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# Employee Retention Credits Exempt Organizations

June 6, 2023



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# Learning Objectives

*At the end of the session, you will be able to:*

- Recall how to calculate your organization's gross receipts by quarter and tie out to your Form 990
- Recognize if common shut-down scenarios might apply to your organization
- Identify questions to ask providers when choosing who to work with to pursue credits



# Agenda

- Employee Retention Tax Credit overview
- Eligibility
  - Gross receipts reduction and how to calculate
  - Government shutdown guidance
- Nonprofit scenarios by organization type
- Credit calculation
  - Qualified wages / health
  - Consideration of other grant funding / credits
- Claiming ERC — timing and financial reporting
- ERC due diligence: questions to ask
- How CLA can help



# Polling Question

Has your Organization:

- Already claimed ERC?
- Currently in process to calculate and claim ERC?
- Still evaluating eligibility



# Employee Retention Credit Overview

	2020	2021
<b>Covered dates (payroll paid during period)</b>	3/13/20 – 12/31/20	1/1/21 – 9/30/21
<b>Employer size-based restrictions*</b>	Over 100 fulltime employees can only include paid but not working	Over 500 fulltime employees can only include paid but not working
<b>Quarterly revenue decline vs. same quarter 2019 OR</b>	>50%	>20%
<b>Partial or full government shut-down</b>	Actual dates organization was shut-down by government order	
<b>Maximum eligible wages + health care cost per employee</b>	\$10,000/year	\$10,000/quarter
<b>% wages + health care eligible for credit</b>	50%	70%
<b>Maximum annual credit/employee</b>	\$5,000	\$21,000

*\*Fulltime employee measured by calendar 2019 according to ACA definition of fulltime employee (130 hrs+/mo = 1.0; < = 0.0)*



# Eligibility — Gross Receipts Reduction

## 2020 Credit

- Greater than 50% reduction in any quarter compared to the same quarter in 2019
- Continue to qualify until the quarter after gross receipts are back up to at least 80% of 2019
- ERC available for wages paid after March 12, 2020

## 2021 Credit

- Greater than 20% reduction in any quarter compared to the same quarter in 2019
- Can use prior quarter to qualify if the prior quarter met the above reduction
- ERC available for Q1, 2, and 3
- Recovery startup available Q3 and 4



# Gross Receipts Reductions — Examples

	Q1	Q2	Q3	Q4	Total
2019	4,203,466.00	4,154,587.00	3,251,166.00	2,188,798.00	13,798,017.00
2020	2,994,368.00	1,523,448.00	2,343,642.00	2,339,155.00	9,200,613.00
	-29%	-63%	-28%	7%	-33%
	<i>Over 50% Reduction</i>		<i>Qualify until first quarter AFTER back up to 80%</i>		
2021	3,166,203.00	4,727,392.00	5,898,479.00		13,792,074.00
	-25%	14%	81%	-100%	0%
	<i>Over 20% Reduction</i>	<i>Qualify based on prior quarter</i>			
	<u>Fiscal Year End</u>	<u>Per Above</u>	<u>Per 990 (Box G Page 1)</u>	<u>Variance</u>	
	6/30/2020	9,957,780.00	9,957,780.00	-	

Follows 6033 of the Code — reconcile annually to Box G on 990 page 1

Can elect to exclude PPP forgiveness, shuttered venue grants and EIDL

- Revenue does not always = Gross Receipts
- Fiscal year-ends need to analyze on calendar year, then adjust to fiscal to tie-out.





# Gross Receipts From 990

IRS Notice 2021-20 clarified nonprofits follow 6033 of the Code, which is defined as Box G on page 1 of the 990

Form <b>990</b>	<b>Return of Organization Exempt From Income Tax</b>		OMB No. 1545-0047
Department of the Treasury Internal Revenue Service	Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations) ▶ 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>2021</b> <b>Open to Public Inspection</b>
<b>A</b> For the 2021 calendar year, or tax year beginning , 2021, and ending , 20			
<b>B</b> Check if applicable: <input type="checkbox"/> Address change <input type="checkbox"/> Name change <input type="checkbox"/> Initial return <input type="checkbox"/> Final return/terminated <input type="checkbox"/> Amended return	<b>C</b> Name of organization Doing business as		<b>D</b> Employer identification number
	Number and street (or P.O. box if mail is not delivered to street address) Room/suite		<b>E</b> Telephone number
	City or town, state or province, country, and ZIP or foreign postal code		
			<b>G</b> Gross receipts \$



# Gross Receipts From 990

## Item G. Gross receipts

On Form 990, Part VIII, column A, add line 6b (both columns (i) and (ii)), line 7b (both columns (i) and (ii)), line 8b, line 9b, line 10b, and line 12

Most Common variance between revenues and gross receipts is proceeds on sales of investments. Should tie to audit cash flow too.

