

A photograph of a spiral notebook with the words "EMPLOYEE RETENTION TAX CREDIT" written in large, bold, black letters on a grid background. A calculator is visible in the upper right corner, and a pen is in the lower right corner. The notebook is on a dark surface.

# Employee Retention Tax Credit (ERTC)

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# Disclaimer

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The information enclosed in the handout today is based on the guidance that has been published as of January 29, 2021. It is expected that additional guidance will be forthcoming from the IRS and SBA that could render some of this material inapplicable. This material should not be used as tax advice in making decisions in your business.



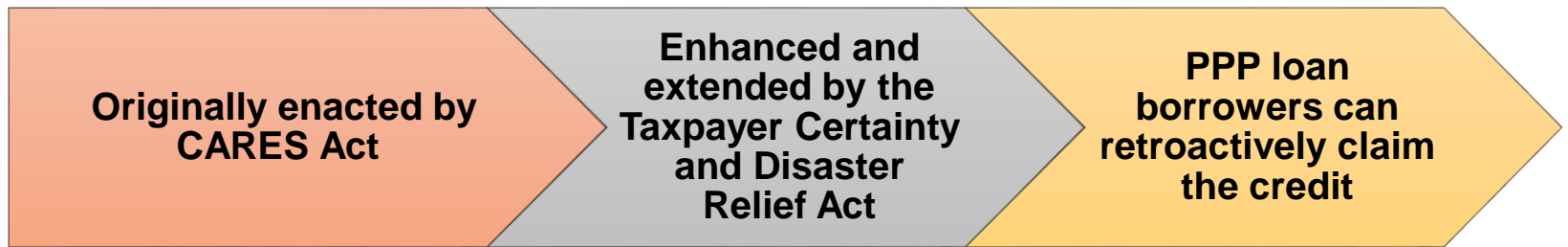
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# Agenda

1. Overview of the ERTC
2. Evaluating eligibility
3. Discuss administrative considerations
4. Questions

# History of the ERTC

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# What is the Employee Retention Tax Credit?

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- The Employee Retention Credit is a fully refundable payroll tax credit for employers equal to 50 percent **(2020)** or 70 percent **(2021)** of qualified wages (up to a \$10,000 cap) that Eligible Employers pay their employees.
- Businesses qualify based on a decline in gross receipts or full/partial shutdown of their business.
- The credit is based on wages paid after March 12, 2020, and before July 1, 2021.
- The maximum credit amount with respect to EACH EMPLOYEE is \$5,000 per year **(2020)** or \$7,000 per quarter **(2021)**
- For-profit and tax-exempt organizations qualify.



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# Steps in the Evaluation Process

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**\*\*\* Aggregation rules must be considered in determining:**

- 1. Gross receipts test**
- 2. Full/partial shutdown**
- 3. Total number of employees**

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# Do I Have a Qualified Business?

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Employers that carry on a trade or business during calendar year 2020, including tax-exempt organizations, that **EITHER**:

Experience a **significant decline** in gross receipts during the calendar quarter; **OR**

**Fully or partially suspended** their operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19.

Government and state entities and political subdivisions are not eligible for the 2020 ERTC. The 2021 ERTC allowed an exception to this rule for tax-exempt public college, universities and hospitals.



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# Aggregation Rules

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- Aggregated employers are treated as a single employer for purposes of:
  - Gross receipts test
  - Determining a full or partial shutdown
  - Total number of employees
- Aggregated under:
  - IRC Section 52(a)
    - Controlled group corporations (generally requires 50% common ownership)
    - Parent-sub, brother-sister, combined group
  - IRC Section 52(b)
    - Sole proprietorship, partnership, trust, or an estate
  - IRC Section 414(m) or (o)
    - Related entities for purposes of qualified retirement plans & other employee benefits
    - Includes A-Org, B-Org & management groups

