

**eZERC** → presents:

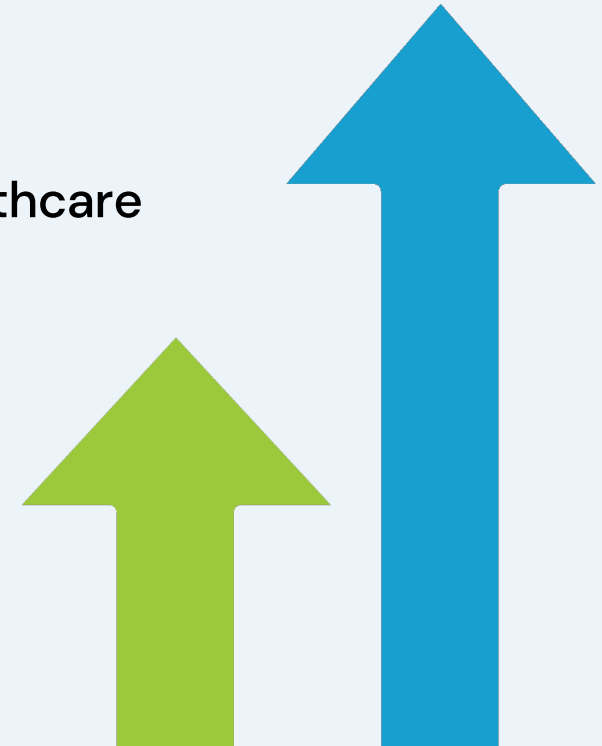
# Understanding Eligibility Regulations

for the Employee Retention  
Credit in the Healthcare Industry:  
Misconceptions vs. Facts



# THIS IS **What you'll learn**

- 1 Employee Retention Credit (ERC) 101
- 2 Common ERC Eligibility Misconceptions in Healthcare
- 3 How to Qualify and Apply
- 4 What to Look Out For In an ERC Advisor



# Introducing *today's emcee*



**Adam Fisher, Esq.**  
General Counsel

- Tricera Capital, 2021 – 2022
- McDermott Will & Emery, 2017 – 2021
- Greenberg Traurig, 2015 – 2017
- Bilzen Sumberg, 2014 – 2015

EZ-ERC's team of Managing Directors bring 50+ years of combined Tax Advisory and Big Consulting Experience



**Kyle Morabito, Esq.**  
CLO & Managing Director

*Tenures at DLA Piper, McDermott Will & Emery, and Bilzin Sumberg*



**Victoria Beck, Esq.**  
Compliance Counsel

*Tenures at Hill Wallack LLP and Parker McCay P.A.*



**JJ Budzik, JD**  
Managing Director

*Tenures at Alvarez & Marsal, Arthur Andersen, and Deloitte*



# ERC 101

# How much can an organization claim?

The **maximum** amount an employer can receive for any W2 employee is \$26,000.

Funds available per W2 employee are as follows:

TIME PERIOD	CREDITS AVAILABLE
March 13, 2020 – December 31, 2020	<b>\$5,000</b> (50% of the first \$10,000 earned in the period)
Q1 2021	<b>\$7,000</b> (70% of the first \$10,000 earned in the period)
Q2 2021	<b>\$7,000</b> (70% of the first \$10,000 earned in the period)
Q3 2021	<b>\$7,000</b> (70% of the first \$10,000 earned in the period)

# ERC Timeline

**MARCH 2020**

ERC created as part of the CARES Act

**DECEMBER 2020**

Extended and expanded through the Consolidated Appropriations Act of 2021

**MARCH 2021**

Further extended through the American Rescue Plan

**APRIL 15, 2024**

Filing deadline for all quarters in 2020

**APRIL 15, 2025**

Filing deadline for all quarters in 2021

# CARES Act

## Paycheck Protection Program (PPP)

---

- The first COVID-19 relief taken by most organizations
- Forgivable loan
- Only to be used for qualified expenses – payroll, rent, etc.

## Employee Retention Credit (ERC)

---

- Unlike PPP, no allocation of funds by the Small Business Administration – ERC is from U.S. Treasury
- Unlike PPP, ERC is a cash refund that can be used in any manner
- Credit earned on wages not utilized for PPP forgiveness (i.e., no double dipping)

“ **As of December 2020, it was no longer the PPP or ERC, you could take both.** What is the ERC? It's a payroll tax credit and it's refundable, meaning it's a cash credit. It's available to businesses that either had a financial statement impact because of COVID-19 or had an operational impact, where they had to change or modify the way they did business as a result of the COVID-19 restrictions. ”

– Kenneth Dettman, CEO & Managing Director



# Common *ERC Eligibility Misconceptions* in Healthcare



## Misconception

Our organization  
is too large to  
qualify



Your organization can qualify for the 2020 credit if you had 100 or fewer average monthly full-time W-2 employees in 2019 and the 2021 credit based on an increased threshold of 500 employees in 2019.

