

2021
National Income
Tax Workbook
Chapter 12:
PAYROLL AND TAX
CREDIT ISSUES



Topics

P. 447

Issue 1: Payroll Tax Overview

Issue 2: Payroll Tax Deferral

Issue 3: Employee Retention Credit

Issue 4: Sick Leave and Family Leave Credits

Issue 5: COBRA Premium Assistance Credits

Payroll Tax
Overview
P. 448

- **FICA wages:**
 - Old-age, survivors, and disability insurance (**OASDI**) = 12.4% capped at \$142,800 in 2021
 - Employer pays 6.2%, withholds 6.2%
 - Hospital insurance (**Medicare**) = 2.9%
 - Employer pays 1.45%, withholds 1.45%
- **Additional Medicare tax** = .9% above \$200,000 for single/HOH and \$250,000 for MFJ, must withheld from employee if employer pays more than \$200,000

Payroll Tax Deposits

PP. 449-450

Schedule based on amount of employer's payroll


Cross-Reference – Limited Penalty Relief due to COVID

Payroll Tax Reporting

- Most file quarterly Form 941
- Agricultural employers file annual Form 943
- With IRS permission, very small employers file annual Form 944

Information Reporting Deadlines for 2022


- January 31, 2022 – employer must send Form W-2s to employees and file W-2 and W-3 with SSA



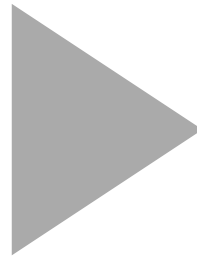
Self-Employed
Taxpayers
P. 450

- ✓ 12.4% social security tax on earnings, up to \$142,800 in 2021, minus any wages paid
- ✓ 2.9% Medicare tax on earnings and an additional .9% Medicare tax on earnings above \$200,000 for single and \$250,000 for MFJ
- ✓ SE tax on 92.35%
- ✓ Reported on Form 1040, Schedule SE
- ✓ No SE tax is due for earnings < \$400
- ✓ Cross-Reference Estimate Tax Payments
- ✓ Self-employed individuals (who are not farmers) must generally make estimated payments if they expect to owe \$1,000 or more.

POLLING QUESTION #1



I don't
prepare
payroll
returns



True or
False



Issue 2: PAYROLL TAX DEFERRAL

PAYROLL TAX DEFERRALS P. 451

CARES ACT – Employer deferral

- 3/27/20 through 12/31/20

Executive Order – Employee deferral

- 9/1/20 through 12/31/20
- Bi-weekly wages less than \$4,000

PAYMENT OF EMPLOYER PAYROLL TAX DEFERRAL P. 451

Repay 50% by 12/31/21

Repay 50% by 12/31/22

Observation – Nonbusiness Days – pay on the next business day

Payment first applied to 50% due in 2021

Example 12.1 – Dogwood Landscaping deposited \$10,000 of total \$30,000 owed. Pay \$5,000 (one-half of total owed) by 12/31/21.

How to Pay P. 452

Deferred amounts owed may be paid (1) electronically using the Electronic Federal Tax Payment System (EFTPS), (2) by credit or debit card, or (3) by check or money order.

If paying by EFTPS, select Form 941 and the calendar quarter in 2020 to which the payment relates. Separate payment for each quarter.

If paying by check or money order, include a 2020 Form 941-V, Payment Voucher. Fill in the circle for the correct quarter.

Self-Employed – Deferred Payroll Taxes P. 453

Self-Employed could
defer 50% of social
security tax

Repay the deferred tax
in two installments, 50%
by December 31, 2021,
and the rest by
December 31, 2022

Pay by EFTPS or by
credit or debit card,
money order or with a
check

Separate payments
from other tax
payments

Independent of other
tax payments

Designate as "deferred
Social Security tax"

Employee –
Deferred Payroll
Taxes P. 453

Self-Employed
could defer 50% of
social security tax

Withhold and pay
ratably between
1/1/21 and
12/31/21

Interest/penalties
begin to accrue
1/1/22

Issue 3: EMPLOYEE RETENTION CREDIT



Employee
Retention
Credit
P. 454

Fully refundable payroll tax credit

- Amount of credit **may exceed payroll taxes due.**
- **Get your wages back!**

Amend Payroll Returns

Employee Retention Credit P. 454

2020 & 2021 Rules

CARES Act – March 12, 2020
thru January 1, 2021

TCDTRA – extended thru June
31, 2021

ARPA – extended thru
December 31, 2021

TCDTRA – ERC & PPP

Practitioner Note -
ERC and the Self-
Employed P. 455

Self-employed individuals are **not eligible** for the ERC because they do not earn wages.

They may claim credit for wages paid to their employees.

ERC – Eligible Employers

P. 455

- Operate Trade or Business
- Fully or partially suspended
- Appropriate Government Orders
- COVID-19
- Significant Decline in Gross Receipts

Practitioner
Note
P 455

Eligible Employer vs. Qualified Wages

- Employer – fully or partially suspended
- Qualified Wages – eligible wages during full or partial shutdown

Eligible Employers P. 455

- Must be in a ***trade or business***
- Household Employers are not eligible for the ERC
- Tax exempt organizations are deemed to be in a T or B for all their operations

Eligible Employers P. 455

Practitioner Note – Entity Type

Employers of any size are eligible

Tax exempt organizations under IRC §501(c) and §501(a) are eligible

Federal, state, and local government entities not eligible in 2020

Tribal governments are eligible

Suspended Business Test P. 455

If a **government order** has “fully suspended” an employer’s operations, it will generally qualify for the ERC.

