

## Miss Out On A Paycheck Protection Program Loan? Don't Forget About The Employee Retention Credit

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Taxes

On March 27, 2020, Congress passed the Coronavirus Aid, Relief and Economic Security (CARES) Act, a \$2.5 trillion relief package aimed at stemming the economic damage caused by the COVID-19 pandemic. The CARES Act contained a wide range of relief, from forgivable small business loans to enhanced unemployment benefits to a host of tax changes designed to allow taxpayers to benefit from previous or anticipated losses.

While many of the benefits of the CARES Act may be stacked upon one another, in one respect, a business owner is faced with a choice: the business can EITHER take out a "Paycheck Protection Program (PPP)" loan, or opt instead to claim the new Employee Retention Credit. Under the Act, a business can have one or the other, but not both.

While I doubt many need a reminder as to the benefits of a PPP loan, I'll briefly describe them here. A business with fewer than 500 employees can borrow up to 250% of its average monthly payroll costs for 2019 as a two-year, 1% note, with repayment deferred for a period of six months. The real appeal, however, is that at least in theory, a PPP loan is a "loan" in name only; any amount the business spends during the first 8 weeks post-borrowing on payroll costs, rent, mortgage interest and utilities will be forgiven by the lender on a tax-free basis.

The lure of free money to pay two months of payroll was too much for most businesses to ignore. Once PPP loans became available on April 3rd, nearly 2 million small business owners raced to apply, and once their loan was approved, they instantly became ineligible for the Employee Retention Credit, a consequence that caused little, if any, regret.

But in what amounted to a PPP gold rush, what these business owners didn't realize was that the loans had one glaring weakness:

No one understands how they work.

Don't get me wrong, in the month that's followed the passage of the CARES Act, the Small Business Administration, the Treasury Department, and even congressional leaders have provided plenty of formal and informal guidance governing PPP loans. Unfortunately, most of that guidance arrived too late to be useful, and those pieces that didn't were confusing, counter-intuitive, and overwhelmingly unfriendly, leaving many early newly-minted borrowers with a bad case of buyer's remorse.

But for those businesses who were left out in the cold in the PPP process – and there were more than a few – the Employee Retention Credit is a nice little consolation prize. Just as was the goal of the PPP, the ERC is designed to encourage employers to continue to pay employees during the economic downturn. Only instead of a forgivable loan, the benefit is in the form of a payroll tax credit.

In short, a for-profit business or tax-exempt organization can claim a refundable payroll tax credit of up to \$5,000 per employee for wages paid between March 12 and December 31, 2020, but only for wages paid during a calendar quarter in which the business is either:

- 1) Shut down by government order, or
- 2) Experiencing a large drop in year-over-year gross receipts.

The credit may be offset in advance against anticipated payroll tax deposits, leaving more cash in the hands of the business throughout the remainder of 2020.

While at first blush, the benefits of the ERC may pale in comparison to those offered by the PPP, as we'll see below, the ERC has two inherent advantages over the new forgivable loan package:

1. An employer with more than 500 employees may claim the ERC, and
2. Thanks to recently issued IRS FAQs, we actually understand how the ERC will be implemented.

Don't believe me on the second one? Let's take a look at what we know, in our own friendly Q&A format:

Q: OK. Give it to me in simple terms. Why do I care about a "credit?"

A: You care because a credit represents a dollar-for-dollar reduction in a business's tax liability. In the case of the ERC, however, the credit doesn't reduce a business's income tax liability – after all, many businesses will be running a loss in 2020, and won't have a liability to reduce – but rather the business's payroll tax liability, which any business with employees will have during 2020, regardless of whether it turns a profit. More specifically, the credit is available against an employer's 6.2% share of Social Security tax on an employee's wages. To illustrate, if an employer pays an employee \$100,000 of salary in 2020, the employer is required to remit 6.2%, or \$6,200, to the government in the form of Social Security payroll taxes. This credit will reduce that obligation.

Q: But wait...assume I only pay around \$100,000 in Social Security tax on behalf of employees during the year. Does that mean my total credit is capped at \$100,000?

A: Why no, it does not. This particular credit is refundable; meaning if it exceeds the employer's share of Social Security tax, the excess is returned to you in cold, hard cash. So if your credit was \$120,000 and your share of Social Security tax was \$100,000, you'd not only get to reduce your obligation to pay the \$100,000 in Social Security tax, you'd also get a check for the government for the extra \$20,000. Good deal, right?