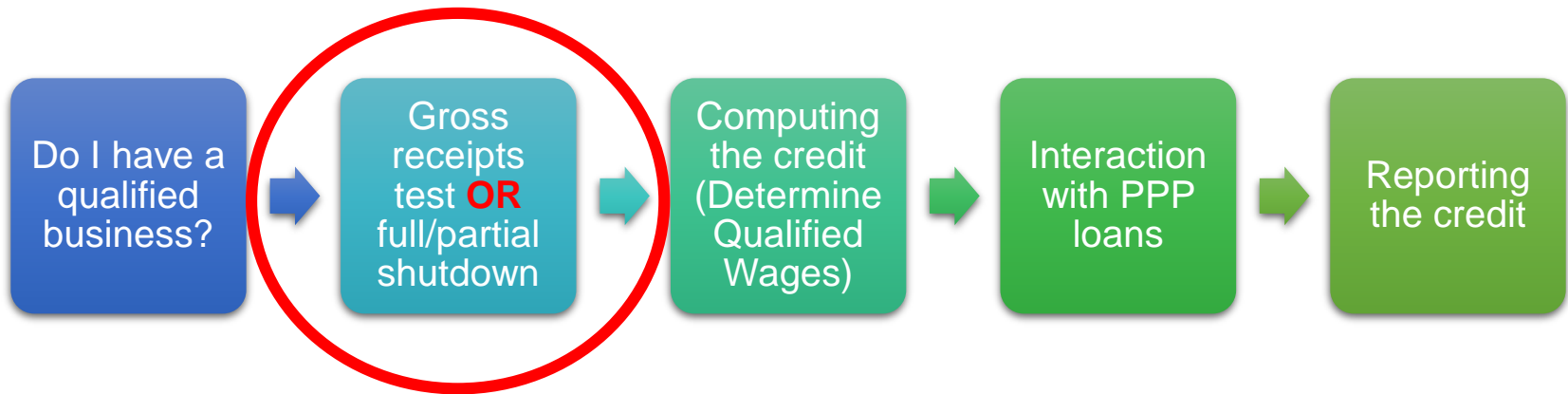


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# Steps in the Evaluation Process

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# What is a Significant Decline in Gross Receipts?

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- **2020 ERTC** – all of 2020

- **START:** The first calendar quarter in 2020 in which an employer's gross receipts are *less than* 50 percent of its gross receipts for the same calendar quarter in 2019.

- **END:** The significant decline in gross receipts ends with the first calendar quarter following the calendar quarter where 2020 quarterly gross receipts are greater than 80 percent of its gross receipts for the same calendar quarter in 2019, **or** with the first calendar quarter of 2021.

- **DOES NOT** have to be COVID-19 related



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# What is a Gross Receipt? – FOR-PROFIT ENTITY

- Follows your **TAX reporting, not book**
- For-Profit Entity
  - Total sales (less returns and allowances)
  - Investment Income
    - Interest
    - Dividends
    - Rents
    - Royalties
    - Annuities
    - Capital transactions (less: adjusted basis in the assets sold)

Form **1120-S** U.S. Income Tax Return for an S Corporation OMB No. 1545-0123  
 Department of the Treasury Internal Revenue Service  
 Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation. Go to [www.irs.gov/Form1120S](http://www.irs.gov/Form1120S) for instructions and the latest information.  
 For calendar year 2020 or tax year beginning 2020, ending 20

A S election effective date Name  
 B Business activity code number (see instructions) TYPE OR PRINT Number, street, and room or suite no. If a P.O. box, see instructions. E Employer identification number  
 City or town, state or province, country, and ZIP or foreign postal code F Total assets (see instructions)

C Check if Sch. M-3 attached

G Is the corporation electing to be an S corporation beginning with this tax year? Yes No If "Yes," attach Form 2553 if not already filed

H Check if: (1) Final return (2) Name change (3) Address change (4) Amended return (5) S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year

J Check if corporation: (1) Aggregated activities for section 465 at-risk purposes (2) Grouped activities for section 469 passive activity purposes

Caution: Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Income	1a	Gross receipts or sales	1a	
	b	Returns and allowances	1b	
	c	Balance. Subtract line 1b from line 1a		1c
	2	Cost of goods sold (attach Form 1125-A)		2
	3	Gross profit. Subtract line 2 from line 1c		3
	4	Net gain (loss) from Form 4797, line 17 (attach Form 4797)		4
5	Other income (loss) (see instructions—attach statement)		5	
6	Total income (loss). Add lines 3 through 5		6	



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# What is a Gross Receipt? – NOT-FOR-PROFIT ENTITY