Employers may also qualify if their operations were “partially suspended” by government order.

Government Orders P 455

Must be an actual order by a governmental authority with jurisdiction over the operations. Must be mandatory, not advisory.

Do not include press conference comments, declaration of a state of emergency that does not limit or suspend actual operations.

Don't look at whether government enforced the order.

Practitioner
Note:
Normal
Business
P. 456

If more than a nominal portion of business operation was suspended

Gross receipts from that portion of business operation are not less than **10% of the total gross receipts**

- Hours of service performed by the employees in that portion of the business are **not less than 10%** of the total hours of service

Not Partially Suspended – Figure 12.1 PP. 457


Customers stay home due to government orders, and business has reduction in demand

Workplace is closed, but continued business operations are comparable to pre-closure operations

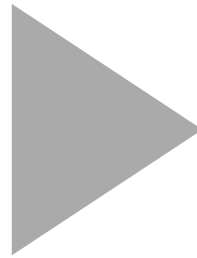
Mask wearing, one-way aisles, etc. will not have more than a nominal effect on business operations

Employers continue operations through telework

POLLING QUESTION #2



Deferred
payroll taxes
are due by Dec.
31, 2021 and
Dec 31, 2022



True or False



May Be Partially Suspended – Figure 12.1 P. 457

- Suppliers cannot make deliveries of critical goods or materials
- More than a nominal portion is closed or suspended
- Modifications have more than a nominal effect
- Significant delay (more than 2 weeks) to move operations to telework



Ex. 12.4 Temp. Closure P. 457

- Processed Foods, Inc. operates a facility that usually operates 24 hours/day
- Local health department says business must clean workplace once every 24 hours
- Business operations reduced by 5 hours each day to comply with the order



Ex. 12.5 Partial Closure P. 457

- Stuff for All, Corp. is a large retailer
- Governmental order closes the storefront for two quarters in 2020
- Customers could pick-up orders
- Storefront is more than nominal

Example 12.6 – Partial Suspension

P. 457

- Governmental order revised to allow storefront traffic, but customers had to socially distance and store had to enforce occupancy caps
- Customers sometimes had to wait in short lines to enter business
- No more than nominal effect

Suspension v.
Decline in Gross
Receipts
P. 458

Establish Significant
Decline in Gross
Receipts

```
graph TD; A[Establish Significant Decline in Gross Receipts] --> B[NO Suspension required]; B --> C[All Wages count];
```

NO Suspension
required

All Wages count

Decline in
Gross Receipts
Test
P. 458

- 2020
 - Any quarter where gross receipts $< 50\%$ of gross receipts for the same calendar quarter in 2019.
- 2021
 - Eligibility period ends with the earlier of January 1, 2021, or first calendar quarter following 1st calendar quarter where gross receipts $> 80\%$ of gross receipts for same quarter in 2019.

Ex. 12.7
Applying the
Test
PP. 458-459

Comfort Shoes had a reduction in customers in early 2020, while it improved retail website.

48% decline in Q1, 83% in Q2, and 92% in Q3

Significant decline in Q1 and Q2

Pracitioner
Note
P. 459

New Business – after
2/15/2020

Special rules apply to new
businesses

See Notice 2021-20

Definition of Gross Receipts P. 459



Non-tax exempt: I.R.C. § 448(c)



Tax-exempt: I.R.C. § 6033

Gross receipts includes all gross receipts, not just those from Unrelated trade or business income.



Practitioner Note – Gross Receipts



Forgiven loan proceeds, grants are not included in gross receipts

Calculating the 2020 ERC P. 459

- For 2020, the maximum ERC is **50%** of **qualified wages** (including allocable health plan expenses) that an eligible employer paid in a calendar quarter.
- The **maximum** qualified wages that can be taken into account for the 2020 ERC is \$10,000 per employee for all quarters.
- The **maximum 2020 ERC is \$5,000 per employee.**

Qualified Wages for 2020 P. 459

- Limited to FICA wages paid after March 12, 2021, and before January 1, 2021
- Amounts paid to maintain group health plan if excluded from income
- Large employer – amounts paid to employee not working b/c suspension
- Small employer – amounts paid to employees b/c business suspended
- Cash tips treated as wages or compensation

Ex. 12.8 2020
ERC Calculation
P. 460

- Stray Cat Consulting 4 employees
- Significant decline in gross receipts Q2, Q3, Q4
- Figure 12.3 payroll and ERC calculation
- \$10,000 limit applies to 2 employees
- \$15,250 ERC