Q: Yes, it is. But we're putting the cart before the horse here, no? As a business owner, what do I have to do to get this credit?

A: Well, it's not so much what you have to do, as it is what is done to you. You see, there are two scenarios that will cause a business to have an "eligible quarter" in 2020, and if you have at least one eligible quarter, then certain wages paid during that quarter will give rise to a credit:

Scenario 1: For any quarter in 2020, the operation of the employer’s “trade or business” is “fully or partially suspended” during the quarter 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.”

Scenario 2: For any quarter in 2020, the “gross receipts” from the “trade or business” of the employer are less than 50% of what they were for the same quarter in 2019. Once this happens, every quarter is an “eligible quarter” until the END of the quarter in which the business’s receipts have returned to at least 80% of what they were for the same quarter in 2019.

#### Trade or Business Requirement, In General

Q: Look, I don’t know much about tax, but I do have enough experience with reading comprehension to know that when you put that many terms in quotes, you’re going to have to do some more explaining. What say we take these one-by-one? What does it mean when it says an employer has to have a “trade or business?”

A: I wouldn’t worry too much about this term in this context. In tax parlance, the requirement that an activity rise to the level of a trade or business can be a VERY important one. And strange as this sounds, nowhere in the tax law does it define a “trade or business,” which causes a lot of confusion. But the highest standard of a trade or business in the tax law is found in Section 162 of the Code, which grants a business a deduction for the ordinary and necessary expenses of carrying on a “Section 162 trade or business.” The Supreme Court has defines a trade or business for these purposes as being an activity entered into for profit and conducted on a regular, continuous, and substantial basis. In contrast, a mere hobby or sporadic activity will not meet this standard.

The trade or business standard regularly becomes an issue with regard to rental activities, as the turn-key nature of many rentals tends to preclude the activity from reaching the standard of a trade or business. But in the case of an ERC, the trade or business standard is likely to have less applicability, because if a business has regularly-staffed non-owner employees, it’s off to a good start in establishing that it is an activity entered into for profit. After all, most people aren’t in the habit of compensating people out of the kindness of their heart; rather, they want to turn that labor into profit.

Q: Hold on a second...you said that tax-exempt businesses can claim this credit. How is that possible if they are not entered into their activity for profit?

A: Good question. The CARES Act offers a bailout, providing that tax-exempt entities under Section 501(a) of the Code are deemed to be engaged in a trade or business with respect to all operations of the organization.

Q: Can you maybe give me one example where an employer COULDN’T claim the ERC because even though they were paying an employee, they weren’t deemed to be in a trade or business?

A: Sure. Assume you pay a full-time nanny. Even though you’re a household “employer,” the IRS deems that you are not conducting a “trade or business” for this purpose, and can’t claim the ERC with respect to your household employee.

Q: What if I don't have any employees, but I'm self-employed. Can I claim the credit against my own self-employment tax?

A: You cannot. Self-employed individuals are not eligible for the ERC. So if you don't have any employees, this isn't for you.

#### Scenario 1: Partial or Suspended Operations

Q: Got it. Let's focus on Scenario 1: How do I know if my business has been "fully or partially suspended" during a quarter due to orders from a government authority

A: Strap in, because there's a lot to absorb here. There are really three parts:

The orders have to come from the federal government, or a state or local government that has jurisdiction over the business;

The orders have to limit commerce, travel, or group meetings due to COVID-19; and

The orders must affect an employer's operation of its trade or business.

You have to understand; ALL THREE tests must be met. For example, if a state of emergency is declared, but that declaration doesn't impact your business in any way, then your operations have not been "fully or partially suspended."

Once we understand that, we can attack the individual tests. The first test is pretty self-explanatory — the only thing to focus on is that mere statements from a government official don't get the job done. So if Mayor McCheese holds a press conference and advises everyone to stay home and practice social distancing, that does NOT rise to the level of a government order.

If, however, Mayor Quimby states that all non-essential businesses must close for a specified period, or a state issues an emergency proclamation that residents must stay home unless they work for an essential business, well...these are the types of "government orders" we're looking for.

As for the second test, it's best to look at it in conjunction with the third test. The government orders must, for example, limit commerce in a way that harms a business. Once again, the cleanest example would be a governor issuing an order that all non-essential business close for a period of time. This is:

- 1) A government order, that
- 2) Limits commerce, and
- 3) Affects the operation of every non-essential business.

Q: But as an employer, what if the government doesn't force me to shut down, but I do it for a period of time to protect my employees? Have my operations been fully or partially suspended?

