file quarterly employment tax returns can file [Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund](#) [PDF](#), to claim the credit for prior 2020 and 2021 quarters.

An Enrolled Agent or CPA on our team will file your amended Form 941 (commonly called a 941-X). Having a Paid Preparer file your return is a safe-guard for any future audit because the IRS uses this fact as a sorting mechanism for ferreting out fraud. Their premise? Paid Preparers limit the chance an individual return will be fraudulent.

**Reminder:** If you file Form 941-X to claim the Employee Retention Credit, you must reduce your deduction for wages by the amount of the credit for that same tax period. Therefore, you may need to amend your income tax return (for example, Forms 1040, 1065, 1120, etc.) to reflect that reduced deduction.

Did you notice the wording here? It says you “may need to amend your income tax return” ... Congress has been working on revising the law which would make your ERC refund non-taxable. BUT, until that happens, we recommend you talk with your CPA before you take any action on amending your tax return.

**Q2. Is there a deadline to claim the ERC? (added July 27, 2023)**

**Yes! Don't Wait! Get your 2<sup>nd</sup> Opinion – Today!** [savings@costcuttersi.com](mailto:savings@costcuttersi.com) • 313.880.1224 • 616.330.1224

A2. Generally, for 2020 tax periods, the deadline is April 15, 2024. For 2021 tax periods, the deadline is April 15, 2025.

**Q3. Who can sign a claim for refund for the ERC? (added July 27, 2023)**

A3. You can sign the claim for refund if you filed an original employment tax return and are:

- Sole proprietorship—The individual who owns the business.
- Corporation (including a limited liability company (LLC) treated as a corporation)—

the president, vice president, or other principal officer duly authorized to sign.

- Partnership (including an LLC treated as a partnership) or unincorporated organization—a responsible and duly authorized member, partner, or officer having knowledge of its affairs.
- Single-member LLC treated as a disregarded entity for federal income tax purposes—the owner of the LLC or a principal officer duly authorized to sign.
- Trust or estate—the fiduciary.

The claim for refund may also be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

If you used a third-party payor such as a PEO, CPEO, or 3504 agent to file your original return, you cannot file a claim for refund on your own, but will need to work with them to claim the ERC.

**Q4. What happens if I improperly claim the credit? (added July 27, 2023)**

A4. The IRS reminds anyone who improperly claims the ERC that they must pay it back, possibly with penalties and interest.

A business or tax-exempt group could find itself in a much worse cash position if it has to pay back the credit than if the credit was never claimed in the first place.

The IRS will be providing more information as it becomes available.

Remember Attila the Hun? Presuming you provide accurate information to our team then our team will make sure you qualify for everything being claimed.

**Q5. Can I claim the ERC on an amended return if I have not filed my original employment tax return? (added July 27, 2023)**

A5. No. Claims for refund will not be processed if an original employment tax return has not been filed.

We actually had one of our clients find out they missed filing a quarterly 941. We helped them file it along with their ERC claims.

**Q6. Can I file an amended return to claim the ERC if I did not issue and file forms W-2? (updated July 28, 2023)**

A6. No. The IRS will not process ERC claims for refund if the claim for refund is filed after Forms W-2 were due and you did not file Forms W-2.

**Q7. Does the ERC affect my income tax return? (added July 27, 2023)**

A7. Yes. You should reduce your wage deduction by the amount of the ERC in the tax year the wages were paid. If you already filed your return before claiming the ERC, you should amend your income tax return to reduce your wage deduction.

Did you notice A7 differs ever-so-slightly from A1? Here in A7 the IRS is saying you should amend your tax return yet in A1 they said you "may need to amend"

**Now what?** You don't have to do anything about your business tax return UNTIL you start receiving your ERC refund checks (one check for every quarter for which you qualify) – and, hopefully by then, Congress will have updated the law to explicitly state the ERC refund should be treated just like PPP money – or – not taxable.

Until then – just be patient!

## ERC SCAMS

**Q1. How do I know if I'm being scammed by an ERC promoter? (updated July 28, 2023)**

A1. Scam promoters use several different tactics to mislead people who have no chance of meeting the requirements for the Employee Retention Credit while charging them excessive fees – often thousands of dollars.

Warning signs of aggressive ERC marketing to watch out for:

- Unsolicited calls or advertisements mentioning an "easy application process," or offering a short eligibility checklist.

We work primarily with people we know – we do not do "general or blitz advertising"

- Statements that the promoter or company can determine ERC eligibility within minutes.

Eligibility determination takes time and can't start until you supply us with all of the necessary documentation (941's, Revenue by Quarter, etc.); we can provide you with a generic estimate based on our experience but remember it might be \$0 (you end up *not* qualifying for a refund) or it might be \$26k per employee!

- Large upfront fees to claim the credit.
- Fees based on a percentage of the refund amount of Employee Retention Credit claimed. This is a similar warning sign for average taxpayers, who should always avoid a tax preparer basing their fee on the size of the refund.

