

# Everything to Know about Employee Retention Credit and Affiliation Rules

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# EVERYTHING TO KNOW ABOUT EMPLOYEE RETENTION CREDIT AND AFFILIATION RULES

Many businesses have been evaluating their eligibility for the Coronavirus Aid, Relief, and Economic Security Act (CARES act), including the Paycheck Protection Program (PPP) and the Employee Retention Credit (ERC) that are two common incentives.

However, there are certain affiliation rules that businesses must follow in order to receive any of these credits, they must also adhere to certain other regulations in order to maintain the credit.

The CARES Act's, PPP and ERC sections have affiliation rules that must be addressed when assessing many levels that influence a firm's eligibility for every incentive.

The PPP and the ERC have different affiliation and aggregation rules, which adds to the complexity. This warning gives a review of the ERC affiliation and aggregation rules, highlighting key distinctions and implications that firms should be aware of before using.

## Affiliation Rules for Employee Retention Credit

### **The ERC's aggregation rules are based on existing IRC laws.**

Employees as well as employees of the same corporate control group

Workers of a common control trade or enterprise, and

The [CARES](#) Act treats workers and members of a connected service group as a single employer.

**The IRS issued FAQs on April 29, 2020, that provide guidance on credit per employee and establish whether businesses are deemed single employers under the ERC's aggregation criteria and how those rules relate to calculating certain thresholds and eligibility for the ERC, including:**

Whether the employer's trade or business has been wholly or partially interrupted as a result of government directives connected to COVID-19;

The affiliation and aggregation rules for each benefit are not constant; therefore, taxpayers considering the PPP and the ERC should be aware of this. The PPP affiliation rules of credit for wages paid emphasize control authority, whereas the ERC affiliation rules emphasize control exercise.

It's critical to understand the regulations that apply to each incentive so that businesses don't accidentally omit applicable, related organizations that they control or influence (or have the opportunity to control or influence) and claim an advantage to which they are not entitled.

### **Applicability of Affiliation Rules:**

The affiliation rules apply to all Employee Retention Credit reasons, including whether commerce or business has been permanently or temporarily suspended or whether the employer's gross receipts have decreased significantly.

### **The following points should be considered:**

Employers in this position may be compelled to lay off substantial swaths of their employees if there is no guidance suggesting that a corporation that repaid a [PPP](#) loan within the safe harbor time for doing so under SBA guidelines.

For the purposes of the gross revenue test, entities with common ownership of 80% or more are classified as one entity. To determine whether a business meets the 50% or 80% threshold, you must add up all of its gross earnings.

If the linked group passes the exam, each entity inside it can claim credit, even if they would not have passed on their own. Be advised that if aggregated organizations have similar personnel, the qualifying earnings for 2020 and 2021 are still capped at \$10,000 per employee per year or per quarter.

If two aggregated entities each paid \$10,000 to the same employee, neither firm could [claim full credit for the employee](#) because the total pay would be \$20,000. The ERC and the costs used to qualify for Paycheck Protection Program forgiveness cannot have any overlap in qualified earnings.

The ERC and the company credit for a paid family as well as medical leave cannot have the same qualifying salaries. For the purposes of the ERC, an employee cannot be included for any period in which the employer is permitted a work opportunity credit for the same employee.

Severance payments paid to a terminated employee are not considered qualifying earnings.

**Any employee who has one of the following ties with the eligible employer or a business owner of the calendar quarter is considered a connected individual.**

- A child or a child's descendent
- Sister, stepbrother, or stepsister.
- An ancestor of either the father or mother
- Father or mother-in-law
- Nephew or niece
- Uncle or Aunt

## Rules and Regulations for Employee Retention Credit Affiliation

Earlier this year, the Internal Revenue Service published affiliation rules on the [IRS](#) website in the form of [frequently asked questions](#) covering different facets of the Employee Retention Credit.

Unfortunately, some of the responses adopt a more restricted interpretation of the law than is warranted, and they appear to be disconnected from the economic realities that many employers—particularly major employers are facing as a result of the COVID-19 pandemic.

### **Following are the rules for Employee Retention Credit Affiliation:**

Employers that have depended on reasonable, good faith judgments of their credit eligibility to retain workers on the payroll may suddenly find themselves in an even more difficult financial position as a result of FAQs implying that credit is not accessible to them in general or to particular workers.

For the purposes of the Work Opportunity Tax Credit, Section 52 contains aggregation rules. In general, section 52(a) allows for the consolidation of a controlled group of firms with more than 50% of maximum credit common ownership. Partnerships, corporations, estates, and single proprietorships all fall under Section 52(b).

The IRS uses Controlled Group Rules to compute the Covid-19 Employee Retention Credit, much like it does for the Research Credit.

Unlike the research credit, the ERC introduces a new test under 414(m) to assess whether a controlled group exists: the “associated services group” test, which is not dependent on ownership.

## Affiliated Support Team and Service Group:

### Following are the rules related to affiliated support team and service groups for ERC affiliation:

An “affiliated support team” is reduced to a single employer under portion 414(m) of the script governed by rules relating to the operations of services by one entity for another or by one entity in conjunction with another for third parties, even if the entity has not had sufficient full ownership of the other organization to establish a regulated gathering.

An affiliated service group is defined by section 414 of the Internal Revenue Code as two or more entities that have a solution that keeps and, in some situations, ownership ties for advance credit.

