

A high-angle, top-down photograph of a group of approximately ten business professionals of various ages and ethnicities. They are gathered in a circle on a floor made of large, rectangular, grey stone tiles. They are all leaning forward with their hands pressed together in the center, forming a huddle. The lighting is bright and even, suggesting an indoor office or meeting space.

Create Cash with Employee Retention Credits and the New PPP Loan Changes

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Today's Agenda

- Opening Remarks
- PPP Borrowers no Longer Excluded from Employee Retention Credits (ERC)
- Employee Retention Credits Provisions
- No Lost Deductions Under PPP Program for Federal Purposes
- Paycheck Protection Program (PPP) Loan Forgiveness Updates
- Provides Additional Funds for Original PPP Borrowers
- Creates Second Draw PPP Loans for a Limited Group of Businesses
- Restaurant Revitalization Grants



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Employee Retention Credit (ERC)

PPP Borrowers may be Eligible for 2020 and 2021 Credits



ERC – Value Proposition

- For 2020:
 - For Qualified wages, paid from March 13, 2020 through December 31, 2020, up to \$10,000 per year per employee, the credit is 50% (\$5,000)
- For 2021:
 - For Qualified wages up to \$10,000 per quarter (for all quarters of 2021) per employee, the credit is 70% (\$7,000)

Note: The Employee Retention Credit is taxable for Federal Income Tax Purposes.



ERC – Do I Qualify

- Decreased Revenue:
 - 2020 – 50% Quarter over Quarter
 - 2021 – 20% Quarter over Quarter
- Operations Shut Down or Curtailed:
 - Due to Government Order – 2020 and 2021
- Received a PPP Loan:
 - For wages not included in the PPP loan forgiveness process/application
- Number of Employees:
 - 2020 – 100 or less
 - 2021 – 500 or less
 - If over limit – For those paid that are not working



ERC – How Do I Calculate It

- Determine Your Qualifying Wage by Quarter
 - Gross wage – tie the amount to your 941
 - Group healthcare expense
 - Some retirement benefits may qualify
- Reduce the Wages Included In the PPP Loan Forgiveness Application (if your loan forgiveness application has not been completed, maximize the non-payroll expense (60%-payroll / 40%-non-payroll) and/or shorten the covered period to the shortest time period possible between the 8 and 24 weeks – PPP period requirement)
- Limit The Qualifying Wage to the \$10,000 limit (annual for 2020 and quarterly for 2021)

ERC – How Do I Calculate It

Any Company
ERC Computation
2020 By Quarter

Q# 2020								
Name	941 Wages			PPP Wages	Eligible Wages & Qualifying Wages			
	Gross Wages	Pre-tax Ded	Taxable Wages		Eligible Wage	Heathcare	Total Eligible	Qualifying
Anderson	30,000.00	1,549.99	28,450.01	17,070.01	11,380.00	400	11,780.00	10,000.00
Brady	9,000.00	-	9,000.00	5,400.00	3,600.00		3,600.00	3,600.00
Carson	25,000.00	1,125.87	23,874.13	14,324.48	9,549.65	200	9,749.65	9,749.65
Folkman	15,000.00	-	15,000.00	9,000.00	6,000.00		6,000.00	6,000.00
James	21,000.00	851.28	20,148.72	12,089.23	8,059.49		8,059.49	8,059.49
Scott	18,000.00	-	18,000.00	10,800.00	7,200.00		7,200.00	7,200.00
Thomas	15,000.00	-	15,000.00	9,000.00	6,000.00		6,000.00	6,000.00
West	24,000.00	1,110.24	22,889.76	13,733.86	9,155.90	200	9,355.90	9,355.90
	157,000.00	4,637.38	152,362.62	91,417.57	60,945.05	800.00	61,745.05	59,965.04
941 line 2					Credit % 0.50			
					Credit 29,982.52			



ERC – How Do I Claim It


- 2020 Claims:
 - Since you have already filed your 2020 payroll tax returns and paid the taxes, you will need to calculate the credit by quarter and file an amended tax return (Form 941X) for each quarter you are claiming the credit
- 2021 Claims:
 - Since you most likely have not filed your 2021 payroll tax returns and paid the taxes, when you do file the returns, you will complete line 11 through 13 on your 941 and pay the lesser tax amount.