We require a nominal, fully refundable deposit of \$2,600 – this eliminates any “tire kicker” who is not serious about moving forward to claim their refund.

We don't shy away from our contingency fee of 20%.

- We're in the Top 3-to-5 providers of ERC services
- Our propriety programs, process, and people consistently find more refund dollars than other providers – one comparison showed 39% more
- Maximizing your refund will help offset our fee
- In one situation we put around \$50k more into our client's pocket (\$11k more in refund dollars and 5% less of a fee to do the work)

**PLUS – we provide a way for our clients to earn back their contingency fee**

- Yes – you read that correctly! We rely upon and reward our network
  - When a client refers someone to us then we will share our commission
  - We call this person an *Active Champion* for actively referring business to us
  - We've had one *Active Champion* earn over \$90k with one referral which more than paid for their \$60k ERC Contingency Fee!
- Preparers refusing to sign the ERC return being filed by the business, exposing just the taxpayer claiming the credit to risk.

**Our Enrolled Agent or CPA will sign and file your ERC return – this is moot!**

- Aggressive claims from the promoter that the business receiving the solicitation qualifies before any discussion of the group's tax situation. In reality, the Employee Retention Credit is a complex credit that requires careful review before applying.
- The IRS also sees wildly aggressive suggestions from marketers urging businesses to submit the claim because there is nothing to lose. In reality, those improperly receiving the credit could have to repay the credit – along with substantial interest and penalties.

Unscrupulous promoters may lie about eligibility requirements, including refusing to provide detailed documents supporting their computations of the ERC. In addition, those using these companies could be at risk of someone using the credit as a ploy to steal the taxpayer's identity or take a cut of the taxpayer's improperly claimed credit.

The IRS continues to see a variety of ways that promoters can lure businesses, tax-exempt groups and others into applying for the credit.



- Aggressive marketing. This can be seen in countless places, including radio, television and online as well as phone calls and text messages.
- Direct mailing. Some ERC mills are sending out fake letters to taxpayers from the non-existent groups like the "Department of Employee Retention Credit." These letters can be made to look like official IRS correspondence or an official government mailing with language urging immediate action.
- Leaving out key details. Third-party promoters of the ERC often don't accurately explain eligibility requirements or how the credit is computed. They may make broad arguments suggesting that all employers are eligible without evaluating an employer's individual circumstances.
  - For example, only recovery startup businesses are eligible for the ERC in the fourth quarter of 2021, but promoters fail to explain this limit.
  - Also, the promoters may not inform taxpayers that they need to reduce wage deductions claimed on their business' federal income tax return by the amount of the Employee Retention Credit. This causes a domino effect of tax problems for the business.
- Payroll Protection Program participation. In addition, many of these promoters don't tell employers that they can't claim the ERC on wages that were reported as payroll costs to obtain Paycheck Protection Program loan forgiveness.

**By now you know we are here to help you claim all of the credit that you are legitimately entitled to claim – not a penny less and not a penny more.**

One word about the last bullet – PPP participation and not double-dipping PPP wages with ERC wages. We tell everyone – and are quite proud of the fact – that our team has invested millions of dollars into proprietary software to ensure you don't inadvertently double count wages used for PPP as part of your ERC claim.

Our software "wage balances" and preserves wages that can be used in calculating your ERC refund. This is why we consistently get 15%-to-30% more of a refund than what other providers achieve. Again, the devil is in the details and that is why we let our ERC specialists handle all of the details.

## **Q2. How can I protect myself from ERC scam promoters? (updated July 28, 2023)**

A2. The IRS reminds businesses, tax-exempt groups and others being approached by these promoters that they can take simple steps to protect themselves from making an improper Employee Retention Credit claim.

**The only reason why you are reading this document is because someone you trust encouraged you to contact us!** We will be just as careful calculating your eligibility and refund amount as we were in calculating your friend's refund.

- Work with a trusted tax professional. Eligible employers who need help claiming the credit should work with a [trusted tax professional](#); the IRS urges people not to rely on the advice of those soliciting these credits. Promoters who are marketing this ultimately have a vested

interest in making money; in many cases they are not looking out for the best interests of those applying.

- Request a detailed worksheet explaining ERC eligibility and the computations used to determine the ERC amount.
- Don't accept a generic document about a government order from a third party. If they say you qualify for ERC based on a government order, ask for a copy of the government order. Review it carefully to make sure it applied to your business or organization.
- Don't apply unless you believe you are legitimately qualified for this credit. Details about the credit are available on IRS.gov, and again a trusted tax professional – not someone promoting the credit – can provide critical professional advice on the ERC.

For more information on warning signs of ERC scams and how to report fraud, see the [Employee Retention Credit](#) page.

