

The Employee Retention Credit (ERC) is a refundable credit designed to encourage businesses, including social clubs, to keep employees on their payroll during the COVID-19 pandemic. The ERC was initially created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). It was later extended and expanded by the Consolidated Appropriations Act, 2021 and once again by the American Rescue Plan Act of 2021. The ERC is a potentially beneficial tax credit that clubs should consider.

Social Clubs and the

em•ploy•ee re•ten•tion

/a breakdown of the definitions and rules/

By Alexander Lazzaruolo, CPA, Esq., and James J. Hankowski, CPA



Cheque No: 123456
Client No: 12345

cred.it

Date: January 10, 2020

Company Name: [blacked out] USD 0247...

Or Order

DOLLARS TWO HUNDRED AND FOURTY SEVEN 40/100 U.S. DOLLARS

For: Bank Branch Name

[Signature]

Authorised Signature

90000

ERC—Refundable Tax Credit Calculation and Eligibility

- Between March 13, 2020 and December 31, 2020, the ERC is 50% of the first \$10,000 of qualified wages paid to employees (potential maximum ERC in 2020 of \$5,000 per employee).
- Between January 1, 2021 and December 31, 2021, the ERC is 70% of the first \$10,000 of qualified wages paid, per quarter, to employees (potential maximum ERC in 2021 of \$7,000 per employee, per quarter).

A club may be eligible for the ERC in any applicable quarter by satisfying one of two factors set forth below. A club is not required to fulfill both factors to be eligible for the ERC.

1. The club's operations were 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;
OR
2. The club experienced a significant decline in gross receipts during the quarter. For 2020, a significant decline in gross receipts is described as a reduction of greater than 50% when compared to the same quarter in 2019. For 2021, a significant decline in gross receipts is a reduction of greater than 20% when compared to the comparable quarter in 2019.

Qualifying Wages

The determination of qualifying wages under the ERC is based, in part, on the average number of full-time employees the club employed during 2019 (Average 2019 FTEs). The term "full-time employee" means an employee who, with respect to any calendar month in 2019, had an average of at least 30 hours of service per

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week or 130 hours of service in the month. A club determines the number of its full-time employees by taking the sum of the number of full-time employees in each calendar month in 2019 and dividing that number by 12.

Clubs with **100 or fewer** Average 2019 FTEs for the 2020 ERC or **500 or fewer** Average 2019 FTEs for the 2021 ERC, may receive the ERC for wages paid to **any employee**, whether or not they are providing services to the club. Clubs which had more than 100 (or 500) Average 2019 FTE's, may receive the credit only for those wages paid to employees who are **not providing services**.

Club's may also treat as qualifying wages, group health plan expenses paid when no wages are paid to an employee (i.e., employees are furloughed but the club continues to provide health insurance).

Government Order

Orders, proclamations or decrees from the federal government, or any state or local government, are considered "orders from an appropriate governmental authority" if they limit commerce, travel or group meetings (for commercial, social, religious or other purposes) due to COVID-19 in a manner that affects a club's operation of its business, including orders that limit hours of operation.

The operations of a club may be considered partially suspended if a governmental authority imposes restrictions on the club's operations such that the club may continue some, but not all typical operations. If all club operations may continue but subject to modification due to a governmental order, such modification of operations is considered to be a partial suspension of business operations due to a governmental order if the modification required by the governmental order has more than a nominal effect on the business operations. Internal Revenue Service (IRS) Notice 2021-20 provides insight in determining whether a modification required by a governmental order has more than a nominal effect on business operations.

Gross Receipts

Gross receipts mean the gross amount received from all sources without reduction for any costs or expenses. Thus, gross receipts include, but are not limited to, the gross amount received as contributions, dues, assessments or initiation fees from members, sales or receipts from business activities, the amount received from the sale of assets without reduction for cost, and the amount received as investment income, such as interest, dividends, rents and royalties.

ERC Reimbursement

Clubs can be reimbursed for the ERC by reducing their required deposits of payroll taxes withheld from employees' wages, through filing of quarterly Form 941's, or via an advance payment

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by submitting Form 7200. Clubs may also submit Form 941-X to request an ERC for a prior quarter in which qualification is subsequently determined. Clubs should discuss these options with their professional advisors.

Every club is unique and has been impacted by the pandemic differently; therefore, clubs must consider the facts and circumstances surrounding their particular circumstances when determining eligibility for the ERC. Clubs will be well served documenting how eligibility was determined under the ERC, the government orders impacting their operations, and their calculations substantiating the amount of qualified wages paid. Much of the guidance regarding the ERC is based on FAQs released by the IRS and IRS Notice 2021-20. We refer the reader and their professional advisors to such guidance for a fuller understanding of the ERC. [CD](#)

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