9 Total. Add lines 2a-2f		
3 Investment income (including dividends, interest, and other similar amounts)		
4 Income from investment of tax-exempt bond proceeds		
5 Royalties		
		(i) Real (ii) Personal
6a Gross rents	6a	
b Less: rental expenses	6b	
c Rental income or (loss)	6c	
d Not rental income or (loss)		
		(i) Securities (ii) Other
7a Gross amount from sales of assets other than inventory	7a	
b Less: cost or other basis and sales expenses	7b	
c Gain or (loss)	7c	
d Net gain or (loss)		
8a Gross income from fundraising events (not including \$ of contributions reported on line 1c). See Part IV, line 18		8a
b Less: direct expenses	8b	
c Net income or (loss) from fundraising events		
9a Gross income from gaming activities. See Part IV, line 19		9a
b Less: direct expenses	9b	
c Net income or (loss) from gaming activities		
10a Gross sales of inventory, less returns and allowances		10a
b Less: cost of goods sold	10b	
c Net income or (loss) from sales of inventory		
		Business Code
11a		
b		
c		
d All other revenue		
e Total. Add lines 11a-11d		
12 Total revenue. See instructions		



# Gross Receipts

- Nonprofits that have multiple entities need to consider if the organizations should aggregate for purposes of:
  - Fulltime employee count
  - Gross receipts analysis
- The IRS did not provide specific requirements for nonprofit aggregation; we suggest considering:
  - Control more than 50% of the board of directors
  - Marked as a related entity on the form 990
  - Consolidated audited financial statements



# Government Shutdown

Fully or partially suspended operations due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19

Comparable operations/ability to telework:

- Employer's telework capabilities
- Portability of employees' work — portable or otherwise adaptable to be performed from a remote location.
- Need for presence in employee's physical workspace.
- Transitioning to telework — is the adjustment period significant?

# Government Shutdown

## Partial Suspension Objective Test

- Gross receipts from that portion of the business operation is not less than 10% of the total gross receipts (both determined using the gross receipts of the same calendar quarter in 2019), or
- The hours of service performed by employees in that portion of the business is not less than 10% of the total number of hours of service performed by all employees in the employer's business (both determined using the number of hours of service performed by employees in the same calendar quarter in 2019).





# Scenarios for Certain Types of Nonprofits

# Religious Eligibility – Partial Suspension of Operations

## Government Order:

- If an organization was partially closed due to a valid government order, then the credit is still applicable for the date the government order is in effect.
- Please note that it must be a government order and not a guideline impacting business operations in order to be valid.
- State of Maryland order number 20-08-03-01 is an example of an order
- District of Columbia Mayor's Order 2020-079 is an example of an order



ORDER  
OF THE  
GOVERNOR OF THE STATE OF MARYLAND  
NUMBER 20-08-03-01

*Religious Facilities.* Subject to applicable Local Orders and Secretary's Directives, churches, synagogues, mosques, temples, and other similar religious facilities of any faith in Maryland ("Religious Facilities") may open to the general public, *provided, however*, that the total number of persons permitted in a Religious Facility at any one time shall not exceed 50% of that Religious Facility's Maximum Occupancy (defined below).

# Associations

- Gross Receipts:
  - Typically need to aggregate if related foundation; watch for investment proceeds on sales
  - May need to adjust to accrual based on revenues earned (many book sponsorship cash basis, for example)
- Shut-Down Order:
  - If event was cancelled due to order in place when decision was made, but order expires before event, may be eligible for period of order.
  - Application of 10% safe harbor to show event was more than nominal is a bit gray; at a minimum show the “qualifying event” was >10% gross receipts in same quarter 2019.
  - If shifted to virtual, need to consider if activities were a full replacement.
- PPP Overlap:
  - 501c6 could not participate in PPP1 in 2020, and often don’t have grant-funded payroll, so 2020 ERC eligibility under shut-down will likely yield larger credits.





