

The image features the word "FORVIS" in a large, bold, red, sans-serif font on the left side. To the right of the text, there is a decorative graphic consisting of several parallel, diagonal stripes in two shades of red, creating a sense of movement and depth. The stripes are set against a white background.

# FORVIS

## **Rethinking the ERC for Long-Term Care Facilities**

October 18, 2022

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# Presenters



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# ERC Program Overview

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# Employee Retention Credit Overview

Established under the Coronavirus Aid, Relief, & Economic Security Act (Cares) Act

- Effective March 27, 2020
- Up to \$5k payroll tax credit per employee
- Originally NOT available to PPP loan recipients

Modified under the Consolidated Appropriations Act (CAA)

- Effective December 27, 2020
- Several retroactive & prospective changes, including availability of program for PPP loan recipients

# Employee Retention Credit Overview

ERC Under the Cares Act

ERC 2020

## Payroll tax credit equal to 50% of qualified wages paid

- Up to \$5K credit per employee (EE) (based on \$10k of qualified wages per EE)
- Applies to wages paid March 13 through December 31, 2020
- Statute of limitations on ERC expires 3 years from 941 filing date

**No employee count limit**

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# Employee Retention Credit Overview

What is an eligible employer?

Must meet 1 of 2 criteria

- Gross receipts for calendar quarter in 2020 are <50% of gross receipts for the same calendar quarter in 2019, **OR**
- Full or partial suspension of business operations during 2020 as a result of government order limiting commerce, travel, or group meetings due to COVID-19

# Partial Suspension of Business Operations Requirements

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**Did government order detrimentally affect your business?**

- Full suspension of operations not required, essential businesses still eligible
- Has to be a mandate, NOT recommendations
- Were you required to change your business practices materially?

**Did the orders detrimentally impact your business more than a nominal amount?**

- Defined as >10%
- Significant census/patient days decline



# Employee Retention Credit Overview

## WHAT ARE QUALIFIED WAGES? SMALL VS. LARGE EMPLOYER

### Average FTEs 100 or Fewer

- Wages paid to ALL employees during qualified disruption period
- Includes healthcare costs

### Average FTEs Over 100

- Wages paid to employees not providing some or all services during qualified disruption period
- Includes healthcare costs

### Notes

- *The 100-employee count applies to computation of 2020 qualified wages & is based on **2019** full-time employee headcount on an aggregated basis. Changes to the 2021 ERC calculation detailed later in this presentation*
- *Companies under common ownership have to be aggregated when determining full-time employee headcount*

# Employee Retention Credit Overview

Small Business Example:  
Company with 100 EEs

EEs each earn \$500/week

Employer pays healthcare costs of \$500/week per EE

Total Qualified Wages

\$1,000 per EE per week

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ERC 2020

Number of weeks to max-out credit	
Maximum Credit-Eligible Wages per EE	\$10,000
Weekly Wages Paid per EE (÷)	\$1,000
Number of Weeks to Max-Out Credit	10

Maximum Credit Opportunity	
Maximum Credit per EE	\$5,000
Number of EEs	100
Total Maximum Credit	\$500,000

*Therefore, a small employer eligible for 1 quarter could reach a maximum credit amount of \$500,000*

# Employee Retention Credit Overview

Large Business Example:  
Company with 1,000 EEs

Company furloughed 500 EEs,  
continuing to pay healthcare of  
\$500/week per EE

Total Qualified Wages

\$500 per EE per week

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ERC 2020

Number of weeks to max-out credit	
Maximum Credit-Eligible Wages per EE	\$10,000
Weekly Wages Paid per EE (÷)	\$500
Number of Weeks to Max-Out Credit	20

Maximum Credit Opportunity	
Maximum Credit per EE	\$5,000
Number of EEs	500
Total Maximum Credit	\$2,500,000

*Therefore, in this example employer could receive a credit of \$2,500,000 if eligible for 2 quarters*

# Retroactive Enhancements to the ERC

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# COVID Relief Bill + Cares Act

COVID Relief Bill – Impact on  
ERC

On December 27, 2020, the president signed into law the Consolidated Appropriations Act, 2021 (“CAA” OR “COVID Relief Bill”)

The CAA/COVID Relief Bill significantly bolsters the ERC originally introduced by the CARES Act in March 2020

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# COVID Relief Bill + Cares Act

COVID Relief Bill – Impact on ERC

## Retroactive Enhancements

- Clarified definition of “gross receipts” for tax-exempt employers
- Confirmed healthcare costs paid to furloughed employees are qualified wages



# Retroactive Enhancements

## Interactions with PPP Loans

Enabled PPP loan recipients the ability to claim the ERC

- Must still qualify as an eligible employer for ERC
- Wages on which ERC are claimed cannot be used in PPP loan forgiveness computation

*Could have adequate wages to claim ERC & obtain full loan forgiveness, if EE headcount/payroll is consistent in 2019 vs. 2020*

# Retroactive Enhancements

Loan Forgiveness & ERC

- Cannot double dip, but may still apply for ERC on “non-forgiveness” wages
- IRS will allow ERC claimed on wages in excess of wages needed for loan forgiveness
- Evaluate ERC eligibility & interaction of PPP & ERC wages

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# 2021 Enhancements to the ERC

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# 2021 Enhancements

Extension of program through  
September 30, 2021\*

*\* Originally through 12/31/2021 but 4th  
quarter eliminated with passing of  
Infrastructure bill*

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## Modification of employer eligibility requirements