A: No, they have not. Remember, ALL THREE tests have to be met. Here, there has been no government order that affected your business.

Q: Assume the government shuts down all non-essential business and tells everyone to stay home, but I run an essential business. All my customers are gone! My operations have been partially suspended, right?

A: No again. The IRS says that losing customers isn't enough to mean your business has been partially suspended. But as we'll see later, if you lose ENOUGH customers, you can still become eligible for the credit based on Scenario 2.

Q: The "partial" suspension thing has me confused. What if I run a restaurant? I'm still open all day, but due to government orders, we're down to take-out only. Is that partial suspension?

A: Why yes, it is. The same would hold true if you were a bricks-and-mortar retailer who also sold products online. If your online business remains intact but the government forces you to close your physical doors for a period of time, then your operations have been partially suspended.

Q: I see. But what if I most or all of my employees can telework, so that being forced to close our physical offices doesn't really hurt that much. What happens then? The government has forced my office to close, but we can still get work done. Have my operations been partially suspended?

A: This, to me, is going to be a big area of dispute. The IRS provides that if a business is closed, but the employer is able to continue operations "comparable" to its operations prior to the closure by requiring its employees to telework, there has been no partial suspension.

Q: Wait...who's to say when operations are "comparable" to what they were prior to a shut down? What if I run a small accounting firm, and we all had to work remotely for the past month. We got 200 returns out the door, but last year we got 500 done in the same time span. Is this "comparable?" Was my business partially suspended or not?

A: Hell if I know. The example in this IRS FAQ describes a software company whose employees had already been teleworking twice a day, with business meetings occurring at various locations. In that example, going to 100% telework wasn't deemed to be a partial shutdown. But what about a small accounting firm that is forced to shut down and loses its processing and mailing center, access to copiers and scanners, etc..? Is there any scenario where asking 70 people who have never teleworked to suddenly work from home is a "comparable" business operation to what was going on before the shutdown? To me, this is open to interpretation.

Q: Man...that IS going to be a problem. Seems way too vague. Anything else I should know about partial or full suspension?

A: Yeah, a couple of things, actually. If the government forces you to reduce your hours, your operations have been partially suspended. If you operate through multiple locations, and you're shut down in some but not all locations, it doesn't matter...the entire business is treated as having been shut down.

Q: OK, I think we're ready to move on, but there's one last thing I'm struggling with: you said this is based on a "quarter," but what if my business is only shut down for part of the quarter?

A: Great question. When we get into the credit computation, it will make a lot more sense. Basically, the quarter is an "eligible quarter," but you'll only get a credit on wages paid during the part of the quarter the business was shut down. To illustrate, assume your business was closed from March 15 through April 15th. You will have an eligible quarter for both Q1 and Q2, but as we'll see shortly, for Q1, eligible wages can only be paid from March 15 – March 31st, and for Q2, eligible wages can only be paid from April 1 – April 15th.

That is, unless that quarter ALSO satisfies Scenario 2 for Q1 and Q2. Maybe we should discuss that next.

Scenario 2: Reduction in Gross Receipts\

Q: This is either-or, right? I don't have to have my operations partially or fully suspended, and I can still get the credit if I satisfy Scenario 2, right? And this one merely requires my receipts to decrease?

A: Yes. Whereas Scenario 1 is, in some ways, subjective and open to interpretation, Scenario 2 is purely mechanical. Each quarter of 2020, you measure your gross receipts, and compare them to the same quarter in 2019. If receipts drops by more than 50%, you count that quarter. Then, you keep counting every quarter until then END of the first quarter in which receipts climb back to at least 80% of what they were for the same quarter in 2019.

By way of example, if receipts in Q1, Q2, Q3 and Q4 of 2019 were \$100,000, \$120,000, \$100,000 and \$150,000, and for the same quarters in 2020 receipts were \$40,000, \$70,000, \$85,000 and \$125,000, the "eligible quarters" for 2020 are Q1 (the first quarter in which receipts are less than 50% of 2019), Q2 (still less than 80% of 2019) and Q3 (the end of the first quarter in which receipts have returned to at least 80% of the same quarter of 2019).

Q: Easy enough. But what are considered "receipts?"

A: According to the IRS, receipts include total sales (less returns and allowances) and income from services provided. Receipts also include interest, dividends, rents and royalties and sale of assets (reduced by the basis of such assets). Gross receipts are NOT reduced by cost of goods sold.