# Arts & Cultural Segment

- Some of the hardest hit nonprofits during COVID
- Eligibility – can mix and match
  - Decline in gross receipts
  - Government order for full or partially suspended operations– will vary state by state
- Complexity with PPP and Shuttered Venue Grants – no double dipping
- Possible factor of union employees

# Senior Living Communities

- Gross Receipts
  - Quantifying total group (assisted living, memory care, etc.) revenues and skilled nursing facility (“SNF”) specific revenues
- Partial Shutdown
  - Common ways to qualify:
    - Reduction in capacity to serve SNF patients from turning semi-private rooms into private rooms or creating a COVID wing in response to government orders
    - Limitations on in-person dining
    - Limitations on in-person therapy
    - Limitations on group activities
  - Not impactful:
    - Reduction in demand (visitor restrictions, elective procedure limitations)
    - Difficulty recruiting employees and increased employee turnover
    - Increased costs, including need for staff personal protective equipment



# Independent Schools

- Gross Receipts
  - Least subjective route
  - Avenues to explore include:
    - Tuition refunds due to COVID-19 learning disruption
    - Capital campaigns running in comparative period
    - Significant restructuring of investment portfolio in comparative period
  - May need to adjust revenues to spread across quarters tuition was earned
- Partial Shutdown
  - Transition to remote learning makes this challenging to meet
  - Operational segments to be considered in applying the 10% test:
    - Food service (if internal employees)
    - Maintenance
    - Athletics
    - Day care or other after school



# Higher Education

- Government shut down
  - Not common in higher ed as delivery of course content virtually does not apply, but could see it in specific operations of the institution – e.g., dining, athletics
- Gross Receipts
  - Investment activity
  - Large gifts or estates in 2019
  - Tuition revenue spread across quarters
  - Camps or auxiliary revenues that could not occur
- Private institutions can qualify in both 2020 and 2021
- Public institutions can only qualify in 2021





# Credit Calculation

# Credit Calculation

## Qualified wages

Medicare wages (gross wages less certain pretax deductions, mainly health)

Severance is excluded

Should agree to Line 5c on the quarterly 941

## Qualified health

Employee pre-tax health deductions (medical, dental, vision)

Employer portion of the above

Employer HRA or FSA contributions

Excluded:

- After tax deductions
- Employer HSA contributions



# Consider Other Funding or Credits

## Exclude

Wages used to obtain PPP forgiveness (*note: wages in PPP period included in application in excess of amount needed can be used*)

Wages/health that were used to claim FFCRA credits

- Reported as qualified sick leave and qualified family leave wages or health on the 941

Wages/health funded by restricted grants

- Some ambiguity in definition of “double dipping”
- Federal grants and cost-reimbursement state grants need to be excluded
- Restricted philanthropic grants may be: see if funder will release restriction or allow shifting to cover non-payroll costs



# Differences in Calculation

## Eligible under gross receipts

All qualified wages/health in quarter can be used toward credit

## Eligible under government shutdown

All quarters that span shutdown are eligible, however, only wages/health paid in the period of the order are eligible

*Example:* eligible period determined to be 4/1/20 – 6/1/20

Q2 2020 is eligible but only wages paid from 4/1 – 6/1 can be used



# Credit Calculation

## By employee

Qualified wages + qualified health – wages used for PPP forgiveness or other grant funding – wages used for FFCRA

X 50% for **2020** credit, capped at \$5,000 for year

X 70% for **2021** credit, capped at \$7,000 per quarter



# Maximizing Credits During PPP Overlap

Suggested strategy:

1

Determine minimum amount of wages/health care needed to **reach 100%** PPP forgiveness.

2

Determine amount of wages/health care from **non-overlapping period** to use towards PPP.