FIGURE 12.3
SCC's Payroll and ERC Calculation for 2020

	Q2 Payroll	Q2 ERC	Q3 Payroll	Q3 ERC	Q4 Payroll	Q4 ERC
Employee 1	\$2,500 wages, \$500 health care benefits	\$1,500 ERC (\$3,000 qualified wages x 50%)	\$2,500 wages, \$500 health care benefits	\$1,500 ERC (\$3,000 qualified wages x 50%)	\$2,500 wages, \$500 health care benefits	\$1,500 ERC (\$3,000 qualified wages x 50%)
Employee 2	\$8,000 wages, \$500 health care benefits	\$4,250 ERC (\$8,500 qualified wages x 50%)	\$8,000 wages, \$500 health care benefits	\$750 ERC (\$1,500 qualified wages x 50%)	\$8,000 wages, \$500 health care benefits	\$0 ERC (\$0 qualified wages)
Employee 3	\$10,000 wages, \$500 health care benefits	\$5,000 ERC (\$10,000 qualified wages x 50%)	\$10,000 wages, \$500 health care benefits	\$0 ERC (\$0 qualified wages)	\$10,000 wages, \$500 health care benefits	\$0 ERC (\$0 qualified wages)
Employee 4	No wages, \$500 health care benefits	\$250 ERC (\$500 qualified wages x 50%)	No wages, \$500 health care benefits	\$250 ERC (\$500 qualified wages x 50%)	No wages, \$500 health care benefits	\$250 ERC (\$500 qualified wages x 50%)
Total	\$22,500	\$11,000	\$22,500	\$2,500	\$22,500	\$1,750

Practitioner Note P. 460

No Wage Duplication

Qualified wages do not include:

- those taken into account for FFCRA credits
- those taken into account for IRC § 45S (paid family and medical leave credit)
- those counted as payroll costs necessary to obtain PPP loan forgiveness

Aggregating Employers

P 461



Controlled
Group

Common
Control

Affiliated
Service Group

Aggregating
Employers
P 461

Determining Trade or Business

Fully or Partial Shutdown

Significant Decline in Gross Receipts

Average 100 FTE

Maximum Credit per Employee

ERC – Related
Individuals
P. 461

Rules “similar to
the rules of I.R.C.
§ 51(i)(1)” apply

Can’t count
wages paid to
certain relatives

**Entity
attribution rules
apply**

ERC – Related Individuals

P. 461

- A related individual is any employee who has of any of the following relationships to the employer, who is an individual:
- A child or a descendant of a child
- A brother, sister, stepbrother, or stepsister
- The father or mother, or an ancestor of either
- A stepfather or stepmother
- A niece or nephew
- An aunt or uncle
- A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law

ERC – Related Individuals


P. 461

- For **corporations** – **related to** an individual owning, **directly or indirectly**, more than 50% in value of the outstanding stock of the corporation.
- For an **entity other than a corporation** -- related to an individual owning, **directly or indirectly**, more than 50% of the capital and profits interests in the entity.
- For an **estate or trust** -- related individual includes a grantor, beneficiary, or fiduciary of the estate or trust, or any person that bears a relationship described above with an individual who is a grantor, beneficiary, or fiduciary of the estate or trust.

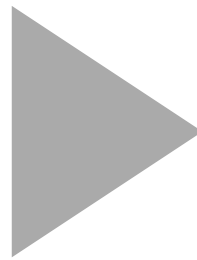
ERC – Related Individuals P. 461

- Indirect ownership is determined through the application of I.R.C. §267(c), which provides the following (among other) rules:
- An individual shall be considered as owning the stock owned, **directly or indirectly**, by or for his family
- The family of an individual includes only brothers and sisters (whole or half-blood), spouse, ancestors, and lineal descendants

POLLING QUESTION #3



The Employee
Retention
Credit was only
available for
tax year 2020



True or False

ERC – Related Individuals PP. 461-463

- **Notice 2021-49 provides guidance**
- Ex. 12.9 No ERC for 80% owner of corp. and son employee
- Ex. 12.10 No ERC for 100% owner of corp. and nonemployee son
- Ex. 12.11 ERC for 100% owner of corp. and spouse employee

ERC and PPP Loan Forgiveness PP. 463-464

- **Wages count for ERC or PPP forgiveness – not both**
- Eligible employer that received a PPP loan is deemed to have made an election not to take those wages into account for the ERC if include on forgiveness app.
- Election only applies if wages were **necessary** for forgiveness.

FIGURE 12.4
PPP Loan Forgiveness Payroll and Nonpayroll Costs

Payroll Costs	Nonpayroll Costs
Compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation, (with limits on cash compensation)	Business mortgage interest payments
Cash tips or equivalent	Business rent or lease payments
Payment for vacation, parental, family, medical, or sick leave	Business utility payments
Allowance for dismissal or separation	Covered operations expenditures
Payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance, including insurance premiums, and payment of retirement benefits	Covered property damage costs
Payment of state or local tax assessed on employee compensation	Covered supplier costs
Owner compensation replacement for the self-employed and net earnings from self-employment for partners	Covered worker protection expenditures

Ex. 12.12 Include Only Wages for PPP Forgiveness P. 464

- Good Eats received a \$100,000 PPP loan.
- On its forgiveness application, it included \$100,000 in payroll costs that would qualify as wages.
- Good Eats also paid \$40,000 in nonpayroll costs but didn't include on its forgiveness application.
- Election to exclude \$100,000 from ERC.

