

## CARES Act

## Consolidated Appropriations Act, 2021

### Eligible Employers

Available to employers that carry on a trade or business during 2020, if, with respect to any calendar quarter in 2020, the employer's:

- Operation of the trade or business is fully or partially suspended due to a COVID-19 related "shut-down order"; or
- Gross receipts declined by more than **50% of gross receipts** when compared to the same quarter in 2019. Employers no longer eligible when gross receipts in any calendar quarter in 2020 exceed 80% of gross receipts of the same calendar quarter in 2019.

For 2021, reduces the threshold for a quarterly reduction in gross receipts from 50% to 20%.

Available to employers that carry on a trade or business during the first two quarters of 2021, if, with respect to either Q1 or Q2 of 2021, the employer's:

- Operation of the trade or business is fully or partially suspended due to a COVID-19 related "shut-down order"; or
- Gross receipts in either Q1 or Q2 of 2021 are less than **80% of gross receipts** of the same quarter in 2019.

In addition, if an employer does not satisfy the reduction in gross receipts test for Q1 or Q2 of 2021 in comparison to the same calendar quarter in 2019, it can elect to use the immediately preceding calendar quarter and compare that quarter to the same quarter in 2019 to determine whether the test is met.

Any employer who was not in existence for the same calendar quarter in 2019 can look to the same calendar quarter in 2020 to determine if the reduction in gross receipts test is met.

### Eligible Employers – PPP Loan Interplay

An employer that receives a Paycheck Protection Program (PPP) loan is not eligible to claim the employee retention credit under the CARES Act. For this purpose, the "employer" includes any affiliated entities with more than 50% common ownership.

An employer that receives a PPP loan may also qualify for the credit with respect to wages not covered by a PPP loan that is forgiven.

**This change is retroactive to March 12, 2020.**

### Period of Credit Availability

Covers qualified wages paid after March 12, 2020, and before January 1, 2021.

Expands coverage period to include qualified wages paid on or after January 1, 2021, and before July 1, 2021.

### Amount of Credit

For the period between March 12, 2020 and before January 1, 2021, the credit was **50%** of the qualified wages paid to an employee (subject to the cap on qualified wages discussed below).

For the period beginning on January 1, 2021 and ending on June 30, 2021, the credit is increased to **70%** of qualified wages paid to employees during each quarter (subject to the cap on qualified wages discussed below).

### Maximum Qualified Wages Eligible for Credit

\$10,000 **during 2020**; maximum credit for 2020 is \$5,000 per employee (\$10,000 in qualified wages x 50%).

Cap on qualified wages paid to an employee is increased to \$10,000 **per calendar quarter**; maximum credit is \$7,000 per employee for each of the first two calendar quarters of 2021 (\$10,000 in qualified wages per quarter x 70%) for a maximum credit for 2021 of \$14,000 per employee.

The 2021 credit is available even if the employer received the \$5,000 maximum credit for wages paid to such employee in 2020.

### Employer Size and Claiming the Credit for Wages Paid to Employees That are Working

An employer with more than **100** full-time equivalent employees could only take the credit for wages paid to an employee who was not providing services due to the shut-down or reduction in gross receipts.

An employer with 100 or less employees was eligible for the credit for all wages paid to any employees during the shut-down or reduction in gross receipts, even if the employee was working (assuming all of the other requirements were met).

The threshold for the number of employees is increased to **500 employees** for the period between January 1, 2021 and ending on June 30, 2021.

An employer with 500 or less employees will be eligible for the credit for all wages paid to employees regardless of whether they perform services.

### Bonuses or Pay Increases

Qualified wages eligible for the credit may not exceed what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the period of economic hardship.

This limitation prohibited employers from claiming the credit for bonus pay or pay rate increases.

This requirement is eliminated for 2021.

Qualified wages can include bonus pay or pay rate increases (subject to the cap of \$10,000 per quarter).

### Advance Payment of Credit

No advance of the credit available for qualified wages before the wages are paid.

Employers with 500 or less full-time equivalent employees may receive an advance payment of the tax credit before the wages are actually paid for eligible quarters in 2021 in an amount not to exceed 70% of the average quarterly wages paid for the same quarter in 2019 (if all eligibility requirements are met).

Employers must repay any excess amounts advanced if the actual credit amount calculated at the end of the quarter is less than the amount advanced.

### Governmental Entities Eligible for Credit

Governmental employers were not eligible.

Expands eligibility for Q1 and Q2 in 2021 to include:

- Section 501(c)(1) organizations organized under acts of Congress (such as certain Federal credit unions)
- Public colleges or universities
- Organizations whose principal purpose or function is providing medical or hospital care