Note: There may be a need to file a Form 7200 if the tax reduction is greater than the tax owed.



ERC Action Plan for PPP Borrowers

- Investigate Employee Retention Credit that are now available to PPP borrower
- **Cost/Benefit Evaluation for 2020**
 - Was business operation interrupted due to government orders?
 - Did quarterly gross receipts decline by greater than 50% compared to same quarter in 2019?
 - After decline, did gross receipts recover to 80% compared to same quarter in 2019?
 - Qualifying wages must exclude wages used for PPP loan forgiveness
 - Maximum credit is \$5,000 per employee, generally those paid when not working unless 100 or fewer full-time employees
- **More Lucrative for 2021**
 - Requires only a greater than 20% decline in quarterly revenue compared to the same quarter in 2019
 - Maximum credit is \$28,000 per employee, generally those paid when not working unless 500 or fewer full-time employees

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New PPP Loan Changes


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No Lost Deductions Under PPP Program for Federal Purposes



PPP Loan Eligible Expenses Are Deductible

- Forgiveness of PPP loan not taxable income
- Expenses Deductible
 - No deduction shall be denied,
 - No tax attribute shall be reduced, and
 - No basis increase shall be denied
- Prior IRS positions in Notice 2020-32 and Rev Ruling 2020-27 no longer apply
- IRS guidance would be helpful on how to deduct previously disallowed expenses
- Tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness
- **However, Utah will tax the PPP loan forgiveness in the year the loan is forgiven**

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PPP Loan Forgiveness Updates



New Forgiveness Application for Loans that Do Not Exceed \$150,000

- SBA issued a new one-page simplified forgiveness application form – Form 3508S (Revised 1/19/21) that applies to first or second draw PPP loans
 - **Certification**
 - Number of employees retained because of the PPP loan;
 - Amount of the PPP loan spent on payroll costs; and
 - Total PPP loan value
 - **Attestation**
 - Spent the PPP loan on eligible expenses and
 - Retains records that prove compliance with PPP requirements
 - Employment records retained for 4 years following submission of the form and
 - Other records retained 3 years following submission of the form
- If your loan is \$50K or less, not subject to FTE reduction or wage reduction
- If loan is +\$50K, borrower is still subject to FTE reduction or wage reduction adjustments to forgiveness
- No additional documentation is required as part of the application
- Borrower remains subject to audit which might require the documentation and result in modifications



PPP Loan Forgiveness

- Costs eligible for loan forgiveness – First and Second Draws:
- Same as PPP 1:
 - Payroll costs (clarified to now include employer contributions for group health, life, disability, vision or dental insurance)
 - Mortgage interest – Rent – Utility payments
- For loans not yet forgiven additional non payroll expenses are eligible
 - **Covered operations expenditures** - business software or cloud computing services that facilitate business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting of tracking supplier, inventory, records and expenses
 - **Covered property damage costs** - uninsured costs related to property damage and vandalism or looting due to 2020 public disturbances
 - **Covered supplier costs** - payments for essential goods for which the borrower was obligated prior to the covered period or during the covered period for perishable goods
 - **Covered worker protection expenditures** - operating or capital expenditures to comply with beginning on March 1, 2020 and ending at the end of the COVID-19 national emergency (drive through window, air filtration system, sneeze guards, expansion of dining area, health screening, materials for personal safety)
- Change made retroactively to the effective date of CARES Act and applies to original PPP loans and new PPP loans (unless forgiveness has already been processed)
- Still, no more than 40% of the forgiven amount can be used for nonpayroll cost