Ex. 12.13
Including
Wages and
Nonpayroll
P. 465

- Same facts but Good Eats included \$100,000 in payroll costs that would qualify as wages and \$40,000 nonpayroll costs.
- Only needed \$60,000 in payroll costs, so only \$60,000 deemed excluded from ERC.

Maximizing ERC

P. 465

- Allocate to PPP 1st
 - Payroll cost
 - Payroll expenses
- What about Partial Shutdown Quarter
 - ERC is only allowed during shut down
 - PPP doesn't have those restrictions

Tax Treatment of the ERC

P. 465

- Not income to the employer,
- Reduce deduction for qualified wages, including qualified health plan expenses **in the amount of the ERC.**
- Employers **do not** reduce the deduction by the employer's share of the SS and Medicare taxes.

Practitioner Note:
Amending 2020
Returns to Claim ERC
PP. 465-466

- Determine quarter(s) of eligibility
- Determine qualified wages (including allocable health care expenses paid)
- Eliminate wages used on a successful PPP forgiveness application, those for which a FFCRA credit was taken, or (if basis of qualification was a shutdown) those wages attributable to period during which employees were working
- Eliminate unqualified employees (related parties, those for whom a work opportunity credit was paid in 2020 quarter)
- Calculate the ERC by quarter

Amending 2020 Returns to Claim ERC P. 466

- Fill out and file the Form 941-X, 943-X, or 944-x (and accompanying worksheets), as appropriate
- Amend **2020 income tax return** as necessary to reduce a prior deduction for qualified wages in the amount of the ERC
- Period of Limitations
 - 3 years to file 941-X
- Practitioner Note (P. 465)
 - Amended return may cause penalties. May not be advantageous to file

Ex. 12.14
Amending
2020 Returns
PP. 466-472

60% decline in Gross Receipts

\$ 60,000 PPP Loan & Erroneously claimed ERC

\$44,833 qualified wages (after allocated to PPP forgiveness)

\$15,000 ERC

Claim on amended 941-X – Figure 12.6

P 466

FIGURE 12.5
Rolly's Roadhouse Costs on the
PPP Forgiveness Application

Nonpayroll Costs:	
Rent	\$15,000
Mortgage interest	5,000
Utilities	4,000
Total nonpayroll costs	<u>\$24,000</u>
Payroll Costs:	
Owner compensation replacement	\$20,833
Other employee compensation, including health care benefits	15,167
Total payroll costs	<u>\$36,000</u>

FIGURE 12.6 (continued)
Rolly's Roadhouse's Form 941-X

Name (not your trade name)		Employer identification number (EIN)		Correcting quarter 3 (1, 2, 3, 4)
Rolly Anderson		XXX-XX-XXX		Correcting calendar year (YYYY) 2020
Part 3: Enter the corrections for this quarter. If any line doesn't apply, leave it blank.				
	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (if this amount is a negative number, use a minus sign.)	Column 4 Tax correction
6. Wages, tips, and other compensation (Form 941, line 2)	60,000 .	60,000 .	0 .	Use the amount in Column 1 when you prepare your Forms W-2 or Forms W-2c.
7. Federal income tax withheld from wages, tips, and other compensation (Form 941, line 3)	9,000 .	9,000 .	0 .	Copy Column 3 here ▶ 0 .
8. Taxable social security wages (Form 941 or 941-SS, line 5a, Column 1)	60,000 .	60,000 .	0 .	$\times 0.124^* = 0 .$
9. Qualified sick leave wages (Form 941 or 941-SS, line 5a(i), Column 1)	.	.	.	$\times 0.062 = .$ <small>* If you're correcting your employer share only, use 0.062. See instructions.</small>
10. Qualified family leave wages (Form 941 or 941-SS, line 5a(ii), Column 1)	.	.	.	$\times 0.062 = .$
11. Taxable social security tips (Form 941 or 941-SS, line 5b, Column 1)	.	.	.	$\times 0.124^* = .$ <small>* If you're correcting your employer share only, use 0.062. See instructions.</small>
12. Taxable Medicare wages & tips (Form 941 or 941-SS, line 5c, Column 1)	60,000 .	60,000 .	0 .	$\times 0.029^* = 0 .$ <small>* If you're correcting your employer share only, use 0.0145. See instructions.</small>
13. Taxable wages & tips subject to Additional Medicare Tax withholding (Form 941 or 941-SS, line 5d)	.	.	.	$\times 0.009^* = .$ <small>* Certain wages and tips reported in Column 3 shouldn't be multiplied by 0.009. See instructions.</small>
14. Section 3121(a) Notice and Demand—Tax due on unreported tips (Form 941 or 941-SS, line 5f)	.	.	.	Copy Column 3 here ▶
15. Tax adjustments (Form 941 or 941-SS, lines 7 through 9)	.	.	.	Copy Column 3 here ▶
16. Qualified small business payroll tax credit for increasing research activities (Form 941 or 941-SS, line 11a; you must attach Form 8974)	.	.	.	See instructions
17. Nonrefundable portion of credit for qualified sick and family leave wages (Form 941 or 941-SS, line 11b)	.	.	.	See instructions
18. Nonrefundable portion of employee retention credit (Form 941 or 941-SS, line 11c)	.	.	.	See instructions
19. Special addition to wages for federal income tax	.	.	.	See instructions
20. Special addition to wages for social security taxes	.	.	.	See instructions
21. Special addition to wages for Medicare taxes	.	.	.	See instructions
22. Special addition to wages for Additional Medicare Tax	.	.	.	See instructions
23. Combine the amounts on lines 7 through 22 of Column 4	.	.	.	0 .
24. Deferred amount of social security tax* (Form 941 or 941-SS, line 13b)	.	.	.	See instructions
25. Refundable portion of credit for qualified sick and family leave wages (Form 941 or 941-SS, line 13c)	.	.	.	See instructions

