

# Employee Retention Credit Tax Strategy Planning Opportunities

Q&A

Can a sole proprietorship/Schedule C with only the owner as an employee utilize the ERC?

No, sole proprietors (Schedule C filers) do not receive qualified wages. An owner of a sole proprietorship is not considered an employee and does not receive wages. Sole proprietors draw funds from the expected profits of the business. These are not paychecks, and no taxes or FICA is withheld.

Just to be clear, when we are looking at the number of employees that we have to see how much of the wages are eligible, we are supposed to look at the average full-time employees for 2019 and not 2020 or 2021?

A business should calculate the average number of full-time employees for 2019 by taking the sum of full-time employees (at least 30 hours of service per week, or 130 hours of service per month) in each calendar month and dividing that number by 12.

How soon will the IRS process and pay ERC credit from filing 941X?

Right now, we believe the IRS's process and payment time on form 941X to be roughly 6-9 months. Returns are being processed in the order that they are received. The IRS is also taking steps to speed up the process. For instance, it is re-routing tax returns from IRS offices that are further behind to those that have more staff availability. Ultimately, these delays should not discourage a business claiming the credit if they are entitled to the funds.

Is there a way to track where your refund payment is on the IRS que?

No, there is not currently a way to track an ERC refund payment.

Once submitted, is there any way to know if the 941X has been received by the IRS?

No, the IRS does not currently have a way to check if a 941x has been received. The only way to know that the IRS has received the 941x is by sending the returns via certified mail.

Do we amend our tax returns once the refund has been received or once we file our 941X?

The tax returns must be amended once the 941x has been filed.

Does the \$10,000 EIDL grant count toward gross receipts since it was not considered taxable income?

We do not believe the EIDL grant needs to be included in gross receipts for ERC purposes. The IRS has not specifically addressed the EIDL advance grant, but Rev. Proc. 2021-33 allows taxpayers to exclude forgiven PPP loan amounts, Shuttered Venue Operator Grants, and Restaurant Revitalization Grants from gross receipts, solely for purposes of determining eligibility for the ERC. In addition, The SBA does not consider the EIDL advance grants part of gross receipts.

An insurance office that has paid everyone in full during the pandemic - some have worked from home, but the business has continued operating. PPP round 1 was funded and forgiven. Would there likely be an ERC credit?

It depends. Partial suspensions are subjective in nature. In this example, if the insurance office can show that the business was operating at less than capacity as compared to the period prior to covid than it is possible that it would qualify.

If we have 8 employees but one of them is the owner, then the eligible wages are only the 7 non-owner employees?

The answer to this question depends on a lot of factors. If the business is a sole proprietor, the only wages that could qualify would be for the 7 employees. If the business is an s-corp. with one owner and no family members.

If you are disqualified for Quarter 4 of 2020, can you claim credit in 2021?

Yes, each quarter is independent from one another for ERC eligibility purposes.

Does a business determine if we are qualified for each quarter, and then calculate the credit for each quarter?

Yes, a business would want to determine which quarters they are eligible and then use the payroll from each quarter to identify the qualified wages and calculate the credit.

What do you do if you already filed for ERC and used owner and relative wages before this ruling came out?

This is a difficult question. The business would need to amend the 941X, but the timing of the amended 941X would be tough to determine. The business would probably need to wait until the first form is processed and then file a 2nd amended 941X including the payment for the overpayment of exempt relative wages.

Our PPP Loan1 was forgiven - we showed 500k payroll for the 24 week, but our loan was only 300K. Can we still use the 200k for the ERC?

If your PPP loan was forgiven before December 27, 2020, then yes. If the loan was forgiven after that date, then only wages that were not included as payroll costs on the PPP loan forgiveness form can be used for qualified wages.

A Sub-S corp who files amended returns, will need to send revised K1's? Shareholders receiving revised K1s will need to file amended returns as well?

Yes, since an s-corp. is a passthrough entity, the credit will increase tax liability for all shareholders. Revised K-1s will need to be sent and shareholders receiving the revised K-1s will need to amend their personal returns.

To be clear - the potential ERC is 7.65% of qualifying wages?

No, ERC can be much greater than 7.65% of qualifying wages.