

NFIB UPDATE

COVID-19 Webinar Series for Small Business

with Beth Milito and Holly Wade, NFIB



May 26, 2021

Special Guest – Martin Karamon, Principal, Cherry Bekaert, LLP

Topic – PPP and ERC: A Tax Lawyer Explains How to Maximize Both Programs Together



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2021 NFIB Virtual Fly-In

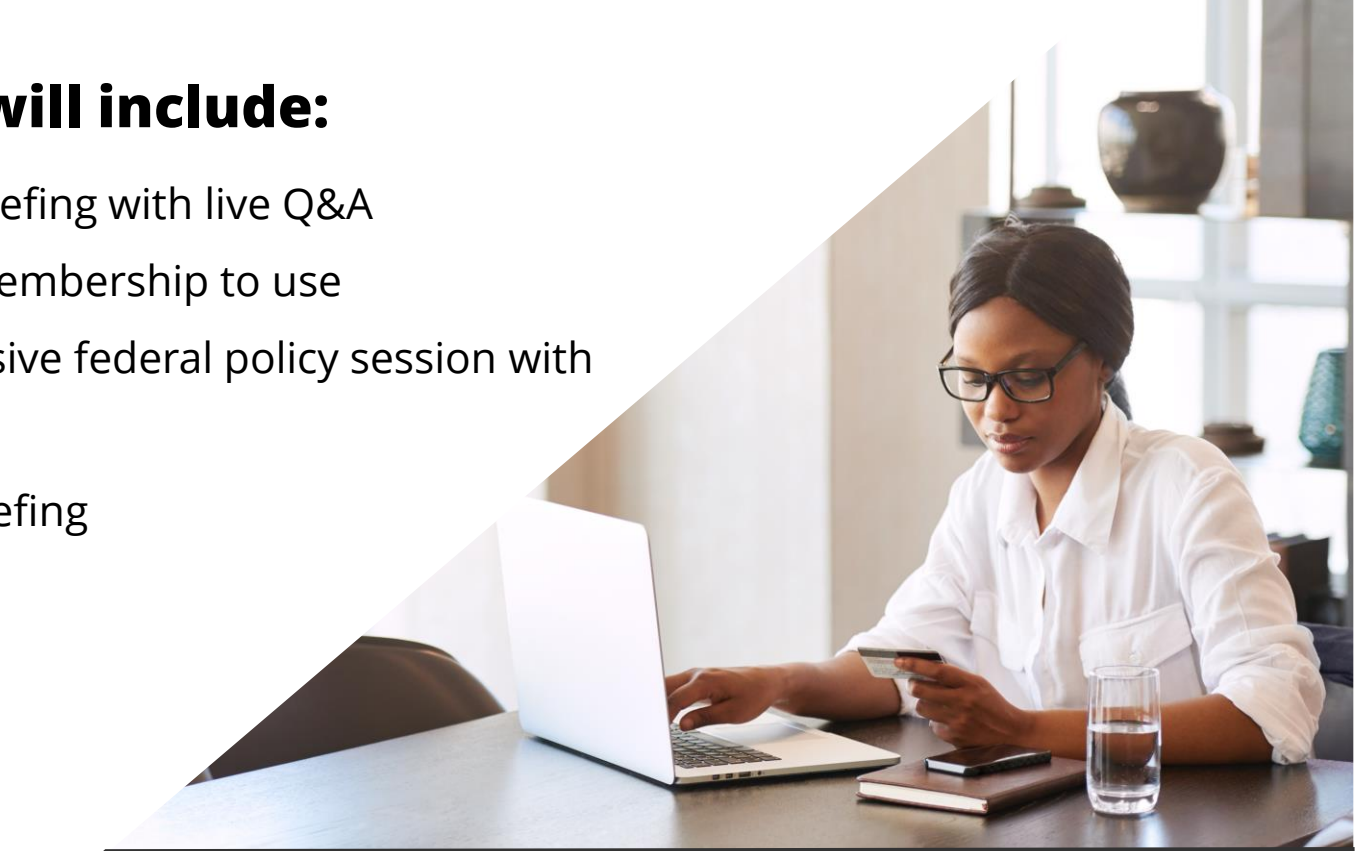
JUNE 22-23

Session topics will include:

- Legislative issues briefing with live Q&A
- Putting your NFIB membership to use
- NFIB member-exclusive federal policy session with special guest(s)
- Insider's political briefing
- ... and more!



Have a question now? Contact us at flyin@NFIB.org



DISCLAIMER

- The materials and information provided in this webinar and on NFIB's website are for informational purposes only and not for the purpose of providing legal or tax advice. You should contact your attorney and/or tax professional to obtain advice with respect to any particular issue or problem.
- This is based on information available by 05/26/21.

