



# ERTC Updated CARES Act and ARP guidance for the Employee Retention Tax Credit (ERTC)

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The Jewish Federations<sup>®</sup>  
OF NORTH AMERICA

Questions at [SBALoans@JFNA.org](mailto:SBALoans@JFNA.org)



# Agenda

- American Rescue Plan Act Update
- IRS Notice 2021-20
- IRS Notice 2021-23
- Fact Pattern Discussion
- Q&As



# American Rescue Plan Act Extends/Expands ERTC for 2021

## Key Provisions

- The employee retention tax credit (ERTC) can be claimed through Dec. 31, 2021.
- 70% of qualified wages up to \$10,000 per quarter for all of 2021 (\$7,000/quarter) up to \$28,000 for 2021.
- Gross receipts test only requires 20% drop (down from 50% in 2020) in the quarter compared to the same quarter in 2019.
- Definition of small employer increased to 500 or fewer employees (100 in 2020).





## Key Clarifications

- Employers that received a PPP loan can now still qualify for the ERTC.
  - Can qualify for both ERTC and PPP loan forgiveness, just not for the same wage payments.
  - Can structure PPP loan forgiveness application to maximize ERTC.
- Notice describes what constitutes a government shut down and new objective 10% test.
  - An employer will not be considered fully or partially shut down if the employees can effectively telework.





## Highlights

- **Gross receipts** include investment income, dividends, rents, royalties, contributions, gifts, grants, dues or assessments from members/affiliated orgs and includes aggregation rules.
- **Lookback rule clarifications:**
  - Employers can elect to use the preceding calendar quarter (as opposed to the current calendar quarter) for gross receipts test.
  - “Qualified wages” can include an increase in wages paid to employees compared to prior quarter.
  - Only “small employers” can obtain an advance payment from the IRS. The advance is limited to 70 percent of “average quarterly wages” for the comparable quarter in 2019.





# Common ERTC Questions/Issues for Nonprofits

Q: Often a 501(c)(3) organization receives a restricted gift from a donor. The agency either has no discretion on how to spend the money or the money is expected to be passed through to another nonprofit agency. Should these gifts be included in the calculation of gross receipts?

A: **Probably.** The definition of gross receipts for nonprofits is very broad and will generally cover grants/gift. The IRS may need to release additional guidance addressing this issue.





# Common ERTC Questions/Issues for Nonprofits

Q: Is parsonage paid to an employee included in the definition of qualified wages for the ERTC?

A: **Probably not.** Parsonage payments to clergy are typically treated as self-employment income and therefore are not eligible for the ERTC. Only amounts paid to employees and subject to FICA taxes under Code section 3121 can be considered qualified wages.





# Common ERTC Questions/Issues for Nonprofits

Q: Assume a 501(c)(3) organization has 500 or fewer employees. After Jan 1, 2021, if one business unit of nonprofit is shutdown (either full or partially) due to a government or CDC mandate, are all of the organization's employees' wages eligible to be included in the ERTC calculation?

A: **Yes.** Employers that operate a trade or business in multiple locations and are subject to state and local governmental orders requiring full or partial suspension of operations in some, but not all, jurisdictions are considered to have a partial suspension of operations and would be an eligible employer for the ERTC.







# Common ERTC Questions/Issues for Nonprofits

Q: Would switching to a remote or hybrid learning model qualify a school for full/partial shutdown status?

A: **Probably not.** If an employer's workplace is closed by a governmental order, but the employer is able to continue operations comparable to its operations prior to the closure, including by requiring its employees to telework, the employer's operations are not considered to have been fully or partially suspended as a consequence of a governmental order...Could qualify for others (e.g., a JCC gym) is closed due to partial order.





# Common ERTC Questions/Issues for Nonprofits

Q: For the quarters when a seasonal employer is not operating full time, how does the seasonal employer calculate eligibility and application of the tax credit?

A: IRS Notice 2021-23 outlines alternative lookback methods that can be utilized. A seasonal employer would **generally just compare gross receipts** to the comparable quarter in 2019 to determine eligibility.





# Common ERTC Questions/Issues for Nonprofits

Q: The government mandate to operate under a partial shutdown ends during the quarter when the 501(c)(3) with less than 500 employees receives its Second Draw PPP loan. Can the agency maximize both its ERTC and ability to qualify for forgiveness?

A: **Yes**, but the answer is predicated on the entity qualifying for the ERTC and not utilizing wages paid with forgiven PPP loan proceeds. The PPP loan forgiveness application should include payments for other covered expenses (e.g., rent) to potentially maximize the ERTC.





# Common ERTC Questions/Issues for Nonprofits

Q: In 2021, A 501(c)(3) organization with 300 employees has an affiliation relationship (common board control) with another nonprofit agency who has 250 employees. It files a separate 990 under a different EIN number and operates from a separate location. Can either entity be considered a small employer for the ERTC?

A: If the entities are considered affiliated under Code section 414(m) by reason of common control, they will **not qualify** as small employers. The fact that the entities have different EINs is not considered controlling.





# Common ERTC Questions/Issues for Nonprofits

Q: How to claim ERTC?

A: In anticipation of receiving ERTC, eligible employers can (1) **reduce** their deposits of federal employment taxes (includes taxes withheld) that would otherwise be required up to the amount of the anticipated credit on Form 941, and (2) request an **advance** of the amount of the anticipated credit that exceeds the reduced federal employment tax deposits by filing Form 7200.

Form 7200 is only utilized if there is insufficient employment tax deposits. Form 941-X is used to obtain the credit for past quarters. For 2021, only small employers can claim an advance and the advance cannot exceed 70 percent of the average quarterly wages paid in calendar year 2019.





# Questions and Answers Continued



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