- Follows your TAX reporting, not book
- Not-for-Profit Entity
  - Total sales (less returns and allowances) \*\*\*
  - Investment & Other Income
    - Interest
    - Dividends
    - Rents
    - Royalties
    - Annuities
    - Capital transactions (less: adjusted basis in the assets sold)
    - Contributions
    - Gifts
    - Grants
    - Member dues

\*\*\* All activities, not just those related to your exempt organization status

Form <b>990</b>		<b>Return of Organization Exempt From Income Tax</b>		OMB No. 1545-0047
(Rev. January 2020)		Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)		<b>2019</b>
Department of the Treasury Internal Revenue Service		▶ Do not enter social security numbers on this form as it may be made public. ▶ Go to <a href="http://www.irs.gov/Form990">www.irs.gov/Form990</a> for instructions and the latest information.		<b>Open to Public Inspection</b>
<b>A</b> For the 2019 calendar year, or tax year beginning , 2019, and ending , 20				
<b>B</b> Check if applicable:				
<input type="checkbox"/> Address change	<b>C</b> Name of organization			<b>D</b> Employer identification number
<input type="checkbox"/> Name change	Doing business as		Room/suite	<b>E</b> Telephone number
<input type="checkbox"/> Initial return	Number and street (or P.O. box if mail is not delivered to street address)		City or town, state or province, country, and ZIP or foreign postal code	
<input type="checkbox"/> Final return/terminated	City or town, state or province, country, and ZIP or foreign postal code			<b>G</b> Gross receipts \$
<input type="checkbox"/> Amended return	<b>F</b> Name and address of principal officer:			<b>H(a)</b> Is this a group return for subsidiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Application pending				<b>H(b)</b> Are all subsidiaries included? <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>I</b> Tax-exempt status: <input type="checkbox"/> 501(c)(3) <input type="checkbox"/> 501(c) ( ) ◀ (insert no.) <input type="checkbox"/> 4947(a)(1) or <input type="checkbox"/> 527 if "No," attach a list. (see instructions)				
<b>J</b> Website: ▶ <b>H(c)</b> Group exemption number ▶				
<b>K</b> Form of organization: <input type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Association <input type="checkbox"/> Other ▶				<b>L</b> Year of formation:
				<b>M</b> State of legal domicile:
<b>Part I Summary</b>				

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# Significant Decline in Gross Receipts – Examples

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2020 ERTC – Start: 50% decline, Stop: 20% decline

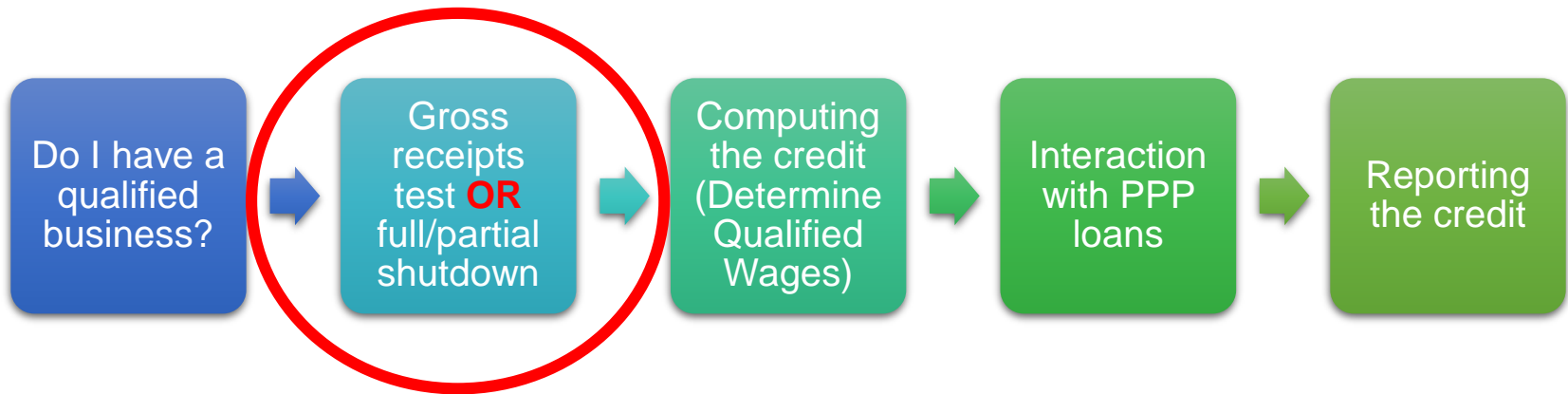
	2020 Gross Receipts	2019 Gross Receipts	Percentage of Prior Year	
1st Quarter	250,000	550,000	45%	QUALIFY
2nd Quarter	265,000	555,000	48%	QUALIFY
3rd Quarter	550,000	565,000	97%	QUALIFY
4th Quarter	575,000	575,000	100%	Does not qualify