P 469

FIGURE 12.6 (continued)
Rolly's Roadhouse's Form 941-X

Name (not your trade name)		Employer identification number (EIN)		Correcting quarter 3 (1, 2, 3, 4)
Rolly Anderson		XXX-XX-XXX		Correcting calendar year (YYYY)
				2020
Part 3: Enter the corrections for this quarter. If any line doesn't apply, leave it blank. (continued)				
	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
26. Refundable portion of employee retention credit (Form 941 or 941-SS, line 13d)	15,000 .	0 .	15,000 .	See instructions -15,000 .
27. Total. Combine the amounts on lines 23 through 26 of Column 4				-15,000 .
<p>If line 27 is less than zero:</p> <ul style="list-style-type: none"> If you checked line 1, this is the amount you want applied as a credit to your Form 941 or 941-SS for the tax period in which you're filing this form. (If you're currently filing a Form 944, Employer's ANNUAL Federal Tax Return, see the instructions.) If you checked line 2, this is the amount you want refunded or abated. <p>If line 27 is more than zero, this is the amount you owe. Pay this amount by the time you file this return. For information on how to pay, see <i>Amount you owe</i> in the instructions.</p>				
28. Qualified health plan expenses allocable to qualified sick leave wages (Form 941 or 941-SS, line 19)				
29. Qualified health plan expenses allocable to qualified family leave wages (Form 941 or 941-SS, line 20)				
30. Qualified wages for the employee retention credit (Form 941 or 941-SS, line 21)	30,000 .	0 .	30,000 .	
31. Qualified health plan expenses allocable to wages reported on Form 941 or 941-SS, line 21 (Form 941 or 941-SS, line 22)				
32. Credit from Form 5884-C, line 11, for this quarter (Form 941 or 941-SS, line 23)				
33a. Qualified wages paid March 13 through March 31, 2020, for the employee retention credit (use this line to correct only the second quarter of 2020) (Form 941 or 941-SS, line 24)				
33b. Deferred amount of the employee share of social security tax included on Form 941 or 941-SS, line 13b (use this line to correct only the third and fourth quarters of 2020) (Form 941 or 941-SS, line 24)				
34. Qualified health plan expenses allocable to wages reported on Form 941 or 941-SS, line 24 (use this line to correct only the second quarter of 2020) (Form 941 or 941-SS, line 25)				



P 472

FIGURE 12.7
Rolly's Roadhouse's Form 941-X, Worksheet 1

Worksheet 1. Adjusted Credit for Qualified Sick and Family Leave Wages and the Employee Retention Credit—(continued)

Step 3. Figure the employee retention credit			
3a	Qualified wages (excluding qualified health plan expenses) for the employee retention credit (Form 941, Part 3, line 21, or, if corrected, Form 941-X, line 30, column 1)	3a	30,000
3b	Qualified health plan expenses allocable to qualified wages for the employee retention credit (Form 941, Part 3, line 22, or, if corrected, Form 941-X, line 31, column 1)	3b	
3c	Qualified wages (excluding qualified health plan expenses) paid March 13, 2020, through March 31, 2020, for the employee retention credit (Form 941, Part 3, line 24, or, if corrected, Form 941-X, line 33a, column 1). Enter an amount here only for the second quarter Form 941-X	3c	
3d	Qualified health plan expenses allocable to qualified wages paid March 13, 2020, through March 31, 2020, for the employee retention credit (Form 941, Part 3, line 25, or, if corrected, Form 941-X, line 34, column 1). Enter an amount here only for the second quarter Form 941-X	3d	
3e	Add lines 3a, 3b, 3c, and 3d	3e	30,000
3f	Retention credit. If you're correcting the second, third, or fourth quarter of 2020, multiply line 3e by 50% (0.50). If you're correcting a 2021 quarter, multiply line 3e by 70% (0.70)	3f	15,000
3g	Enter the amount of the employer share of social security tax from Step 1, line 1i	3g	3,720
3h	Enter the amount of the nonrefundable portion of the credit for qualified sick and family leave wages from Step 2, line 2j	3h	
3i	Subtract line 3h from line 3g	3i	3,720
3j	Nonrefundable portion of employee retention credit. Enter the smaller of line 3f or line 3i. Enter this amount on Form 941-X, line 18, column 1	3j	
3k	Refundable portion of employee retention credit. Subtract line 3j from line 3f and enter this amount on Form 941-X, line 26, column 1	3k	15,000

Caution:
Only complete lines 3c and 3d for your second quarter 2020 Form 941-X.