Agenda

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- Covid-19 Small Business Resources
 - Updates on federal programs
 - Employee Retention Tax Credit
 - Q&A
 - Send questions to info@nfib.org

Upcoming Webinar



Wednesday, June 9th @ 12pm EST

Topic – Step by step instructions on how to claim the ERTC (or ERC) retroactively.

Special guest: Justin Elanjian, CPA, Apiro



COVID-19 Resources

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- [Paycheck Protection Program](#)
 - [Economic Injury Disaster Loan](#)
 - [Employee Retention Tax Credit](#)
 - [Restaurant Revitalization Fund](#)
 - [Shuttered Venue Grant](#)
 - [NFIB Coronavirus Resources](#) (including past webinars)

Economic Injury Disaster Loan

- Starting the week of April 6, 2021, the SBA is raising the loan limit for the COVID-19 EIDL program from 6-months of economic injury with a maximum loan amount of \$150,000 to up to 24-months of economic injury with a maximum loan amount of \$500,000. SBA will reach out directly via email.
- If an applicant accepted a loan for less than the full amount originally offered, the applicant will have up to two years after the date of the loan promissory note to request to request additional funds. Applicants may continue to request additional funds even after the application deadline of December 31, 2021.
- SBA is extending deferment periods for all disaster loans, including COVID-19 EIDLs, until 2022 to offer more time for businesses to build back. SBA will extend the first payment due date for disaster loans made in **2020 to 24-months** from the date of the note and to **18-months** from the date of the note for all loans made in the calendar year 2021.
- Check EIDL application status: Customer Service Center at **1-800-659-2955** (1-800-877-8339 for the deaf and hard of hearing) or email DisasterCustomerService@sba.gov
- Application declined?
 - Decline letter sent via email.
 - Applicant can request reconsideration in writing within six (6) months of the date of decline letter.
Send to: E-mail: pdcrecons@sba.gov



Employee Retention Credit (ERC):

Maximization and Monetization

May 2021



This is not a comprehensive review of any development or tax position. Do not rely on these brief summaries to take action without further reading into the underlying source documents and consultation into specific topics. It is not, and should not be construed as, accounting, legal, or written tax advice provided by Cherry Bekaert LLP. Your specific circumstances or needs, and other factors could affect the information contained herein. Please consult with your tax advisor before implementing any planning ideas or taking any actions based on discussion in this general explanation.

Agenda

- ▶ **ERC Overview**
- ▶ **Eligible Employer Status**
- ▶ **Gross Receipts**
- ▶ **Controlled Group Analysis**
- ▶ **Full Time Employee Count**
- ▶ **Acquisitions / Dispositions**
- ▶ **Monetization**
- ▶ **Our Approach for Clients**

ERC Overview

ERC	2020 RULES	2021 RULES
Credit Type	Refundable Payroll Tax credit to Eligible Employers	Refundable Payroll Tax credit to Eligible Employers
Credit Applicability	Qualified Wages Paid after March 12, 2020 and on or before December 31, 2020	Qualified Wages Paid after December 31, 2020 and on or before January 1, 2022
Credit Amount	50% of Qualified Wages (Maximum \$10,000 per employee per year)	70% of Qualified Wages (Maximum \$10,000 per employee per quarter)
Max Credit	\$5,000 Per Employee	\$28,000 Per Employee

Credit ERC against certain employment taxes before considering reduction of other employment taxes.
 Credit can reduce all payroll tax deposits with reconciliation on the Form 941.



ERC: Are You an Eligible Employer?

2020 RULES

Government Mandate Test: Employers (including Tax Exempt Orgs.) carrying on a T or B during 2020 with respect to any calendar quarter where operations (including suppliers) are fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel or group meetings due to COVID-19.

Gross Receipts Test: Employers carrying on a T or B and tax-exempt organizations during 2020 that, in a calendar quarter, have less than 50% of gross receipts in the same calendar quarter during the prior year.

- Status continues until subsequent quarter in 2020 when gross receipts return to 80% or more of the gross receipts for that same calendar quarter as the prior year.
- Calculate at Controlled Group Level

2021 RULES

Government Mandate Test: Employers (including Tax Exempt Orgs.) carrying on a T or B during 2021 with respect to Q1–Q4 where operations (including suppliers) are fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel or group meetings due to COVID-19.

Gross Receipts Test: Employers carrying on a Trade or Business and tax-exempt organizations during 2021 that, in a calendar quarter, have less than 80% of gross receipts in the same calendar quarter during 2019.