Q: Do I need to show that my drop in receipts were due to COVID-19 the same way I have to show my operations were suspended because of the pandemic?

A: Nope. The IRS stated that a drop in receipts is enough. You don't have to establish WHY the receipts dropped by more than 50%.

Q: What if my business wasn't around for all of 2019? How do I measure the drop in receipts?

A: If you started in the first quarter of 2019, just go ahead and use the first quarter 2019 receipts, and compare it to Q1 2020. If you started in the second quarter of 2019, use that quarter to compare to BOTH the 1st and 2nd quarters of 2020. If you started in the third quarter of 2019, use that quarter to compare to quarters 1, 2 and 3 of 2020. And if you started in the fourth quarter of 2019, eh...you get the idea.

For any quarter in 2019, if business started part-way through the quarter, extrapolate the receipts to what they would have been for a full quarter. So if you started midway through Q1 of 2019 and had \$100,000 of receipts, use \$200,000 for Q1 2019.

Q: And if I operate a tax-exempt organization? What are my gross receipts?

A: We don't know yet. The IRS said guidance is forthcoming.

#### Determining the Credit: Number of Employees

Q: This isn't so bad. So if during ANY quarter in 2020, either Scenario 1 or 2 befalls my business, I take the wages paid to my employees and claim a credit. Is it time to show me how that math works?

A: Uh, no. Not yet. As you'll see, there is one other critical determination that must be made before we can compute this payroll tax credit. We have to determine how many employees you have.

Q: Why? I thought you said that unlike the PPP loans, there was no limit on employees if you want to claim the ERC?

A: There isn't. It's just that the rules change a bit if you had averaged more than 100 "full-time equivalent employees (FTEs)" during 2019. So we should probably discuss how you make that determination.

An FTE is an employee who, for any calendar month in 2019, had an average of at least 30 hours of service per week or 130 for the month. If you were in business for all of 2019, you determine FTEs by taking the sum of the number of FTES for each month and then dividing by 12.

Q: I can do that. So how do the rules change if you're under or over 100 FTEs?

A: Alright...stick with me here. As we've established, the credit is based on wages paid during an eligible quarter. But the amount of wages you take into consideration will depend on your number of FTEs.

If you have MORE than 100 average monthly FTEs for 2019, only wages paid to an employee during an eligible quarter to NOT PROVIDE SERVICES are eligible for the credit. In other words, you MUST be paying an employee to NOT work, either because business has been shut down or receipts have dropped significantly.

If you have LESS than or equal to 100 average monthly FTEs for 2019, then ALL wages paid to an employee during an eligible quarter can give rise to a credit, even if the employee is currently at work.

Q: You lost me. How 'bout a couple of examples?

A: Sure thing.

Q is a chain of full-service restaurants with more than 100 average monthly FTEs in 2019. State X forced Q to go to take-out only for Q2 and Q3 of 2020. Q continues to pay its kitchen staff to come in and prepare food every day. Even though Q has had its operations partially suspended, because Q has more than 100 FTEs for 2019, only those wages paid to employees NOT TO WORK are eligible for the credit. Thus, the amount Q pays its kitchen staff to cook are not eligible for the ERC.

Assume, however, that Q also paid wages to waiters and bartenders who are NOT coming in to work. These wages WOULD be eligible for the credit.

If instead, Q had LESS than 100 average monthly FTEs in 2019, ALL wages paid during Q2 and Q3 to ALL employees would be eligible for the credit; even the wages paid to kitchen staff who were continuing to work.

I can't overstate how important this distinction is. A business could fight to make the argument that its operations were partially suspended for a quarter during 2020 – for example, if the employees were all forced to telework – but if the business has more than 100 FTEs, it will all be for naught, as the business can only claim the credit for wages paid to employees NOT to work. And if employees are teleworking, well...that won't satisfy that requirement.

Q: I can't believe I'm saying this, but I think I understand that. But what if I have more than 100 FTEs, and I slash my employees' hours but continue to pay them in full. Aren't I really paying them NOT to work in some capacity?

A: Why yes, you are, and should be treated as such. To illustrate, if in Q2 your business is partially shut down due to government orders, and you cut your employees hours to 20% of normal but still pay them 100% of normal pay, then the 20% you pay them to provide services is NOT eligible for the credit, but the 80% you continue to pay them to NOT work IS eligible for the credit.

Q: I'm ready to move on, so....wait, hold on...what if I wasn't in business in 2019? How do I compute FTEs?

A: You use your average for 2020. Add 'em all up for each month and then divide by the number of months you were in business for 2020.