---

Not all employees count towards the limitation – only full-time W-2 employees from 2019 count.

---

Full-time employees are those W-2 employees who work at least 130 hours per month.

---

Aggregation rules must be considered to accurately determine which employees must be counted.

misconception:

Our organization took non-PPP government funding and therefore we aren't eligible



This is a case-by-case consideration:

- ❖ Health and Human Services (HHS) has explicitly said that ERC does not constitute “other assistance” (i.e., reimbursement of payroll costs) and therefore it does not negate the availability of ERC.
- ❖ ERC is calculated based on the amount of wages but it is not a reimbursement of those wages or payroll outside of the Employer-Paid FICA reimbursement (i.e., the nonrefundable piece). It's a refundable payroll tax credit.

---

Requirements are dependent on grants received.

*We recommend working with someone who understands the intricacies of federal and state funding.*

misconception:

Facilities that didn't  
experience revenue  
declines aren't eligible



Many U.S. healthcare facilities have *dismissed the possibility* of ERC eligibility due to stable or increased revenue over the tested eligibility period (i.e. 2020–2021)

There are two clear ways to know if you qualify for the ERC:

- the Significant Decline in Gross Receipts test (financial statement test); or
- the full or partial suspension of operations test (governmental order test).

You do not need to satisfy both.

The suspension of operations test takes *specialized knowledge* and is difficult to assess without the support of a qualified advisor.

misconception:

Our facility was never fully shutdown and therefore doesn't qualify



Since most U.S. healthcare facilities were considered essential and not fully shutdown they *dismissed the possibility* of ERC eligibility.

IRS Notice 2021-20 states:

- If an employer's workplace is closed due to a governmental order for certain purposes, but the employer's workplace may remain open for other limited purposes, the employer's operations would be considered to be partially suspended.
- If all, or all but a nominal portion, of an employer's business operations may continue, but the operations are subject to modification due to a governmental order, such a 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 under the facts and circumstances.

The suspension of operations test takes *specialized knowledge* and is difficult to assess without the support of a qualified advisor.

[ez-erc.com](http://ez-erc.com)



# How to Qualify & *Apply*

# Eligibility

## TEST #1

### Substantial Decline in Gross Receipts Test

Did your gross receipts decline by:

▶ **50%**

*Per quarter*

comparing each quarter in 2020 to the same quarter in 2019?

▶ **20%**

*Per quarter*

comparing Q1, Q2 and Q3 of 2021 to the same quarter in 2019?

## TEST #2

### Partial Suspension of Operations Test

Was your organization ability to provide goods or services restricted or modified by a COVID executive order?

If so, would your organization have been able to provide

▶ **10%** *in additional goods or services*

if such COVID executive orders were never enacted?

# How EZ-ERC approaches the full or partial suspension analysis for healthcare organizations



## Four-Pronged Approach:

---

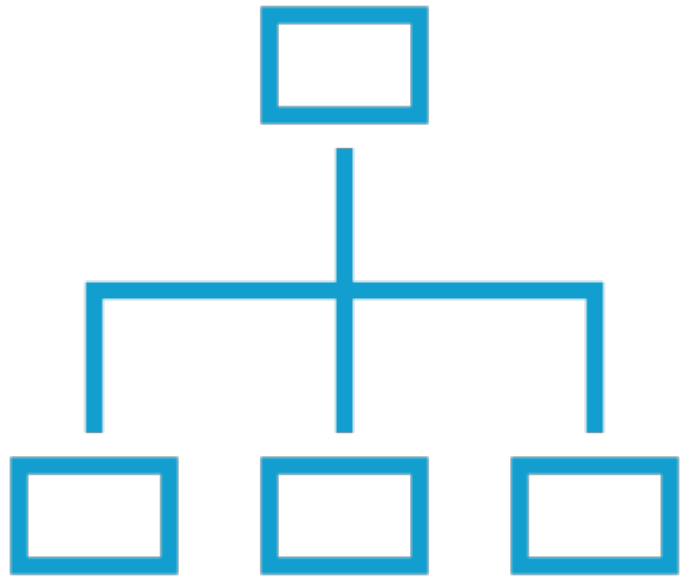
- 1 Can your operations be broken down into “portions” or “segments”?
- *Services and/or procedures provided;*
  - *Groups served;*
  - *Locations where services are delivered, etc.*
- 

- 2 What COVID-19 governmental orders imposing mandated restrictions affected your organization during the pandemic?
- *Social distancing & capacity restrictions;*
  - *Increased sanitization & disinfection;*
  - *COVID-related absences & quarantine;*
  - *Changes in the format of the service, etc.*
- 

- 3 What changes or modifications did you make to your business operations to comply with these governmental orders?
- 

- 4 What was the impact? Was there a “more than nominal” (>10%) impact on the operations of the segment/portion?
-