## RECORDKEEPING

### Q1. What records do I need to support my eligibility for the employee retention credit? (added July 27, 2023)

A1. In general, you need to have the records you relied on to show:

*All of the information you placed into your client portal along with your qualification report should be kept for a minimum of seven (7) years.*

- That your business operations were suspended, including the specific government order;
- You experienced the required decline in gross receipts;
- Which employees received qualified wages and in what amounts;
- That you paid qualified wages only to employees who were not providing services, if you are a large eligible employer;
- How you allocated qualified health plan expenses;
- Your relationship to other businesses or entities and how it affects your ERC claim (see aggregation rules in [Notice 2021-20](#), Part III, Section B);
- Any completed Forms 7200 that you submitted to the IRS;
- Any completed federal employment and income tax returns related to your claim for ERC.

## TIMING

### Q1. How long will it take to get my Employee Retention Credit? (added July 28, 2023)

*It's been our experience when a refund check is less than \$200k it will take three-to-twelve months to show up in your mailbox; and, any refund check over \$200k will take over twelve months to arrive in the mail.*

*Remember, you only pay 20% when you receive a check and it's only on the amount claimed in the 941-X – meaning, any interest paid back to you is yours to keep!*

A1. The IRS continues to process ERC claims as quickly as possible. We understand the importance of these credits, and we appreciate the patience of employers and tax professionals as we continue to get valid claims processed – while also protecting against fraud.

For the most current information about processing, see [IRS Operations: Status of Mission Critical Functions](#).

## **MORE INFORMATION AND RESOURCES ON ERC**

- [Employee Retention Credit](#) – includes notices, forms and instructions
- [ERC Webinar](#)
- [Legal memo regarding supply chain disruptions](#) [PDF](#), July 21, 2023
- [Professional Responsibility and the Employee Retention Credit](#) [PDF](#) (03/07/23)

**\*\*\* this is the official end of the 7/31/2023 IRS document \*\*\***

In a separate update, [IR-2023-135, July 26, 2023](#), IRS Commissioner Danny Wefel is quoted as having said “the agency has entered a new phase of increasing scrutiny on dubious submissions while renewing consumer warnings against aggressive marketing.”

Most of the points raised in the 7/26 news release were also covered in the 7/31 FAQ document. **We fully support this effort to reduce fraud but respectfully point out that someone else committing fraud should not keep organizations from filing legitimate claims for their ERC refund.**

**We affectionately call this the Ronald Reagan *Trust-but-Verify 2<sup>nd</sup> Opinion!***

Some have projected there should be at least 20-to-22 million legitimate claims for ERC refunds. IR-2023-135 states there have been more than 2.5 million claims filed. 2.5M is 12.5% of 20M and 50% of 5M – regardless of the remaining amount of legitimate claims to be filed, [don't you want to know for sure if you have a legitimate claim?](#)

In order to address fraud and error, Werfel is also quoted as having said “We will work with Treasury to explore legislative solutions ... including potentially putting an earlier ending date for businesses to claim the credit...”

**Don't Wait! Reach out to us for a 2<sup>nd</sup> Opinion!** ([savings@costcuttersi.com](mailto:savings@costcuttersi.com) • 313.880.1224 • 616.330.1224)

While we've referenced on our website the full IRS update from March (IR-2023-40), we included here the paragraph containing the most relevant quote of then Acting Commissioner, Doug O'Donnell – because it pertains to the “conversation” we've been having so far in this document!

Please continue reading on the following page ...

"While this is a legitimate credit that has provided a financial lifeline to millions of businesses, there continue to be promoters who aggressively mislead people and businesses into thinking they can claim these credits," said Acting IRS Commissioner Doug O'Donnell. "Anyone who is considering claiming this credit needs to carefully review the guidelines. If the tax professional they're using raises questions about the accuracy of the Employee Retention Credit claim, people should listen to their advice. The IRS is actively auditing and conducting criminal investigations related to these false claims. People need to think twice before claiming this."

- We agree this is a legitimate credit & has provided a financial lifeline to millions of organizations
- We agree there are some who mislead people to claim a refund for which they do not qualify
- We disagree that "if the tax professional ... raises questions ... people should listen ...."
  - Why? **Implied in this statement is that you will listen to their advice & not apply**
    - many times, the tax professional is just quoting this type of warning
    - many times, they have not analyzed the facts to determine if you have a legitimate claim
  - **Just as you cannot identify in minutes that you qualify for a refund – you cannot in just a few minutes determine that you do not qualify for a refund**
  - Unless your tax professional goes through the effort to compare your situation to the law then they are just stating an opinion about your situation
  - **We analyze your data & give you the facts so you can make an informed decision**

This is truly a limited time opportunity to claim your legitimate, ERC refund. **Don't Wait! Reach out to us to secure your complimentary, "Trust but Verify" 2<sup>nd</sup> Opinion!** ([savings@costcuttersi.com](mailto:savings@costcuttersi.com) • 313.880.1224 • 616.330.1224)