### Qualified Wages

Q: This is all starting to come together for me. To rehash:

Step 1: Identify that I have an "eligible quarter" in 2020; either because business was partially or fully suspended or because gross receipts have dropped precipitously.

Step 2: Determine how many average monthly FTEs I had for 2019, as that will drive whether my credit is based on wages paid only to employees NOT to work (over 100 FTEs), or to ALL employees during an eligible quarter (under 100 FTEs).

Step 3: Det...wait. I don't know what Step 3 is, but I know it has to do with computing the credit. I need to start doing some math on wages, right?

A: Right. Now, what we do is this: Starting March 12, 2020, for every employee you pay eligible wages to during an eligible quarter, you get a credit equal to 50% of those wages. But there's a number of additional restrictions:

First and foremost, the MAXIMUM amount of wages you can take into account for ANY ONE EMPLOYEE for the ENTIRE year is \$10,000. That's it; that's all. So once you've paid an employee \$10,000 in qualified wages, you are tapped out at a \$5,000 credit.

You can increase the wages paid to an employee by the employee's allocable share of certain health care costs.

If you terminate an employee and pay severance, those are NOT qualified wages.

If you have more than 100 FTEs, payments made for any pre-existing accrued vacation, sick time, or other personal leave wages are not qualified wages, as they were "accrued" at a time when the employee was providing services.

Wages paid to a related individual – or in the case of a corporate employer, someone related to the majority owner of the corporation – are not eligible wages.

Any qualified family leave or sick leave wages paid pursuant to the Family First Coronavirus Relief Act are NOT eligible wages.

Q: I'm sorry, but I'm going to need a little more guidance. First, can you give me an example of this \$10,000 per-employee cap?

A: Sure. Business X has its operations shut down by government order for Q2 and Q3 of 2020. During Q2, X pays employee A \$8,000 in qualified wages. During Q3, X pays A another \$6,000 in eligible wages. In Q2, X can claim a credit of \$4,000 (50% of \$8,000) related to A. In Q3, X's credit for wages paid to A is limited to \$1,000 (maximum wages of \$10,000 less \$8,000 taken into account in Q2). For the rest of 2020, X cannot take ANY additional credit related to employee A.

Q: Got it. It's not a per-quarter cap; it's a TOTAL per-employee cap. You mention increasing wages for allocable health care costs. Are these costs on TOP of the \$10,000 cap or included within it? And what are the types of health care costs we can allocate to an employee?

A: It's a COMBINED cap of \$10,000: wages + health care costs. As for the types of costs, you can allocate to an employee both the costs incurred by the EMPLOYER and any pre-tax employee contributions. Employee after-tax contributions do not count. The IRS FAQ at Question 68 allows an employer to allocate health care costs to an employee's wages using any reasonable method, and offers some alternatives for doing so.

Note: employers using a self-insured group health plan may also allocate healthcare costs to employee wages, but employer contributions to a Health Savings Account or Archer Medical Savings Account may not be allocated to wages.

Q: I had to put some people on furlough for the next few months. I'm not paying them a salary, but I am covering their health care costs. Can I treat those costs as eligible wages?

A: No. If you are not paying ANY wages but you are paying health care costs, you cannot allocate the health care costs to wages, because there ARE no wages. But if an employer with more than 100 FTEs pays employees a REDUCED salary –for example, hours are cut by 60% but wages are cut by only 50% — health care costs can be allocated to the 10% of wages that the employer is treated as paying the employee NOT to work.

### Claiming the Credit

Q: Mind if I try to put this all together? In Q2, my business is entirely shut down by government orders. I have fewer than 100 average monthly FTEs in 2019. During Q2, I pay the following wages and payroll taxes:

Table

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If my math is right, I can take a credit of \$16,500, 50% of my qualified wages, correct?

A: Close, but not quite. Don't forget, the maximum wages for any one employee are \$10,000, so C's wages are capped at that amount. Thus, the total credit is \$14,000 (50% of \$8,000 + \$10,000 + \$10,000).

Q: Not to complicate it further, but \$2,000 of the wages paid to A were qualified sick leave for which I'm told I get a \$2,000 payroll tax credit under the Families First Act. Do I get to double dip?

A: No, you do not. The \$2,000 of sick leave wages are pulled out first, and you'll get your \$2,000 credit. That then reduces your qualified wages to \$26,000 (\$6,000+ \$10,000 + \$10,000), and your credit to \$13,000.