Change to End of Covered Period

- Start of Covered Period remains the same - the date PPP loan funds were disbursed to the borrower
- Borrower selects the end date that is at least 8 weeks later but not more than 24 weeks after the loan disbursement date
- Removes the need for alternative payroll covered period
- End of Covered Period impacts safe harbor
 - Borrowers that reduce wage or employment levels during the Covered Period can lose loan forgiveness unless safe harbor excludes the reductions
 - For loans issued before August 9, 2020, the safe harbor must be satisfied by December 31, 2020
 - New borrowers, including Second Draw loans, must satisfy the safe harbor by the end of the Covered Period



Other Provisions Affecting Forgiveness

- Economic Injury Disaster Loan (EIDL) grants that were advanced to borrowers do not reduce PPP forgiveness amount
 - Any EIDL advance amounts previously deducted from a borrower's forgiveness amount will be remitted to the lender, together with interest to the remittance date
- Any payroll costs used to support newly available ERC or Families First Coronavirus Response Act (FFCRA) payroll credit cannot be used for PPP loan forgiveness
 - Borrower has the option to choose between treating eligible wages as support for Employee Retention Credit (ERC) or PPP forgiveness



American Rescue Plan Act of 2021 (ARPA) - Provisions Affecting PPP

- Provides an additional \$7.25 billion funding for PPP loans
- Additional expansion to certain large nonprofit entities (500 or less employees per location)
 - Section 501(c)(5) labor organizations
 - Section 501(c)(7) social and recreational clubs
 - Section 501(c)(8) fraternal benefit societies
- “Additional Covered Nonprofit Entities” also eligible for PPP loan
- Digital media companies that employ not more than 500 employees per physical location and is an internet-only news or periodical publisher eligible loan
- Shuttered Venue Operators Grant (SVOG) can now apply for PPP loans, but any SVOG amount received will be reduced by the amount of PPP funds approved
 - SVOG is expected to be launched by the SBA in early April

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Additional Funds Provided for Original PPP Loans




Eligibility for First Draw

- Did not yet receive a PPP loan or qualifies for an increase of original loan
- **Generally, CARES Act rules apply**
 - Small business per SBA size standards or special definition of 500 or less US employees
 - In business on February 15, 2020
- Application deadline is March 31, 2021 or exhaustion of funds using SBA Form 2483 (Revised 3/3/21) / Form 2483-C (Revised 3/3/21) (1st Draw) Sch C Using Gross Income
- **Economic Aid Act makes additional employers eligible**
 - 501(c)(6) organizations, other than professional sports leagues or certain organizations involved in lobbying or participating in political campaigns (300 EES or less)
 - News Organizations with NAICS code 511110 or 5151 (500 EES or less per location)
 - Housing Cooperatives (300 EEs or less)
 - Destination Marketing Organizations (300 EEs or less)
- **Economic Aid Act specifies the following are ineligible**
 - Publicly-traded entities (for new loans)
 - 501(c)(6) entities that are professional sports leagues and that are involved lobbying or political campaigns
 - Entities that receive a grant under new program “Save Our Stages”



Limitations on First Draw Loans

- Generally, the same as CARES Act provisions - 2.5 months of average payroll cost
- **Modified by Economic Aid Act for**
 - Additional payroll costs **group life**, **disability**, vision or dental insurance
- **Can be used to pay additional expenses**
 - **Covered operations expenditures** - business software or cloud computing services that facilitate business operation
 - **Covered property damage costs** - uninsured costs related to property damage and vandalism or looting due to 2020 public disturbances
 - **Covered supplier costs** - payments for essential goods for which the borrower was obligated prior to the covered period or during the covered period for perishable goods
 - **Covered worker protection expenditures** - operation or capital expenditures to comply with guidance beginning on March 1, 2020 and ending at the end of the COVID-19 national emergency (drive through window, air filtration system, sneeze guards, expansion of dining area, health screening, materials for personal safety)

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PPP Second Draw Loans



Who is Eligible?

