

# LATEST UPDATES ON THE NEW STIMULUS PACKAGE

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withum<sup>+</sup>

**nj**car

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# The PPP Forgiveness

- Where we are:
  - Full application portals up and running from the banks
  - PPP1 applications should be submitted, PPP2 starting up.
  - Expedited review and approval from the SBA
  - No legislation to amend the current program

# ERC Generally

- What is it?
  - ERC is a fully refundable credit for certain wages paid to employees during specified periods of economic hardship
- When was it enacted?
  - March 27, 2020, as part of CARES Act
- Did it change recently? Yes
  - December 27, 2020 – Consolidated Appropriations Act, 2021
    - Eliminated ban on ERC if taxpayer also obtained a PPP loan – created retroactive 2020 refund opportunity
    - Extended ERC into first two calendar quarters of 2021, and made it more generous than the 2020 ERC
    - Expanded access to 2020 ERC – raised cap from 100 to 500 employees, *etc.*
  - March 1, 2021 – IRS issued [Notice 2021-20](#) (102 pages)
    - Addresses 2020 ERC only, not the 2021 ERC
    - Incorporate the IRS [FAQs](#) and addresses additional issues
  - March 11, 2021 – American Rescue Plan Act of 2021 (ARPA)
    - Adds §3134 to the Code (the ARPA ERC)
    - Extends the ERC through December 31, 2021 and adds additional eligibility criteria for Recovery Startup Businesses, among other things
    - Extended statute of limitation on ERC from 3 to 5 years
  - April 2, 2021 – IRS issued [Notice 2021-23](#) (17 pages)
    - Addresses changes applicable to 2021 ERC **for the first two calendar quarters only** (later guidance will address Q3 and Q4)
    - Discusses election to use previous quarter, amount of credit, qualified wages, *etc.*

# Overview of ERC

	<b>2020</b> (see Notice 2021-20)	<b>2021</b> (see Notice 2021-23)
<b>Eligibility</b>	<p>Either full or partial suspension of operations (see <a href="#">Q&amp;As #11-22</a>; <a href="#">FAQs #30-38</a>)</p> <p>OR</p> <p>Quarterly drop in 2020 gross receipts by more than 50% compared to the same quarter in 2019, and continuing through quarter where gross receipts are at least 80% of the same quarter in 2019 (see <a href="#">Q&amp;As #23-28</a>; <a href="#">FAQ #39-46</a>)</p>	<p>Either full or partial suspension of operations OR</p> <p>Quarterly drop in 2021 gross receipts by more than 20% Q1 2021 v. Q1 2019 Q2 2021 v. Q2 2019 Q3 2021 v. Q3 2019 Q4 2021 v. Q4 2019 (or elect to use previous quarter, e.g., Q4 2020 v. Q4 2019)</p>
<b>Wage Period</b>	3/13/20 – 12/31/20 (see <a href="#">FAQ #1</a> )	1/1/2021 – 12/31/2021
<b>Qualified Wages</b>	<p>Up to \$10K of wages (including qualified health plan expenses) per employee, for all of 2020 (see <a href="#">Q&amp;As #30-39</a>; <a href="#">FAQs #48-61</a>)</p> <p>(includes health plan expenses if no cash wages paid)</p>	<p>Up to \$10K of wages (including qualified health plan expenses) per employee, in each quarter of 2021</p> <p>(includes health plan expenses even if no cash wages paid)</p>

## Overview of ERC (cont'd)

<b>Credit Amount</b>	50% of Qualified Wages (see <a href="#">Q&amp;A #19</a> ; <a href="#">FAQ #47</a> )  (max \$5K per employee <u>per year</u> )	70% of Qualified Wages  (max \$7K per employee <u>per quarter</u> ; total of \$28K for 2021)
<b>Advance Payments</b>	Employers can request an advance payment after reducing employment tax deposits (Refundable Credit Utilized)	Employers with 500 or fewer full-time employees in 2019 can request an advance payment after reducing employment tax deposits



## Overview of ERC (cont'd)

<b>Covered Employees</b>	<p>If the average number of full-time employees in 2019 was <math>\leq 100</math>, then the wages of all employees; if <math>&gt; 100</math>, then only the wages of employees <b>not</b> providing services (see <a href="#">FAQ #6</a>)</p>	<p>If the average number of full-time employees in 2019 was <math>\leq 500</math>, then the wages of all employees; if <math>&gt; 500</math>, then only the wages of employees <b>not</b> providing services</p> <p>If severely financially distressed in Q3 or Q4 2021 (gross receipts decline <math>&gt; 90\%</math>), then ERC includes wages of all employees regardless of size</p>
<b>PPP</b>	<p>Available even if obtained a PPP loan (and can be claimed retroactively)</p> <p>Wages used for PPP loan forgiveness cannot also be used to claim the ERC</p>	<p>Available even if obtained a PPP loan</p> <p>Wages used for PPP loan forgiveness cannot also be used to claim the ERC</p>