Q: Speaking of double dipping, I normally deduct all my wages. But now I'm getting a CREDIT for those wages too. Do I really get both?

A: Once again, you do not. You may not deduct the amount of wages upon which you claim the credit. So in our example above where you take a \$13,000 credit on \$26,000 of wages, you would reduce your deduction for wages by the \$13,000 credit. (Note, you would also be required to increase your INCOME by the \$2,000 of sick leave wages for which you claimed a credit).

Q: Got it. Let's keep moving with my example where I get a \$2,000 sick leave credit and \$13,000 ERC against the wages and payroll taxes claimed above. How do I actually get my cash?

A: Listen up, because this is important. The IRS is doing everything in its power to make sure that you don't have to wait to get your credit. Under normal procedures, you would remit the federal income tax withholding and employer and employee share of payroll taxes as part of your ongoing payroll deposits, before then truing up at the end of the quarter upon filing a Form 941, Employer's Quarterly Federal Tax Return.

But in this case, the IRS wants you to have your cash NOW. So here's what you do: instead of remitting the \$9,548 of total income and payroll taxes as part of your normal deposits, you would REDUCE your deposits by the amount of the anticipated payroll tax credits. In this case, the \$9,548 deposit is first reduced by the \$2,000 sick leave credit, leaving \$7,548. But there is an anticipated ERC of \$13,000, so you can further reduce your deposit to \$0. As a result, you have \$9,548 you otherwise would not have.

Q: That's great, but I had a \$13,000 ERC and only got to claim \$7,548. I thought you said this was refundable?

A: It is. If you don't want to wait to file your Form 941 and claim the refund, you can immediately file a new Form 7200 and request a refund of the excess credit of \$5,452. You should receive the refund within two weeks.

Q: Sorry, but I have to ask. In this example, as the employer, I am paying \$2,046 in my share of Social Security tax. But I thought the CARES Act allows me to defer that payment until 2021 (50%) and 2022 (50%). If I choose to do that, how does it impact my credit?

A: Great question. The order works like so: FIRST, you would defer the \$2,046 of Social Security tax, reducing your total required payroll deposits from \$9,548 to \$7,502. NEXT, you claim your \$2,000 sick leave credit, further reducing the required deposit to \$5,502. THEN, you claim the \$13,000 ERC, reducing

the deposit to zero and creating a \$7,498 refund. As a result, you have an extra \$2,046 in cash; but remember, that amount will be paid in 2021 and 2022 when the deferred Social Security tax comes due.

Q: There's one thing I don't get. Today is April 30th. But we could claim a credit for qualified wages paid as far back as March 12, 2020. How do we claim those credits if we already paid those deposits and filed the Form 941 for Q1?

A: The IRS asks that you report those wages on the Form 941 for the SECOND quarter of 2020, and claim the corresponding credits there.

### Aggregation Rules

Q: I think we're just about there. Is there anything else I need to know about the ERC?

A: Yup. Often times, a business will operate through multiple legal entities. For purposes of the ERC, we have to apply the "aggregation rules" of Sections 52, 1563 and 414 of the Code. These are a tangled web of provisions that look to common ownership of multiple entities and if certain tests are met, the entities must be treated as one business for many purposes of the Code. You can read about aggregation tests [here](#).

In computing the ERC, multiple employers that are treated as one under the aggregation rules have a number of considerations:

In determining whether a business has been partially or fully suspended, if ONE business in the group satisfies this requirement, then all businesses are treated as having been partially or fully suspended.

In computing whether a business has experienced a 50% drop in receipts, the receipts of ALL aggregated businesses must be taken into account.

In determining whether the business had more than 100 FTEs for 2019, employees for all aggregated businesses must be added together.

If any ONE business in an aggregated group took out a PPP loan, all businesses are ineligible for the ERC.

Once these factors are determined, each SEPARATE business claims its own ERC. The ERC is the amount of the credit apportioned among the members of the aggregated group on the basis of each member's proportionate share of the qualified wages giving rise to the credit.

Q: Are we done?

A: No, but we're damn close. One last thing: Just because a business uses a third party to report and pay payroll taxes does not preclude it from claiming the ERC. The IRS FAQ provides steps necessary to claim the benefit of the credit in these circumstances.

Q: Got it. It took 6,000 words, but I understand how the ERC works. Which is more than I can say about the PPP loans. Suddenly, I don't feel so bad about missing out on the PPP gold rush.

A: That's not really a question, but I share your sentiments. Thanks for following along.

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