2021 Employee Retention Credit P. 473

TCDTRA extended – after December 31, 2020 and before July 1, 2021

ARPA extended – July 1, 2021 through December 31, 2021

Eligible Employers

- 501(c)(1) and 501(a)
- College or University
- Government entity – principal purpose or function is medical or hospital care


2021 Employee Retention Credit P. 473

- Decline in Gross Receipts Test
- 80% threshold
- Employer qualifies if gross receipts for calendar quarter in 2021 are less than 80% of gross receipts (>20% decline) for same calendar quarter in 2019.
- **Alternate calculation** also available

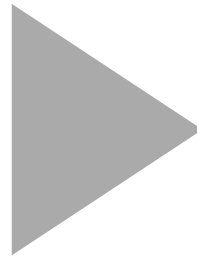
2021 Credit Calculation P. 474

- ERC credit is increased from 50% to 70% of qualified wages.
- Limit remains \$10,000, but is for each quarter, not across quarters.
- **Eligible employer can claim up to \$28,000 credit per employee in 2021.**
- **Qualified Wages**
- Large employers expanded to > 500 (instead of >100).

POLLING QUESTION #4



Qualified
wages for ERC
ALWAYS
include related
party wages.



True or False

2021 Credit Calculation P. 474

- **Severely Financially Distressed**
- In Q3 and Q4, large employers whose revenue is less than 10% of revenue for comparable 2019 quarter may count all wages, whether employees worked or not.
- **Recovery Startups** - \$50,000 limit per quarter

NOT QUALIFIED WAGES P. 475

- Qualified wages for the ERC don't include wages taken into account for credits under I.R.C. §§ 41, 45A, 45P, 45S, 51, 1396, 3131, and 3132.
- Qualified wages also don't include wages that were used as payroll costs in connection with a Shuttered Venue Operator Grant or a restaurant revitalization grant.
- No PPP loan forgiveness and a credit for the same wages.

EX. 12.15
CALCULATING
2021 CREDIT PP.
475-476

In 2021, SCC had significant decline in gross receipts for Q2, Q3, and Q4.

Figure 12.6 payroll and credit calculation

SCC is eligible for a \$46,200 credit (compared to \$15,250 in 2020).

EX. 12.15
 CALCULATING
 2021 CREDIT
 PP. 475-476

FIGURE 12.8
 SCC's 2021 Payroll and ERC Calculation

	Q1 Payroll	Q1 ERC	Q2 Payroll	Q2 ERC	Q3 Payroll	Q3 ERC
Employee 1	\$2,500 wages, \$500 health care benefits	\$2,100 ERC (\$3,000 qualified wages x 70%)	\$2,500 wages, \$500 health care benefits	\$2,100 ERC (\$3,000 qualified wages x 70%)	\$2,500 wages, \$500 health care benefits	\$2,100 ERC (\$3,000 qualified wages x 70%)
Employee 2	\$8,000 wages, \$500 health care benefits	\$5,950 ERC (\$8,500 qualified wages x 70%)	\$8,000 wages, \$500 health care benefits	\$5,950 ERC (\$8,500 qualified wages x 70%)	\$8,000 wages, \$500 health care benefits	\$5,950 ERC (\$8,500 qualified wages x 70%)
Employee 3	\$10,000 wages, \$500 health care benefits	\$7,000 ERC (\$10,000 qualified wages x 70%)	\$10,000 wages, \$500 health care benefits	\$7,000 ERC (\$10,000 qualified wages x 70%)	\$10,000 wages, \$500 health care benefits	\$7,000 ERC (\$10,000 qualified wages x 70%)
Employee 4	No wages, \$500 health care benefits	\$350 ERC (\$500 qualified wages x 70%)	No wages, \$500 health care benefits	\$350 ERC (\$500 qualified wages x 70%)	No wages, \$500 health care benefits	\$350 ERC (\$500 qualified wages x 70%)
Totals	\$22,500	\$15,400 ERC	\$22,500	\$15,400 ERC	\$22,500	\$15,400 ERC

Claiming the Credit P. 476

- The ERC is a refundable credit against certain payroll taxes. For wages paid ***before July 1, 2021***, the nonrefundable portion of the ERC was against the employer share of social security tax (6.9%).
- However, for **wages paid after June 30, 2021**, the nonrefundable portion of the ERC is against the employer share of Medicare tax (1.45%).
- Reduce employment tax deposits
- Advance credit – file Form 7200

2021 ERC –
Extended Audit
Period
P. 477

- ARPA includes a new **5-year statute of limitations** for IRS to audit and assess a deficiency for claiming the ERC in quarters **three and four** of 2021.
- Prior quarters are subject to the standard 3-year audit rule.