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# Steps in the Evaluation Process

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**\*\*\* Aggregation rules must be considered in determining:**

- 1. Gross receipts test**
- 2. Full/partial shutdown**
- 3. Total number of employees**

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# Do I have a Full or Partially Suspension of Operations?

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Employers that carry on a trade or business during calendar year 2020, including tax-exempt organizations, that **EITHER**:

Experience a **significant decline** in gross receipts during the calendar quarter; **OR**

**Fully or partially suspended** their operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19.

For Tri-State Area most shut-downs occurred from  
March 21st through May 1st, 2020



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# What Qualifies as a Suspended Business Operation?

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- Partial suspension – eligible employer continues some, but not all of a trade or business operation:
  - A supply concept, not a demand concept
  - If able to telework, no suspension
  - Operations must not be able to be continued “in manner **comparable** to operations before COVID”
  - Modifications to operations must have more than a **nominal effect** on business operations
- All members of aggregated group are eligible employers if one member of the group has business operations fully or partially suspended due to government order



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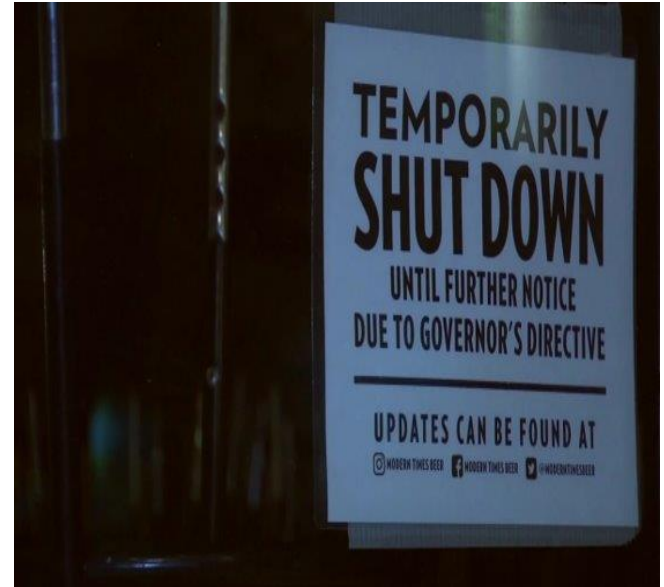
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# What is a Government Order?

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- Mayor orders shutdown of non-essential businesses
- State emergency proclamation that residents must shelter in place, other than those working for essential business that must travel to and from the workplace
- Local officials impose curfew on residents that impact the operating hours of a business
- Local health department orders workplace closures for cleaning or disinfecting



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# Do I Have Full or Partial Shut-down?

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1. Govt order required non-essential business to suspend operations but allows essential businesses to continue. (Nominal)
2. Govt order impacting supplies of essential business. (ex. Contractor, Manufacturer)
3. Govt order cause customer of essential business to stay at home.
4. Govt order requires employer to close its workplace but employer able to continue **comparable** operations prior to closure. (ex. Telework)
5. Govt order requires an employer to close its workplace for certain purposes but the workplace remain operational for limited purposes. (ex. Hospital, Retail, Restaurant)
6. Employer operates business in multiple locations and is subject to a govt order requiring a full or partial shut-down in some locations but not all locations.
7. Employer's operations required to reduce its operating hours by govt order. (ex. Food)



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# Steps in the Evaluation Process

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- 2. Full/partial shutdown**
- 3. Total number of employees**

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# What Are Qualified Wages?