- Gross receipts for calendar quarter in 2021 are <80% of gross receipts for the same calendar quarter in 2019
- For determining eligibility in 2021, an employer may elect to use the prior quarter's gross receipts for purposes of this test, *i.e.*, for Q1 2021 eligibility, may elect to compare to Q4 2020 gross receipts to Q4 2019 gross receipts

# 2021 Enhancements

May claim up to \$10,000 in qualified wages per employee, **per quarter**

Credit amount equal to 70% of qualified wages

- \$7,000 maximum credit per employee, **per quarter**

An eligible employer may now claim a credit of up to \$26,000 per employee between 2020 & 2021

Change in definition of “large employer” for purposes of determining qualified wages

- Large employer = >500 full-time employees (based on 2019)
- Companies below this threshold may claim all wages paid as qualified wages

# Employee Retention Credit Overview

Small Business Example:  
Company with 100 EEs

EEs each earn \$500/week

Employer pays healthcare  
costs of \$500/week per EE

Total Qualified Wages

\$1,000 per EE per week

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Number of weeks to max-out credit	
Maximum Credit-Eligible Wages per EE	\$50,000
Weekly Wages Paid per EE (÷)	\$1,000
Number of Weeks to Max-Out Credit	62

Maximum Credit Opportunity	
Maximum Credit per EE	\$26,000
Number of EEs	100
Total Maximum Credit	\$2,600,000

*Therefore, in 4 quarters of eligibility, i.e., Q4 2020-Q3 2021, this example employer could reach a maximum credit amount of \$2,600,000*



# Case Studies

- Long-Term Care Facility
  - Credit amount: \$5,200,000
  - Number of EEs: 300
- Long-Term Care Facility
  - Credit amount: \$2,200,000
  - Number of EEs: 100
- Long-Term Care Facility
  - Credit amount: \$9,300,000
  - Number of EEs: 500
- Hospital with Related LTCF
  - Credit amount: \$1,000,000
  - Number of EEs: 50 (LTCF only)

# Pitfalls in Picking a Trusted Advisor

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## Read Engagement Letter Thoroughly

- Audit defense?
- Do they provide an audit defensible deliverable, or just promise to defend it if chosen for audit?
- Obligation to pay if you disagree with eligibility?
- If contingency fee, paid at receipt of credit?
- Who pays penalty & interest?
- Do a Google search

## Deliverables

- Is preparing/signing the 941X part of deliverable?
- Have CPA review deliverables before income tax return amendment

# Employee Retention Credit/CARES Act + CAA + ARPA + Infrastructure Bill

## COVID RELIEF BILL – IMPACT ON EMPLOYEE RETENTION CREDIT (ERC)

On Dec. 27, 2020, the president signed into law the Consolidated Appropriations Act, 2021 (CAA), followed by the American Rescue Plan Act (ARPA) signed on March 11, 2021. These acts significantly bolster the ERC originally introduced by the Coronavirus Aid, Relief, & Economic Security Act (CARES Act) in March 2020. Below is a summary of amendments in these acts related to ERC; & a comparison to the earlier CARES Act



Employee Retention Credit (ERC)	Original CARES Act for 2020	CAA/ARPA/Infrastructure Bill Changes for 2021
Eligible Employer	For 2020, an employer may qualify for the credit if they meet <u>one</u> of the following <ul style="list-style-type: none"> <li>Govt. Mandate – Your offices were closed, or operations partially suspended by a government order; OR</li> <li>Gross Receipts – You experienced a 50% or more decline in gross receipts compared to the same quarter in 2019</li> </ul>	Gross Receipts Test Modifications – For 2021 an employer may qualify for the credit if gross receipts for a quarter are less than 80% of gross receipts compared to the same quarter in <u>2019</u> (Govt. order test remains the same)
Eligible Period	Eligibility period through the end of 2020	Eligibility period extended through the 1 <sup>st</sup> three quarters of 2021
Credit Percentage	50% of qualified wages applicable for the entirety of 2020	70% of qualified wages applicable for each of 1 <sup>st</sup> three quarters of 2021
Qualified Wage Limit	\$10,000 per employee for the entirety of 2020	\$10,000 per quarter, per employee (\$30,000 total)
Maximum Potential Credit	\$5,000 (50% of \$10,000) per employee for the entirety of 2020	\$21,000 (70% of \$30,000) per employee for all of 2021
Qualified Wages – Definition	Employers with 100 or fewer full-time employees in 2019 (small employer) – all wages & healthcare costs paid during eligibility period Employers with more than 100 full-time employees (large employer) – all wages paid to employees who are <b>NOT</b> providing services (full or partial reduction)	Increases definition of small employer to 500 or fewer employees in 2019, allowing wages & healthcare paid to ALL employees to qualify for employers with 500 or fewer employees
PPP Loan Impact	Companies that received a loan under the Paycheck Protection Program (PPP) were unable to claim an employee retention credit, even if such loan was not forgiven	Companies are <u>retroactively</u> eligible to claim both an ERC & a PPP loan. However, any wages used for forgiveness of the PPP are <u>ineligible</u> to also be claimed for the ERC
Small Employer Max Credit Example	Eligible small business employer with 100 employees could receive up to \$500K credit in 2020	Eligible small business employer with 500 employees could receive up to \$10.5M credit in 2021

# Service Offerings



## Phase 1 – Scoping

- High-level analysis of employer eligibility
- Estimated range of credit & costs to appropriately qualify & document position

## Phase 2 – Quantification/Credit Calculation

- Identify eligible employees, *i.e.*, furloughed, decreased hours, etc.
- Calculate credit-eligible wages, healthcare costs, calculate credit

## Phase 3 – Compliance (if needed)

- Preparation/review of quarterly Form 941 filings

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# Questions?

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