A first service group (FSO) and one or both of the following sites form affiliated service groups. An FSO must be a “service company” (as defined in section 414(m) as a firm that primarily delivers services). An “organization” is a firm, partnership, or another type of business.

To form an associated service group, a first-service organization can partner with two other types of organizations:

Another type of service group is an “A” organization. A “B” organization is one that performs services for a first-service organization or an “A” organization that is similar to those that are normally performed by individuals in the group's service field.

The second most prevalent type of linked service group is one that consists of a management and a beneficiaries agency.

A management organization's primary duty is to do management responsibilities for a receiver business on a regular and ongoing basis.

A beneficiary is any corporation or linked organization that obtains management obligations.

## Employee Retention Credit Common Ownership

The major question is whether the IRS considers different ownership arrangements to constitute the same firm.

If it's the same company, it's referred to as a "controlled group." Civic groups, wherein the one organization owns 50% or more of all companies, as well as brother-sister organizations, in which five or fewer people own at least 80% of each firm in the company with at least 50% voting power, are really the two most frequent types of controlled groups.

Multi-unit owners own a lot of eateries. For example, if a multi-unit franchisee operates three restaurants, the entire number of workers and total earnings of the firm must be combined together to calculate the ERC based on year-over-year reduction.

This is significant since it is at this level that you may decide whether the company is too large to qualify for the ERC.

Between all of your enterprises, you should have 100 or fewer staff. (Technically, if your average is 101-500, you still qualify, but only for salaries given to personnel who did not perform any services.) So, not really useful.) Details on estimating the average number of workers may be found on page 11 of IRS Notice 21-20.

One intriguing side note is that it makes no difference if the sorts of businesses you own are connected. You must combine the companies as long as the controlled group requirements for each firm are satisfied.

If you operate a restaurant, a manufacturing firm, and a janitorial services company, for example, this is true. If the property is controlled, they are all combined together for ERC reasons.

## Other ERC and Affiliation Rules FAQs

### Who is Considered a Related Party for Employee Retention Credit?

If the major shareholder has a family participant who is a brother or sister, forefather, or distant lineal relative, the spouse is a related individual for uses of the Employee Retention Credit, for whom wage levels are not eligible wages.

### What are the New Rules for Employee Retention Credit?

Employee Retention Credit Limitation, unless the company is a recovery beginning firm, Section 3134 of the Internal Revenue Code was modified on November 15, 2021, to limit an [Employee Retention Credit to wages](#) received before October 1, 2021.

### What are Aggregation Rules for Employee Retention Credit?

The Employee Retention Credit must be distributed to the aggregated group members based on their proportional share of the qualifying profits that gave birth to the credit.

Any employer or tax-exempt organization required to be aggregated in chapter 52(a) or 52(b) of the Act, or if they include an affiliated service again for to be averaged under section 414(m) of Code, must be pooled for the sake of the retention credit.

### Are All Employers Eligible for Employee Retention Credit?

No, the federal government, state governments, and any agency or

apparatus of those government agencies are not eligible employers, and employers for purpose are not eligible for the Employee Retention Credit and cannot submit loan forgiveness applications as well as qualified health plan expenses.

Governmental entities, sole proprietorships, and tribal entities, on the other hand, may be qualified employers for hospital care as well as for partial suspension.

Learn more about [Eligibility for Employee Retention Credit](#).

Unfortunately, the ERC is not available to all employers. If an employer obtains a Paycheck Protection Program (PPP) mortgage, which is also a CARES Act provision, the employer is not eligible for the ERC.

Check out this [Employee Retention Credit Detailed FAQ Guide](#).

## **Conclusion and Summary on Everything to Know about Employee Retention Credit And Affiliation Rules**

**The ERC affiliation rules are developed from existing IRC requirements. For the purposes of the ERC, these are some of the affiliation rules:**

Employees and members of the same controlled group of corporations,

Employees of trades or businesses under a common control (whether or not incorporated),

Employees and members of an affiliated service group are treated as single employers under the CARES Act.

In general, the ERC's affiliation rules are more form-driven than the SBA's, focusing on employer status and actual voting control to assess whether a company is a single employer.

Check out [Everything To Know About Employee Retention Credit – ERC Example](#).



**Schedule Your [Employee Retention Credit Consultation](#)** to see what amount of employee retention tax credit your company qualifies for.

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# EMPLOYEE RETENTION TAX CREDIT (ERC / ERTC) HELP: CLAIM UP TO A \$26,000 REFUND PER EMPLOYEE FOR YOUR BUSINESS

Disaster Loan Advisors™ can **assist your business with the complex and confusing** Employee Retention Tax Credit (ERTC) and Employee Retention Credit (ERC) program.

Depending on eligibility, business owners and companies can **receive up to \$26,000 per employee** based on the number of W2 employees you had on the payroll in 2020 and 2021.

The ERC / ERTC Program is a **valuable tax credit you can claim**. This is money you have already paid to the IRS in payroll taxes for your W-2 employees.

Done correctly, **these tax credits or cash refunds can be retroactively claimed for up to 3 years**.

It's encouraged that business owners **obtain professional assistance in going through the complex 941-X amended filing process** to help your company **maximize** the full value of the ERC / ERTC program.



**4/15/24 is the Deadline to Amend the 2020 Tax Year.**  
**4/15/25 is the Deadline to Amend the 2021 Tax Year.**



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