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- **2020 ERTC** – all of 2020
  - 100 or **FEWER** employees - **ALL** qualified wages paid to an employee
  - 100 or **MORE** employees - **ONLY** qualified wages paid to an employee for **NOT** providing services
- Computation of full-time employee is based on a monthly average of **2019 employees**
- The term “full-time employee” means an employee who, with respect to any calendar month in **2019**, worked an average of at least 30 hours per week or 130 hours in the month
- Generally, it is compensation paid by an eligible employer after March 12, 2020 and before July 1, 2021. Qualified wages also includes the Eligible **Employer's qualified health plan expenses** that are properly allocable to the wages.
- Related party compensation is excluded from qualified wages
- **CANNOT** use the same wages for PPP forgiveness, FFCRA tax credits and the Employee Retention Credit



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# What is the Employee Retention Tax Credit? - EXAMPLE

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- **2020 ERTC** – all of 2020
  - Employer N has two employees, Employee A and Employee B;
  - Employer N pays each employee \$8,000 in qualified wages in the second quarter 2020; and
  - Employer N pays each employee \$8,000 in qualified wages in the third quarter 2020
  - What is Employer N's credit for 2020?

	2020 Qualified Wages ***	2020 Credit
2nd Quarter	16,000	8,000
3rd Quarter	16,000	2,000

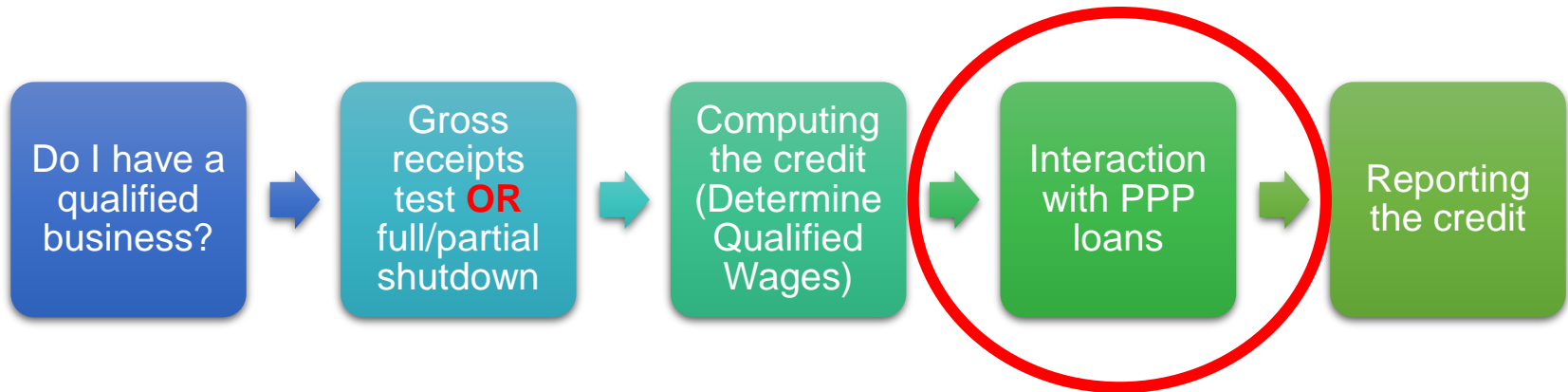
\*\*\* Includes qualified health plan costs



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# Steps in the Evaluation Process

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**\*\*\* Aggregation rules must be considered in determining:**

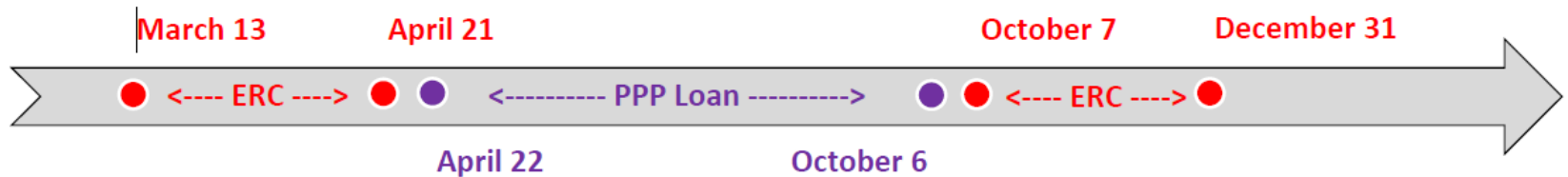
- 1. Gross receipts test**
- 2. Full/partial shutdown**
- 3. Total number of employees**

