

Forbes ERC Articles

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Employee Retention Credit: Top Ten Mistakes Of Business Owners And Their Advisors

Dean Zerbe, Contributor

[Edited for brevity]

The Employee Retention Credit (ERC) is a tax credit first put in place [in 2020] as a temporary coronavirus-relief provision to assist businesses in keeping employees on payroll. Since then, [...] the ERC has been extended for all of 2021. [...]

I've seen first-hand businesses receive tens and hundreds of thousands of dollars in tax credits struggling to keep employees on payroll and their doors open. [...] Unfortunately, I also see, in my work at alliantgroup, far too many business owners who are making mistakes as to whether their business qualifies for the ERC and how their business should properly document that they qualify for the ERC in order to pass muster with the IRS.

The Top Ten Mistakes and Misunderstandings Surrounding the ERC:

1. I can't claim ERC if I've already claimed PPP (or gotten my PPP loans forgiven).

Now you can claim both! Congress, in the Consolidated Appropriations Act (CAA) of 2021, removed the limitation on only claiming one or the other. [...]

2. My business did not have a drop in gross receipts of 50% or more.

[Congress] changed the qualifications so that a reduction of 20% now qualifies. BUT remember there is also another way to qualify for the ERC – if your business has been subject to a partial or full suspension due to a government order – see the next point.

3. My business was not shut down during the pandemic.

Even a partial suspension order by the government (federal, state, or local) of your business could potentially qualify. For instance, a partial shutdown, a disruption in your business, inability to access equipment, having limited capacity, shutdowns of your supply chain or vendors, reduction in services offered, reduction of hours to accommodate sanitation, shut down of some locations and not others, and shutdowns of some members of a business are all scenarios that still potentially qualify for the ERC. The key considerations are – due to the government ordered partial (or full) suspension is/was your business *not* able to continue its activities in a comparable manner, and did that result in a more than nominal impact on business operations. Remember, the partial or full suspension is an alternative way to qualify for the ERC – separate from the reduction in gross receipts test.

4. My company was deemed an essential business, so I do not qualify because of business suspension.

Even if your business is deemed essential, an impact or change in your business may still qualify you. For example, even if you were open but your vendors were closed down or you can't go to a client's job site, you may still qualify. [...] The scenarios discussed above in *Mistake 3* could apply here as well.

5. My company has grown during quarantine, this isn't something I should take.

Great news! If your company has grown during quarantine, but experienced a full or partial suspension, there are expenses that may qualify.

6. Sales have rebounded for us in Q1 of 2021, I can't qualify for this credit.

[...]You have the option to look at one quarter prior to determine qualification. This means we can determine eligibility based on lost revenue in 2020. Also, if you were subject to a full or partial suspension, you may qualify regardless.

7. We were in losses, or do not have any tax liability.

This is a refundable credit. In practice, this means that any credit overage above tax liability is sent to the taxpayer/business owner as a refund.

8. My company has grown to over 500 employees, so we are not eligible for the ERC.

The employee count restriction is based on full time [...] employees, which is a more involved calculation than just counting everyone in the office. We helped a business with 640 employees and the [...] calculation put them at under 500. Furthermore, if you paid any employees to NOT work, or to work less than the hours for which they were paid, then the employee count restriction *would not apply* for those employees.

9. I'm a charity and the ERC is only for business.

The ERC also may provide significant benefit to charities – churches, nonprofit hospitals, museums, etc. Charities can be particularly good candidates for the ERC.

The Tenth Mistake – Failure to Document – the Taxman Cometh.

The ERC is a refundable tax credit – providing robust benefits. If you had to draw up a tax provision that makes the IRS lie awake at night – it would be a refundable tax credit involving real dollars. I am blinked at the number of businesses – and their tax advisors – I see who believe that they can just create their own simple form, check a few boxes and the IRS will whistle a happy tune. As my drill sergeant would say (often) – “You are doing it wrong.”

While the ERC is certainly a taxpayer – friendly relief provision – the IRS is not just giving dollars away. [...] In talking with the former senior IRS officials I work closely with at alliantgroup, it is clear that the best practice is for business to provide contemporaneous documentation now – when determining whether they qualify. To avoid headaches and heartaches down the road – businesses need to have counsel to properly and fully document and paper how the business qualifies for the ERC.

Business owners need to be eyes open as to whether their company qualifies for the ERC (and not miss out on this terrific tax incentive); and, also eyes open on ensuring that their business crosses “t’s” and dot “i’s” to make sure that the IRS is in a happy place. Good opportunities.

FROM Forbes Magazine, Feb, 2022

Employee Retention Credit: Still The One (Latest Update)

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[Edited for brevity]

The Employee Retention Credit (ERC) [...] provides employers up to \$7,000 per employee per quarter in refundable tax relief for the first three quarters of 2021 (and a reduced benefit for 2020).

The IRS management anticipated that approximately 70%-80% of small and medium businesses (as well as tens of thousands of charities) were good candidates for taking the ERC. The reality is – to date the actual numbers of businesses and charities applying for the ERC – is far below that. Small and medium businesses (as well as tax-exempts/charities) are leaving billions of dollars on the table.

As I’ve written in the past – the ERC is a misunderstood tax benefit – with small and medium business owners and managers of charities either not knowing about the ERC or being wrong [...] about what they know.

In addition, employers often don’t appreciate that there are basically two ways you can qualify for the ERC: 1) reduction in revenues; and, 2) if your business/charity has had a more than nominal impact due to federal, state, local government or regulatory COVID orders. [...]

Finally, some business owners and charity managers wrongly think ERC is only for entities that are in distress/under water. No. Congress viewed this provision as a means of encouraging businesses and charities to retain employees and hire new employees – helping to weather the economic hardships and costs brought by COVID.

In practice, alliantgroup has found that an extremely broad range of businesses are good candidates for the ERC – including restaurants, manufacturing, construction, food industry, healthcare – and when it

comes to charities/tax exempts – churches, museums, food kitchens, schools, are just the start of the list.

IRS Processing and Guidance

Processing of ERC credits for businesses and tax-exempts has been caught up in the general grind of work at the IRS. [...]

Separately, to the IRS' credit, they did recently issue a helpful comparison sheet – that is useful in illuminating the different changes that have been made overtime [sic] to the rules regarding ERC. One of the mistakes business owners and charitable managers have made is not understanding that Congress has changed the rules of the ERC several times in the short period of its existence – primarily for the better. [...]

For many business owners and managers of tax-exempts – the ERC remains the go-to relief from the pandemic. Yet hundreds of thousands of businesses and charities across the country are failing to take advantage of the ERC. Billions of dollars are available for the businesses and charities to retain employees and hire new employees. But you have to apply.