- Companies that did not exist in the first two quarters of 2019 substitute the corresponding quarter in 2020.
- Option to compare immediately preceding quarter to the corresponding quarter in 2019.
- Calculate at Controlled Group Level



ERC: Gross Receipts

Taxable Entities

- ▶ Total sales (net of returns and allowances) and all amounts received for services.
- ▶ Includes any income from investments
 - ▶ Dividends,
 - ▶ Interest
 - ▶ Rents,
 - ▶ Royalties and annuities, regardless of whether those amounts are derived in the ordinary course of the taxpayer's trade or business.
- ▶ Reduced by the taxpayer's adjusted basis in certain property used in a trade or business or capital assets sold.
- ▶ Tax accounting method for income recognition applies.

Tax-Exempt Entities

- ▶ Gross Receipts means gross receipts of the taxable year and generally includes all receipts.
- ▶ Tax accounting method for income recognition applies.
- ▶ Includes proceeds from investments and grants.
- ▶ Uncertainty over whether PPP Loan proceeds at disbursement or loan forgiveness are included in income.
- ▶ Not Reduced by the taxpayer's adjusted basis in certain property used in a trade or business or capital assets sold.



ERC Controlled Group Analysis

- ▶ **Eligible Employer** status determined at the controlled group level
 - Greater than 50% parent subsidiary ownership.
 - In a brother sister structure, the same five or fewer own 80% or more of two entities
 - Affiliated service groups.
 - Organizations for which management functions are provided.
 - In the Private Equity context, brother-sister entities may not have to be aggregated.



ERC: Full Time Employee Count in 2019

Notice 2021-20

Identify “full-time” employees in each month in 2019 :

- Average at least 30 hours of service per week; or
- 130 hours of service in the month

In business for all months in calendar year 2019:

- sum the number of full-time employees in each calendar month
- divide by 12

Special rules apply to employers not in business all of 2019



ERC: Acquisitions / Dispositions (Employee Counts and Gross Receipts)

- ▶ How does an employer that acquires or disposes of a trade or business during 2020 determine whether a significant decline in gross receipts occurred OR number of FTEs in 2019.
- ▶ **Example:**
 - When an employer compares its gross receipts for a 2020 calendar quarter when it owns an acquired business to its gross receipts for the same calendar quarter in 2019, the employer may include the gross receipts of the acquired business in its gross receipts for the 2019 calendar quarter.
 - Under this safe harbor approach, the employer may include these gross receipts regardless of the fact that the employer did not own the acquired business during that 2019 calendar quarter.



ERC: Monetizing the Credit

Credit can reduce payroll tax deposits

- ▶ Credit offsets employer OASDI payments on wages paid to all employees after consideration of:
 - Credits from mandated FMLA and sick pay leave
 - Start-up company R&D credits and
 - Nonprofits claiming credits for employing veterans
- ▶ All payroll tax deposits can be reduced including:
 - Employees' FIT, OASDI and Medicare taxes
 - Employer's OASDI and Medicare taxes

Credit can be claimed in advance of wages on Form 7200

- ▶ Amounts up to the average quarterly wages for 2019
- ▶ Could result in excess amounts which would need to be repaid at the end of the quarter
- ▶ Processed with other tax returns received by the IRS
- ▶ At least 30 days before funds received

Credit can be claimed as wages are paid on Form 7200

Credit can be claimed at quarter end on Form 941

- ▶ Employer specifies whether credit should be refunded or carried forward as a credit to the next quarter
- ▶ If carried forward as a credit to the next quarter, payroll tax deposits can be reduced until credit is absorbed



Maximizing Your CARES Benefits

- ▶ Coordinate wages claimed with PPP loans and grants and credits for paid sick and family medical leave, R&D credits and WOTC
- ▶ Allocate PPP proceeds among employees to maximize ERC.
- ▶ Extend PPP2 covered period across multiple quarters to maximize ERC.
- ▶ Utilize non-wage expenses in PPP forgiveness to the extent possible.
- ▶ Apply for all available programs.



Our Approach for Clients

Complimentary Scoping

- Meet with Company personnel to review Company facts and gather information, including PPP loan forgiveness expenses
- Assist the Company in its evaluation and qualification for the ERC
- Prepare a preliminary estimate of potential payroll tax benefits

Project

- Assist the Company in documenting Eligible Employer Status under the ERC.
- Assist the Company in determining the Qualified Wages to be used in the ERC calculation(s).
- Assist the Company in calculating the ERC in each calendar quarter.
- Assist Company with documentation required to substantiate the ERC benefits.
- Advise the Company, as necessary, to prepare amended employment tax returns to claim the ERC or adjustments for current quarters returns and general employment tax assistance, as necessary

Proprietary Software Platform

