

COVID-19-Related Employee Retention Credits: Special Issues for Employers FAQs

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Please see [Notice 2021-20](#) [PDF](#) for guidance on the Employee Retention Credit as it applies to qualified wages paid after March 12, 2020, and before January 1, 2021.



These FAQs do not reflect the changes made by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted December 27, 2020, or the American Rescue Plan Act of 2021 (ARP Act), enacted March 11, 2021. The Relief Act amended and extended the employee retention credit (and the availability of certain advance payments of the tax credits) under section 2301 of the CARES Act for the first and second calendar quarters of 2021. The ARP Act modified and extended the employee retention credit for the third and fourth quarters of 2021.

This FAQ is not included in the Internal Revenue Bulletin, and therefore may not be relied upon as legal authority. This means that the information cannot be used to support a legal argument in a court case.

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Special Issues for Employers: Income and Deduction

85. Does the Employee Retention Credit reduce the expenses that an Eligible Employer could otherwise deduct on its federal income tax return?

Yes. Section 2301(e) of the CARES Act provides that rules similar to section 280C(a) of the Internal Revenue Code (the "Code") shall apply for purposes of applying the Employee Retention Credit. Section 280C(a) of the Code generally disallows a deduction for the portion of wages paid equal to the sum of certain credits determined for the taxable year. Accordingly, a similar deduction disallowance would apply under the Employee Retention Credit, such that an employer's aggregate deductions would be reduced by the amount of the credit as result of this disallowance rule.

86. Does an Eligible Employer receiving an Employee Retention Credit for qualified wages need to include any portion of the credit in income?

No. An employer receiving a tax credit for qualified wages, including allocable qualified health plan expenses, does not include the credit in gross income for federal income tax purposes. Neither the portion of the credit that reduces the employer's applicable employment taxes, nor the refundable portion of the credit, is included in the employer's gross income.

Special Issues for Employers: Use of Third Party Payers

87. Can an Eligible Employer that uses a third party to report and pay employment taxes to the IRS get the Employee Retention Credit?

Yes, if a common law employer is otherwise eligible to receive the Employee Retention Credit, it is entitled to the credit, regardless of whether it uses a third party payer (such as a reporting agent, payroll service provider, PEO, CPEO, or agent) to report and pay its federal employment taxes. The third party payer is not entitled to the Employee Retention Credit with respect to the wages it remits on the employer's behalf (regardless of whether the third party is considered an "employer" for other purposes of the Internal Revenue Code (the "Code")). If an employer uses a third party to file, report, and pay employment taxes, certain rules for claiming/reporting the Employee Retention Credit will apply depending on the type of third party payer the employer uses.

If an Eligible Employer uses a reporting agent to file the Form 941, Employer's Quarterly Federal Tax Return, the reporting agent will need to reflect the Employee Retention Credit on the Form 941 it files on the employer's behalf.

If an Eligible Employer uses a CPEO or a 3504 agent to report its federal employment taxes on an aggregate Form 941, the CPEO or 3504 agent will report the Employee Retention Credit on its aggregate Form 941 and Schedule R, Allocation Schedule for Aggregate Form 941 Filers, that it already files. An Eligible Employer can submit its own [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), to claim the advance credit. The Eligible Employer will need to provide a copy of the Form 7200 to the CPEO or 3504 agent so the CPEO or 3504 agent can properly report the Employee Retention Credit on the Form 941.

If an Eligible Employer uses a non-certified PEO to report and pay its federal employment taxes, the PEO will need to report the Employee Retention Credit on an aggregate Form 941 and separately report the Employee Retention Credit allocable to the employers for which it is filing the aggregate Form 941 on an accompanying schedule R. The PEO does not have to complete Schedule R with respect to employers for which it is not claiming an Employee Retention Credit. The Eligible Employer will need to provide a copy of any Form 7200 that it submitted for an advance to the PEO so the PEO can properly report the Employee Retention Credit on the Form 941. These rules are similar to the rules that apply with respect to the payroll tax election available under section 41(h) of the Code for the credit for certain research and development expenses.

88. May a payroll reporting agent sign and submit Form 7200 on behalf of a client? (updated June 19, 2020)

A payroll reporting agent (RA) may sign [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#), for a client for which it has the authority, via Form 8655, Reporting Agent Authorization, to sign and file the employment tax return (e.g., Form 941, Employer's Quarterly Federal Tax Return). The signatory must be the Principal or Responsible Official listed on the RA's e-file application. The signatory may sign with ink on paper or

may use the alternative signature method (rubber stamp, mechanical device, or computer software program; for details and required documentation, see [Rev. Proc. 2005-39, 2005-28 I.R.B. 82](#)). Consistent with Rev. Proc. 2005-39, an alternative signature must be in the form of a facsimile signature. The RA will submit the form via fax to 855-248-0552.