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# Interaction with PPP Loan Forgiveness

- No double dipping, wages cannot be used to claim Employee Retention Credit AND PPP forgiveness
  - PPP forgiveness applications often include payroll costs and other expenses in excess of what is needed for loan forgiveness
  - Guidance is forthcoming from SBA and IRS



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# 2021 Enhancements

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- Qualified wages per employee increased
  - \$10,000 per quarter for 2021 vs \$10,000 per year for 2020
- Credit increased to 70% for 2021 vs 50% for 2020
- Revise definition of significant decline in gross receipts
  - 20% reduction for 2021 vs 50% reduction for 2020
- Revise definition of qualified wages
  - 500 employees for 2021 vs 100 employees for 2020
- Election to use prior quarter gross receipts to determine eligibility
- Extended credit through June 30, 2021
- Public college, universities & public health care entities can claim the credit
- Added provisions for business that were not in existence in 2019
- Eliminate 30 day look back period that limits qualified wages



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# What is the Employee Retention Tax Credit? - EXAMPLE & ENHANCEMENT

- **2021 ERTC** – 1/1/2021 thru 6/30/2021
  - Employer N has two employees, Employee A and Employee B;
  - Employer N pays each employee \$8,000 in qualified wages in the first quarter 2021; and
  - Employer N pays each employee \$8,000 in qualified wages in the second quarter 2021

## 2020

	2020 Qualified Wages ***	2020 Credit
2nd Quarter	16,000	8,000
3rd Quarter	16,000	2,000

## 2021

	2021 Qualified Wages ***	2021 Credit
1st Quarter	16,000	11,200
2nd Quarter	16,000	11,200



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\*\*\* Includes qualified health plan costs

# What is a Significant Decline in Gross Receipts? – ENHANCEMENT

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- **2020 ERTC** – all of 2020
  - Gross receipts decline by at least 50%
- **2021 ERTC** – 1/1/2021 thru 6/30/2021
  - Gross receipts decline by at least 20%
  - Compare Q1 2021 to Q1 2019
  - Compare Q2 2021 to Q2 2019
- Special rule - Eligible Employers can elect to use the preceding quarter's gross receipts
  - Example – Compare Q4 2020 to Q4 2019 to determine Q1 2021 eligibility



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# Significant Decline in Gross Receipts – EXAMPLE & ENHANCEMENT

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2021 ERTC – Start: 20% decline; Stop: 20% decline

## EXAMPLE 1

	Gross Receipts	2019 Gross Receipts	Percentage of Prior Year	
2021 1st Quarter	400,000	555,000	72%	QUALIFY
2021 2nd Quarter	600,000	555,000	108%	QUALIFY

## EXAMPLE 2

	Gross Receipts	2019 Gross Receipts	Percentage of Prior Year	
4th quarter 2020	400,000	555,000	72%	QUALIFY
1st quarter 2021	600,000	555,000	108%	QUALIFY



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# What Are Qualified Wages? – ENHANCEMENT