COMPARING
THE
PROVISIONS
PP. 477-478

FIGURE 12.9
Comparison of ERC Provisions

	2020	2021 Q1 and Q2	2021 Q3 and Q4
Time Period for Wages	March 13, 2020–December 31, 2020	January 1, 2021–June 30, 2021	July 1, 2021–December 31, 2021
Amount of Credit	50% of qualified wages (including allocable health plan expenses) Limited to \$10,000 in qualified wages per employee for all quarters, so maximum ERC is \$5,000 (\$10,000 × 50%) per employee for the year	70% of qualified wages (including allocable health plan expenses) Limited to \$10,000 in qualified wages per employee per quarter, so maximum ERC is \$28,000 (\$10,000 × 4 quarters × 70%) per employee for the year	
Decline In Gross Receipts Test	Employers whose operations were fully or partially suspended or had a reduction in gross receipts of more than 50% for quarter as compared to 2019 (employer will lose eligibility the quarter after first quarter where gross receipts exceed 80% of 2019 gross receipts)	Employers whose operations were fully or partially suspended or had a reduction in gross receipts of more than 20% for quarter as compared to 2019 May use prior quarter and compare to equivalent 2019 quarter to establish eligibility	

COMPARING THE PROVISIONS PP. 477-478

**FIGURE 12.9 (continued)
Comparison of ERC Provisions**

	2020	2021 Q1 and Q2	2021 Q3 and Q4
Employees Not Providing Service	Employers with 100 or fewer full-time employees in 2019 can claim ERC for all qualified wages Employers with more than 100 full-time employees may claim ERC only for employees that are not performing services	Employers with 500 or fewer full-time employees in 2019 can claim ERC for all qualified wages Employers with more than 500 full-time employees may claim ERC only for employees that are not performing services	Same as quarters one and two, 2020, but large severely financially distressed employers (gross receipts less than 10% percent of gross receipts for same quarter in 2019) can claim ERC for employees, regardless of whether they are performing services
Recovery Startup Business	N/A	N/A	After February 15, 2020, may claim up to \$50,000 credit per quarter, even if it was not subject to shutdown or did not have a significant decline in gross receipts
Interaction with Other Provisions	An employee will not be included for the ERC for any period that an employer is allowed a work opportunity credit under I.R.C. § 51 for that employee Qualified wages exclude wages taken into account for FFCRA credits, and other FMLA credit under I.R.C. § 455 Employers can receive both a PPP loan and the ERC, however, employers cannot receive both loan forgiveness and a credit for the same wages.	Qualified wages exclude wages taken into account for credits under I.R.C. §§ 41, 45A, 45P, 45S, 51, 1396, and FFCRA Qualified wages exclude amounts used as payroll costs necessary for PPP loan forgiveness	Qualified wages exclude wages taken into account for credits under I.R.C. §§ 41, 45A, 45P, 45S, 51, 1396, 3131, and 3132 Qualified wages exclude amounts used as payroll costs necessary for PPP loan forgiveness Qualified wages exclude wages used for payroll costs for shuttered operator grants and restaurant revitalization grants
Nonrefundable Portion	For wages paid before July 1, 2021, the nonrefundable portion of the employee retention credit is against the employer's share of social security tax		For wages paid after June 30, 2021, the nonrefundable portion of the employee retention credit is against the employer's share of Medicare tax
Advance Credit	Form 7200 advance credit available to all eligible employers	Form 7200 advance credit in an amount up to 70% of 2019 average quarterly wages, available only to employers with 500 or fewer full-time employees	
Government Employers	No government employers	Public colleges, universities, and organizations whose primary purpose is to provide medical or hospital care	
Statutory Enforcement Period	3 years	3 years	5 years

Issue 4: SICK LEAVE AND
FAMILY
LEAVE CREDITS

Sick and Family Leave Credits

P. 479

- From April 1, 2020, through December 31, 2020, the FFCRA provided for paid coronavirus-related leave through:
- the Emergency Paid Sick Leave Act (EPSLA), which entitled workers to up to 80 hours of paid sick time when they were unable to work for certain reasons related to COVID-19, and
- the Emergency Family and Medical Leave Expansion Act (Expanded FMLA), which entitled workers to certain paid family and medical leave.

Sick and Family Leave Credits

P. 479

- COVIDTRA extended the FFCRA leave credits through March 31, 2021. No longer mandatory
- Through March 31, 2021, credits claimed in 2020 reduced the credits available in the first quarter of 2021.
- ARPA extended the credits through September 30, 2021 and expanded availability.

Sick and Family Leave Credits

PP. 479-480

- **Eligible Employers**
- Businesses and tax-exempt w/ fewer than 500. Not government.
- **Wages**
- Compensation
- No double benefit
- Practitioner Note – for family leave and sick leave to care for someone else limited to 2/3 regular pay, max \$200/day

Sick Leave Credits

PP. 480-481

- 80 hours/\$511 per day if employee can't work b/c employee is ill
- 80 hours/\$200 day if employee can't work b/c caring for someone else
- **Family Leave Credits**
- \$200/day capped at \$10,000
- Ex. 12.16 two limits apply
- **Additions to the Credits**
- Medicare tax, health insurance coverage
- **Tax Treatment**
- Include in gross income

Q2 and Q3 2021 Credits

P. 482

- ARPA resets and expands
- **New category of sick leave beginning April 1**
- the time the employee is seeking or awaiting the results of a diagnostic test for a medical diagnosis of, COVID-19 (and the employee has been exposed to COVID-19 or the employee's employer has requested such test or diagnosis), or
- the employee is obtaining immunizations related to COVID-19 or recovering from an injury, disability, illness, or condition related to such immunization (or caring for someone else who meets this criteria).