3

**Calculate** ERC using all wages/health care.  
(excluding those paid for by restricted grants)

4

**Pull wages** for those exceeding the ERC max (\$10k) into PPP during overlap.

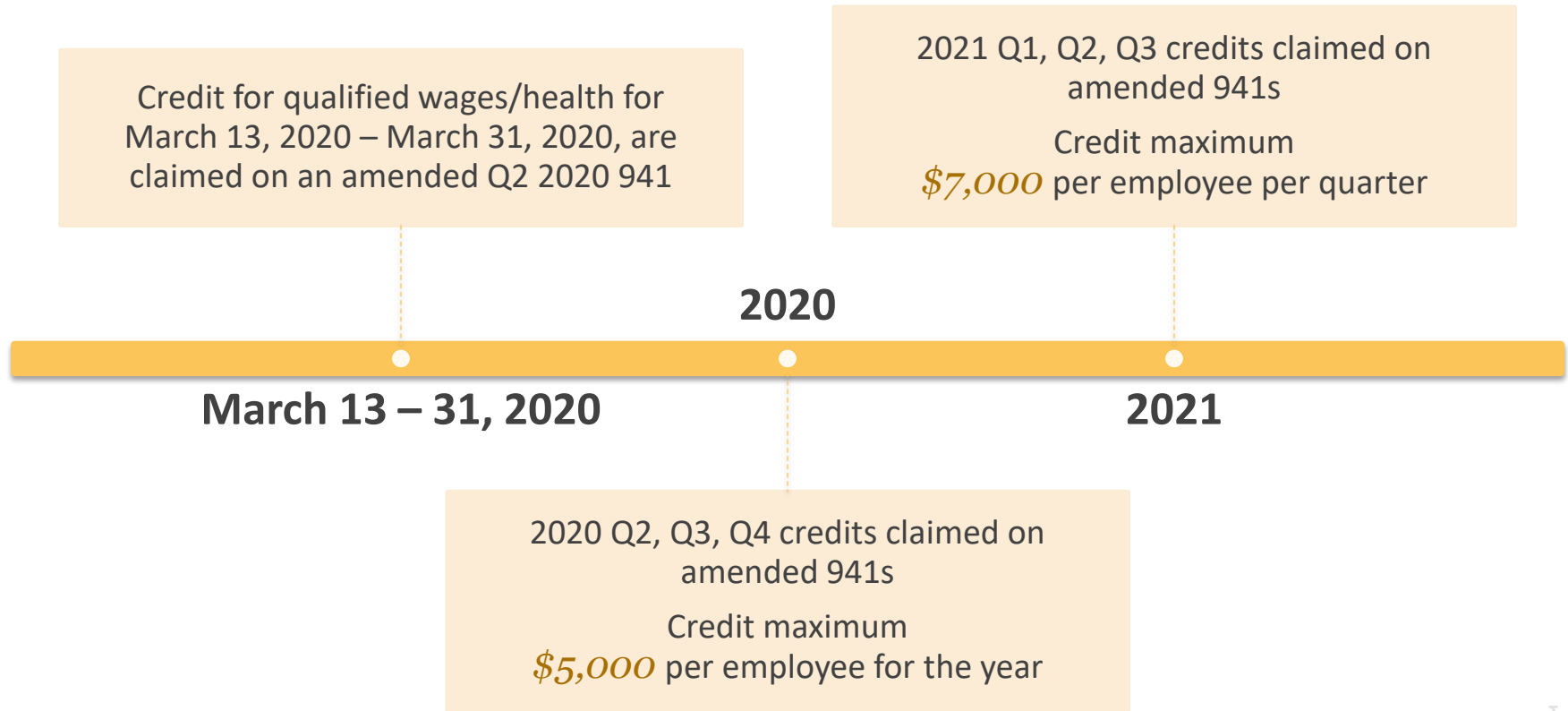
5

**Determine gap** for PPP and pull minimum needed from ERC to PPP.



# Claiming ERC

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# Claiming ERC — Timing and Financial Reporting

- Have 3 years from the date of the original filed 941 to claim the credit on an amended 941x
  - 2020 credits: last date to file: April 15, 2024
  - 2021 credits: last date to file: April 15, 2025
- Current IRS turnaround 9 – 12 months
- Reported as government grant — recognize when all conditions of such grant are fulfilled or there is reasonable assurance that they will be fulfilled (typically, when the 941x is filed)





# Selecting a Partner: Due Diligence

# Selecting a Professional to Help With ERC

1

You can file for ERC yourself — you do not have to work with a firm or provider.

Consider the capacity and knowledge-base you have internally to:

- *Evaluate* eligibility. If gross receipts and you can easily tie-out, this is simpler than if you need to consider shut-downs.
- *Calculate* the credits, particularly with PPP and restricted grant overlaps.
- *Prepare* the form 941-X.
- *Document* the details in case of a future IRS audit.



# Selecting a Professional to Help With ERC

2

If you do seek to team with a provider for support, consider asking the following questions.

- Under what eligibility criteria do you believe we are eligible?
- Does your firm follow the IRS notices for guidance, or just the language in the CAA and ARPA legislation?
- If providing estimated credit amounts, do they properly account for restricted funding and PPP?
- If we work with you, when do we sign the contract and lock in?
- What is your fee structure and when will we have to pay it?  
*(note: many providers charge a % of the credit, which may incentivize aggressive eligibility, and can become a significant cost fairly quickly).*
- What are the deliverables from your work?  
*(We recommend looking for a provider who will include an analysis of eligibility with orders if under shut-down, tie-out of gross receipts to 990s, detailed calculation of the credit by employee, and 941-X if they will prepare it for you).*
- What is your company's history working with organizations like us on tax credit programs? *(both ERC and others prior to the pandemic)*







# Questions?

# How CLA Can Help



*30-minute* complimentary consultation re: eligibility

If additional eligibility support is needed; we will engage time and materials to support. We can typically credit these fees against your final costs.

Small organizations (<10 employees)

- Time and materials engagement — typically \$3 – 8k total fees

>10 employees

- \$750/employee for 2020 credits
- \$750/quarter/employee for 2021 credits

[CLAconnect.com/contact-us](https://CLAconnect.com/contact-us) — mention *ERC* in the form



Thank You!

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