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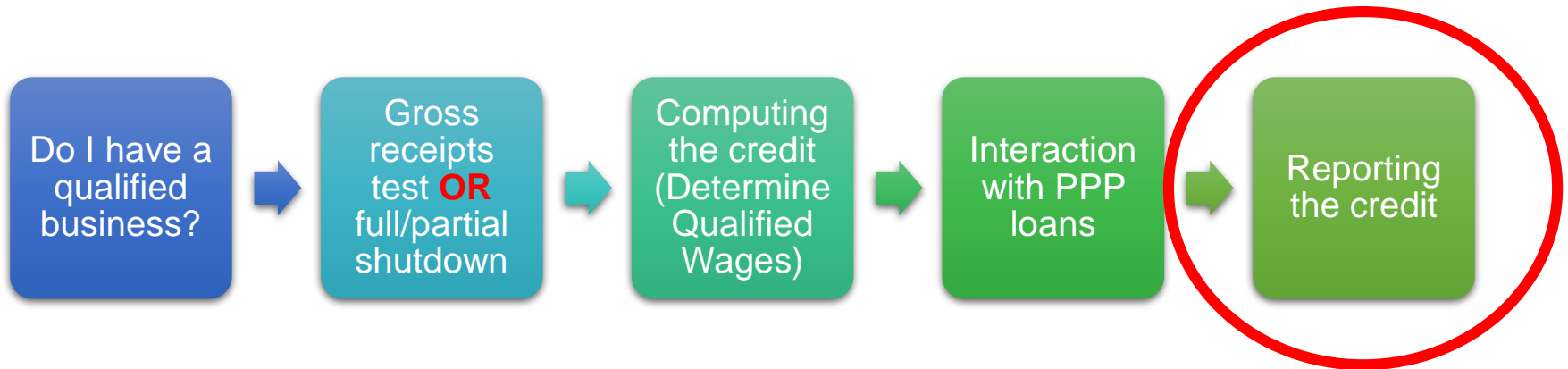
- **2020 ERTC** – all of 2020
  - **100** or FEWER employees - ALL wages paid to an employee
  - **100** or MORE employees - ONLY wages paid to an employee for NOT providing services
- **2021 ERTC** – 1/1/2021 thru 6/30/2021
  - **500** or FEWER employees - ALL wages paid to an employee
  - **500** or MORE employees - ONLY wages paid to an employee for NOT providing services
- Based on 2019 headcount



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# Steps in the Evaluation Process

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# How Do I Receive My Credit?

- Employers can reduce deposits of employment taxes for federal income tax withheld from employees, Social Security and Medicare taxes of employees and employer
- Claim on form 941
- File form 7200
- Guidance forthcoming on Advance Credit

**941 for 2020: Employer's QUARTERLY Federal Tax Return**  
Form 941 (Jan-April 2020)  
 Department of the Treasury - Internal Revenue Service

**7200**  
 Form 7200 (March 2020)  
 Department of the Treasury  
 Internal Revenue Service

**Advance Payment of Employer Credits Due to COVID-19**  
 OMB No. 1545-0029

▶ Go to [www.irs.gov/Form7200](http://www.irs.gov/Form7200) for instructions and the latest information.

Report for this Quarter of 2020 (check one)  
 1 January, February, March  
 2 April, May, June  
 3 July, August, September  
 4 October, November, December  
 Go to [www.irs.gov/Form941](http://www.irs.gov/Form941) for instructions and the latest information.

Please read the separate instructions before filing. Answer these questions:

1	Number of employees who period including June 30, 2020	Name (not your trade name)	Employer identification number (EIN)
2	Wages, tips, and other comp	Trade name (if any)	Applicable calendar quarter (check one)
3	Federal income tax withheld		<input checked="" type="checkbox"/> 1 April, May, June
4	If no wages, tips, and other s	Number, street, and apt. or suite no. If a P.O. box, see instructions.	<input type="checkbox"/> 2 July, August, September
5a	Taxable social security wage	City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)	<input type="checkbox"/> 3 October, November, December
		Foreign country name	Foreign province/county
		Foreign postal code	
Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name.			Third-party payer's EIN (if applicable)

**Tip:** File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on

# Other Considerations

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- The credit is treated as reduction of an expense for book and tax purposes.
- Can amend prior year form 941 as long as you do so by the later of:
  - 3 years from the original filing
  - 2 years from paying the tax



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# Documentation

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- Employer does not need to submit anything to the IRS to prove that they qualify
- Recommend that all employers claiming the credit fully analyze and document their eligibility for the credit
- Records should be retained for at least 4 years

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# Summary-What Every Business Needs to Evaluate

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1. Did your business experience a 50% reduction in gross receipts in any quarter of 2020 compared to the same quarter in 2019?
2. Was your business required to be partially or fully shut down under a state or local order at any time from March 12 to the present?
3. How many full-time employees did your business have in 2019?
4. Did your business experience a 20% reduction in gross receipts in the 4th quarter of 2020 compared to the 4th quarter of 2019?
5. Does your business anticipate a 20% reduction in gross receipts in the 1st quarter of 2021 compared to the 1st quarter of 2019?
6. Does your business anticipate a 20% reduction in gross receipts in the 2nd quarter of 2021 compared to the 2nd quarter of 2019?

**\*Aggregation rules apply to commonly owned businesses (revenue decline, operations suspension and total number of employees)**



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# QUESTIONS?

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