- Previous PPP loan recipient
- That has or will spend the original loan funds prior to receipt of 2nd draw and will apply on SBA Form 2483-SD (3/21) by 3/31/21 / Form 2483-SD-C (Revised 3/3/21) (2nd Draw) Sch C Using Gross Income
- Employs not more than 300 employees (determined by location for NAICS 72 (accommodations and food services industry), 511110 or 5151 entitles, and entities assigned a franchise status by the SBA)
- Had at least a 25 percent reduction in gross receipts during any quarter of 2020 from gross receipts during the same quarter in 2019
 - Can use quarterly financial statements or bank statements
 - Allowed to use annual receipts from 2019 tax return compared to 2020 tax return information
 - Special provisions for entities not in business during 2019
- **Necessity certification must be considered**
- Ineligible if:
 - Primary activity is political or lobbying activities, including research, advocacy such as public policy, political strategy or self described as a think tank
 - Has ties to the People's Republic of China or the Special Administrative Region of Hong Kong,
 - Required to register under section 2 of the Foreign Agents Registration Act of 1938, or
 - Receive a grant under Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act



Top Questions

- Can a borrower **apply for second draw if they didn't spend all the money** from the 1st draw? What if borrower won't (or didn't) qualify for **full forgiveness on the 1st draw**?
 - **Refer to Interim Final Rule on Second Draw Loans**
 - Before **second draw is disbursed**, borrower must certify that it **has used the full loan amount** (including any increase) of the first draw **only for eligible expenses**
 - Does not mean 100% forgiveness of PPP loan is required
 - Does not mean that application for forgiveness has been submitted
 - But some lenders are setting their own policies and require forgiveness applications for first draw before accepting application for second draw
 - Funds could have been spent **after the end of the first draw covered period** on eligible expenses
 - **All of first draw must be spent on eligible expenses**



Maximum Second Draw

- Generally, 2.5 times average monthly payroll cost calculated for the 12 months prior to the application or for 2019 calendar year
- Limited to \$2 million/\$4 million for affiliated group
- Special rule for NAICS Code 72 entities (accommodation and food services industries)
 - 3.5 times average monthly payroll costs
- Other special rules
 - Seasonal employers
 - New entities



Loan Forgiveness Requirements and Review Procedures as Amended by Economic Aid Act

- Provisions apply to first or second draw loans
 - 60/40 payroll to non-payroll, FTE reductions, wage reductions, etc.
- Alternative covered payroll period is gone – borrower picks their covered period as any time between 8 and 24 weeks
- FTE safe harbor – if loan is made after December 27, 2020, the safe harbor date is the last day of covered period
- For Second Draw PPP loans in excess of \$150,000, submit forgiveness application for the First Draw before or simultaneously with the loan forgiveness application for the Second Draw PPP Loan




Restaurant Revitalization Grants Administered by SBA

- Eligible businesses in which public or patrons assemble for the primary purpose of being served food or drink
- Businesses not eligible include restaurants with more than 20 locations (using a 50% aggregation test), applied for or received a SVOG, are publicly traded, or are operated by a state or local government
- Priority may be given to restaurants with revenues \$500K or less in revenue
- Tax-free federal grant cannot exceed \$10.0 million or \$5.0 million per location and applicable expenses deductible
- Calculation of tax-free federal grant
 - Established Restaurants: $(2019 \text{ Rev.}) - (2020 \text{ Rev.} + \text{PPP Rec.})$
 - Restaurants opened in 2019: $(12 \times \text{Avg. Rev.}) - (2020 \text{ Rev.} + \text{PPP Rec.})$
 - Restaurants opened in 2020: Eligible expenses less revenue and PPP Rec., if any



Summary Dates to Watch

- The new PPP loan and the second draw PPP loan application deadline is currently March 31, 2021 or the exhaustion of funds, but this deadline may be extended
- The American Rescue Plan Act extended the ERC through the end of 2021, as well as provided new eligibility for “Recovery Startup Businesses,” an expanded credit for “severely financially distressed” employers, and an increased statute of limitations for assessments to five years
- Retroactive ERC for 2020 payments can be claimed by filing Forms 941X for applicable quarters
- The American Rescue Aid Act extended the FFCRA payroll tax credit until September 30, 2021 and increased the eligible wage maximums and allows for qualified paid leave related to getting the COVID-19 vaccine

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Q&A



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