Additional Amounts

P. 483

- Qualified sick and family leave wages taken by employees prior to April 1, 2021, were only subject to the employer's share of Medicare tax (and not the employer's share of social security tax); therefore, the employer was entitled to receive credits to offset only the Medicare tax for those periods.
- Under I.R.C. §§ 3132 and 3133, qualified family and sick leave wages are subject to the employer's share of social security tax and Medicare tax, but the **credit is increased by the employer's share of social security and Medicare taxes imposed** on the qualified family leave wages.

Tax Treatment

P. 484

- In the third and fourth quarters of 2021, eligible employers must include the **full amount of the credits received** for qualified leave wages in income.
- Qualified leave wages and health care expenses generally remain deductible.

Sick and Family Leave Credits

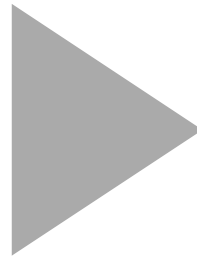
PP. 484-487

- Interaction w/ other credits – no double benefit
- Extended limitation period – 5 years
- Documenting eligibility – keep records 6 years
- Self-Employed – comparable credits



POLLING QUESTION #5

There is no need
to amend payroll
returns, the Irs
will correct them
to include the
credits.



True or False

Sick and Family Leave Credits PP. 486-487

FIGURE 12.10
Comparison of Sick and Family Leave Credit Provisions

	2020 Q2, Q3, and Q4	2021 Q1	2021 Q2 and Q3
Time Period for Wages	April 1–December 31, 2020	January 1–March 31, 2021	April 1, 2021–September, 2021
Eligible Employers	Businesses and tax-exempt organizations with fewer than 500 employees No eligibility for federal, state, or local governments (Tribal governments are eligible.)		Businesses and tax-exempt organizations with fewer than 500 employees State and local governments are eligible, regardless of size
Leave Mandate	Employers are required to provide paid sick and family leave to eligible employees	Leave is optional, but credits are available to compensate eligible employers that provide it	
Sick Leave Reasons	(1) Employee subject to quarantine or isolation, (2) advised by health care professional to quarantine, (3) experiencing COVID-19 symptoms and seeking a diagnosis, (4) caring for an individual subject to quarantine or isolation order or advised to quarantine, or (5) caring for a child whose school or daycare was closed		All sick leave reasons for 2020 and 2021 Q1 and adds (1) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID-19; (2) obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to the immunization; or (3) accompanying someone who is obtaining immunization related to COVID-19 or caring for someone who is recovering from any injury, disability, illness, or condition related to the immunization
Family Leave Reasons	Care for a child of the employee if the child's school or place of care has been closed or the childcare provider is unavailable for reasons related to COVID-19		All sick leave reasons for 2021 Q2 and Q3
Sick Leave Credit Limits	100% percent of qualified wages, which include 2 weeks or 80 hours, capped at \$511/day (\$5,110 in aggregate) for reasons related to employee's own health needs; two-thirds regular pay up to \$200 per day (\$2,000 in aggregate) to care for others		Resets available sick leave limits and provides up to 10 days per employee

Sick and Family Leave Credits

PP. 486-487

FIGURE 12.10 (continued)
Comparison of Sick and Family Leave Credit Provisions

	2020 Q2, Q3, and Q4	2021 Q1	2021 Q2 and Q3
Family Leave Credit Limits	100% of qualified wages, which include 10 weeks, two-thirds regular pay up to \$10,000 (\$200 per day)		Resets available family leave limits and provide up to 12 weeks per employee (\$12,000 limit)
Additions to the Credits	Employer's share of Medicare tax imposed on wages and cost of health insurance coverage allocable to qualified wages (employers not subject to employer's share of social security tax on qualified wages)		Allocable health insurance coverage, collective bargaining contributions (subject to wage limit), employer's share of social security and Medicare (employer subject to Medicare and social security tax on qualified wages)
Interaction with Other Provisions	May not take into account same wages for FMLA credit under I.R.C. § 455 Employers can receive both a PPP loan and family and sick leave credits; wages are not eligible as payroll costs for PPP loan forgiveness		Qualified wages don't include wages taken into account for credits under I.R.C. §§ 45A, 45P, 45S, 51, 1396 Tax credit is reduced by amount of research credit under I.R.C. § 41 Cannot use wages used for payroll costs for PPP, shuttered operator grants, and restaurant revitalization grants For Q2, if receives ERC on same wages, employer must reduce credit by credit allowed under ERC. For Q3, qualified leave wages may not be taken into account for ERC
Taxation of Credit	Credits included in employer's gross income; expenses deductible		
Advance Credit	Form 7200 advance credit available to all eligible employers		
Statutory Enforcement Period	3 years	3 years	5 years
Self-Employed	May claim up to 10 days of sick leave and 50 days of family leave, applying average daily self-employment income	May claim a family leave credit for a maximum of 60 days, and a sick leave credit of 10 days in 2021 May only claim credit for vaccine and vaccine-related conditions during the second and third quarters	

Issue 5: COBRA PREMIUM
ASSISTANCE CREDITS

COBRA Premium Assistance Credit PP. 488-489

- ARPA premium assistance and corresponding tax credit
- 100% reduction in premium
- Loss of coverage b/c reduced hours or involuntary termination
- April 1 through September 30, 2021
- Refundable payroll credit
- Reduce employment tax deposits, request an advance
- Included in gross income of recipient



Questions?