# Key Eligibility Differences

## 2020 ERC

- Full or partial suspension
- > 50% reduction in gross receipts
  - Company remains eligible through quarter which greater than 80% gross receipts restored

## 2021 ERC

- Full or partial suspension
- > 20% reduction in gross receipts
  - Can elect to utilize prior calendar quarter to test eligibility under gross receipts test

# Test #1 – Full or Partial Suspension

- 3-part test –
    - government order restricts operations,
    - the order limits commerce, travel, or group meetings, and
    - the order affects the typical operations of the business in a non-trivial manner
    - (aggregation rules apply – see [Q&A #21](#))
  - Government orders include federal/state/local orders (e.g., closure of nonessential businesses, curfews, shelter-in-place orders, workplace closures), but not statements in press conferences or in interviews with the media, or declarations of a state of emergency unless they limit commerce, travel, or group meetings (see [Q&A #10](#))
  - More than a nominal portion of the business must be affected
    - Safe harbor offered by the IRS provides that nominal is < 10% of gross receipts (determined using same calendar quarter in 2019), or < 10% of total hours of service performed by all employees in the business (determined using same calendar quarter in 2019) ([Q&A #11](#))
  - Common examples
    - Reduction in seating capacity
    - Reduction in hours of operation
    - Order prohibits suppliers from making delivery of critical goods to an essential business ([Q&A #12](#))
    - Partial closure of operations
- Examples that do not meet the test
- Partial closure but business can run comparably through telework ([Q&As #15-16](#))
    - Factors: employer’s telework capabilities, portability of employee’s work, need for presence in employee’s physical workspace, and transitioning to telework operations
  - Business able to operate but sales were down due to reduced demand or loss of business or customers ([Q&A #13](#)) (but consider 50% declines in gross receipts test)

# Test #1 – Full or Partial Suspension

## **Executive order 107 – issued March 21<sup>st</sup>**

*The brick-and-mortar premises of all non-essential retail businesses must close to the public as long as this Order remains in effect. Essential retail businesses, listed below, are excluded from this directive and may remain open during their normal business hours.*

*Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics*

While the executive order carved out a specific exception to remain open for service departments, dealership showrooms were closed, and the order also asked New Jersey residents to remain home. New Jersey was a ghost town for several weeks and many of our dealership clients closed their doors during these first few weeks until the March 30<sup>th</sup> order.

# Test #1 – Full or Partial Suspension

## **Administrative Order No. 2020-6 – issued March 30<sup>th</sup>**

*Car dealers may continue to conduct online sales or remote sales that can be completed by phone, text, or email, and are consistent with current law. Such sales shall be deemed permissible in accordance with paragraph 6 of Executive Order*

*No. 107. In the event of such a sale, the car may be delivered to the purchaser or the purchaser can pick up the car curbside or in the dealership service lane. Picking up a car from a dealership shall be considered essential retail business for the purposes of paragraph 6 of Executive Order No. 107.*

This started limited sales through remote contact only.

# Test #1 – Full or Partial Suspension

## **Administrative Order No. 2020-13 – issued May 22<sup>nd</sup>**

*1. Car and used car dealerships, motorcycle dealerships, boat dealerships, and bicycle shops are added to the list of essential retail businesses in accordance with paragraph 6 of Executive Order No. 107, but must operate under the following provisions:*

*a. Limit occupancy at 50% of the stated maximum store capacity and require all customer visits, including sales, to be by appointment only;*

## Test #2 – Decline in Gross Receipts

### 2020 ERC

- Quarterly drop in gross receipts by more than 50% compared to the same quarter in 2019
  - Can be any single quarter, and does not need to be related to COVID-19
  - If you qualify for one quarter you automatically get the next quarter because you stay eligible *through* the quarter you establish gross receipts rise above 80%

### 2021 ERC

- Quarterly drop in 2020 gross receipts by more than 20% compared to the same quarter in 2019
  - Can be any single quarter, and does not need to be related to COVID-19
  - If you qualify for one quarter you generally also get another quarter due to law which states that you can elect to use the prior quarter to test eligibility

## ERTC Summary

- 2020 ERTC was based on the existence of a partial or full suspension of operations, or a substantial (more than 50%) decline in gross receipts (100 employees or less)
- Fully refundable tax credit equal to 50% of wages paid between March 13, 2020, and December 31, 2020, to employees up to a maximum amount of \$10,000 per employee for 2020
- Max credit for wages paid to any employee is \$5,000 (50% of \$10,000) (annual)



## ERTC Summary

- 2021 ERTC was based on the existence of a partial or full suspension of operations, or a substantial (more than 20%) decline in gross receipts (500 employees or less)
- Fully refundable tax credit equal to 70% of wages paid for each quarter to employees up to a maximum amount of \$10,000 per employee
- Max credit for wages paid to any employee is \$7,000 (70% of \$10,000) per quarter
- Gross receipts test does not include PPP wage forgiveness amount



Q U E S T I O N S ..

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