The RA must obtain written authorization from the client (paper, fax, or e-mail) to perform these actions regarding the Form 7200. The RA need not submit that authorization to the IRS, but should retain it in its files so that the RA can furnish it to the IRS upon request. For a client for which a third party does not have a Reporting Agent Authorization, it may complete and print the form, or it may provide the client a means to complete and print the form, but the client will have to sign it.

The signatory for the RA must sign, date, and print his or her name in the relevant boxes on Form 7200. In the box, "Printed Title," the signatory must include the RA company name or name of business as it appeared on line 9 of the Form 8655. If the RA company name or name of business from the Form 8655 is missing, the Form 7200 cannot be processed.

89. What information must third party payers obtain from their client employers to claim the Employee Retention Credit on their client's behalf?

If a third party payer (CPEO, PEO, or 3504 agent) is claiming the Employee Retention Credit on behalf of the client employer, it must collect from the client any information necessary to accurately claim the Employee Retention Credit on its client's behalf. This includes obtaining information with respect to the client's claims for credits under section 45S of the Internal Revenue Code and under the FFCRA, as well as whether the client has received a Paycheck Protection Program (PPP) loan authorized under the CARES Act.

90. May third party payers rely on client employer information regarding the Employee Retention Credit? (updated June 19, 2020)

If a third party payer is claiming the Employee Retention Credit on behalf of the client employer, the third party payer may rely on the client employer's information regarding the client employer's eligibility to claim the Employee Retention Credit, and the client employer may maintain all records which substantiate the client's eligibility for the Employee Retention Credit.

However, upon request by the IRS, the third party payer must obtain from the client employer and provide to the IRS records that substantiate the client's eligibility for the Employee Retention Credit. The client employer and the third party payer will each be liable for employment taxes that are due as a result of any improper claim of Employee Retention Credits that are improperly claimed in accordance with their liability under the Internal Revenue Code and applicable regulations for the employment taxes reported on the employment tax return filed by the third party payer on which the credit was claimed.

91. Upon request by the IRS, what records must third party payers obtain from their client employers to substantiate the client's eligibility for the Employee Retention Credit?

If a third party payer is claiming the Employee Retention Credit on behalf of the client employer, it must, at the IRS's request, be able to obtain from the client and provide to the IRS records that substantiate client's eligibility for the Employee Retention Credit.

92. Are client employers responsible for avoiding a "double benefit" with respect to the Employee Retention Credit and the credit under section 45S of the Internal Revenue Code? (updated June 19, 2020)

Yes. The client employer is responsible for avoiding a “double benefit” with respect to the Employee Retention Credit and the credit under section 45S of the Internal Revenue Code. The client employer cannot use wages that were used to claim the Employee Retention Credit, and reported by the third-party payer on the client employer’s behalf, to claim the 45S credit on its income tax return.

Other Issues

93. May an Eligible Employer elect to forego the Employee Retention Credit?

Yes. Any Eligible Employer may elect not to apply the Employee Retention Credit for any calendar quarter by not claiming the credit on the employer's employment tax return.

94. May an Eligible Employer change an election to forego the Employee Retention Credit?

Yes. If an Eligible Employer elected not to claim the Employee Retention Credit in one calendar quarter, the Eligible Employer is not prohibited from claiming the credit in a subsequent calendar quarter for qualified wages paid in that subsequent quarter provided it meets the requirements to claim the credit. In addition, an Eligible Employer can file a claim for refund and make an interest-free adjustment for a prior quarter to claim the Employee Retention Credit to which it was entitled in a prior quarter, following the rules and procedures for making such claims or adjustments. See the instructions to Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund. However, qualified wages paid during the first quarter of 2020 should be reported on the employer's second quarter Form 941, Employer's Quarterly Tax Return. Therefore, an employer should not file a Form 941-X to make an adjustment for qualified wages paid during the first quarter of 2020. See [How does an Eligible Employer report qualified wages paid in the first quarter of 2020?](#)

Example: Employer H paid qualified wages during the second quarter of 2020 but did not claim an Employee Retention Credit on its second quarter 2020 Form 941, Employer's Quarterly Tax Return. If Employer H subsequently decides to claim the credit for the second quarter of 2020, Employer H should file a Form 941-X within the appropriate timeframe to make an adjustment. Employer H should not use its third quarter 2020 Form 941 to claim an Employee Retention Credit for qualified wages paid in the second quarter of 2020.

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