# Aggregation Implications



Aggregation



Full-Time Employee Count



Gross Receipts



Full or Partial Suspension of Operations

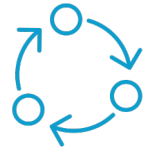


Credit per Employee

---



# Examples of Changes in Operations to Comply with Executive Orders



## **Elective Procedures**

Modification or restrictions to the performance of elective procedures or “emergency” procedures



## **Enhanced Sanitation and Hygiene Procedure**

Increased efforts toward sanitization of equipment, patient rooms, common areas, air, etc. and use of “resting rooms”



## **Reconfiguration of Beds/Chairs/Facilities**

Removal or reconfiguration of patient beds, chairs, or facilities to accommodate social distancing



## **Changes to Appointment Scheduling**

Modifying the length of appointments and time between appointments

---





### **Changes to Patient Entry to Facility and Processing**

- Closure of waiting room or restricted to patients only;
- Changes to check-in/checkout procedures (phone, curbside)
- COVID screenings – requiring temperature checks, attestations on COVID-19 exposure/vaccinations, and testing.



### **Medical Personnel**

Restricted access to medical facilities of “essential personnel”



### **Limitation on Pre- Post-Op Areas**

Reducing number of patients in pre- and post-operative areas (i.e., surgery center)



### **COVID-19 “Wings”**

Isolating services and personnel to “COVID Wings”

---

There's no harm in getting a second look if you're not confident that you've received your full credit.

---

A second look can lead to:



Refiling previously filed quarters to receive full credit.



Filing for quarters you previously missed.

# If you've already filed for an ERC claim, but did any of the following, you should consider a second look:

---

- "Blacked out" your entire PPP Covered Period from ERC eligibility
- Did not fully evaluate partial suspension through the end of local social distancing orders
- Used W2 count instead of FTE count



# What To Look For In An *ERC Advisor*

# What *differentiates* EZ-ERC from its competitors?

- **Tax Guidance:** Kenneth Dettman (former partner at Alvarez & Marsal and Co-Head of their ERC Taskforce) signs every ERC filing as paid preparer; thereby taking responsibility for our clients' ERC tax positions;
- **Legal Guidance:** We work side-by-side with some of the top law firms in the country specializing in the ERC and even work several lawyers who were integral in writing the ERC legislation;
- **Legal Opinion:** EZ-ERC pays for a tax attorney to prepare a legal analysis and/or opinion, where applicable, substantiating our clients' ERC legal eligibility; thereby taking responsibility for our clients' ERC legal positions;
- **Tax Insurance:** EZ-ERC has relationships with insurance providers that can source tax insurance policies to protect our clients' ERC claims;
- **Timing:** We can finalize and submit an ERC claim to the IRS within a month from the time a client signs our engagement; and
- **Price:** EZ-ERC generally charges 10-20% of the credit (competitors generally charge 25-30%).

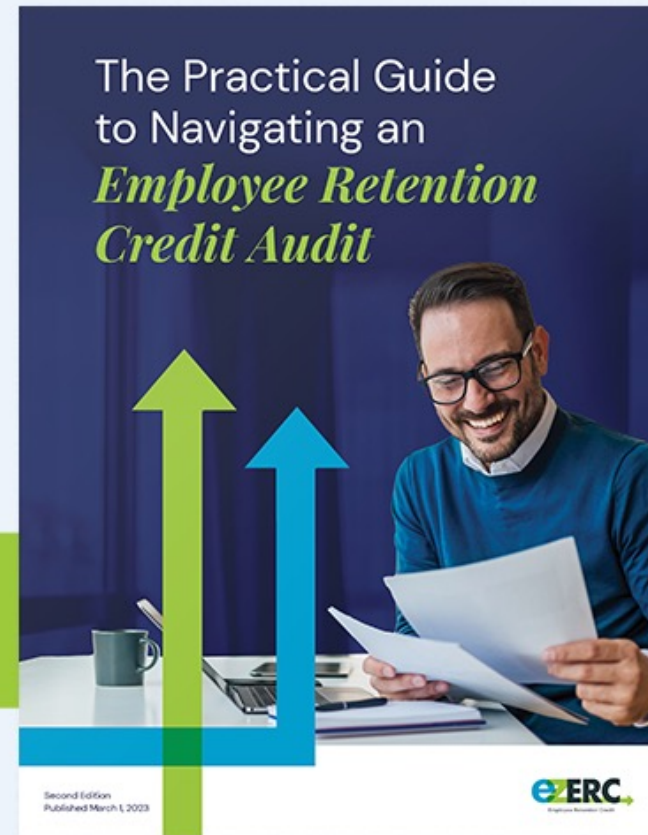
# Documentation Required

- Ownership and Related Party Information
- Full-Time Employee Count (2019)
- Gross Receipt Substantiation (2019–2021 Quarterly P&Ls)
- Payroll Tax Filings
- Payroll and Employer–Paid Health Information
- PPP Information
- Tax Return Support
- Other Wage–Based Tax Credits

# The *Unofficial* Audit Guide

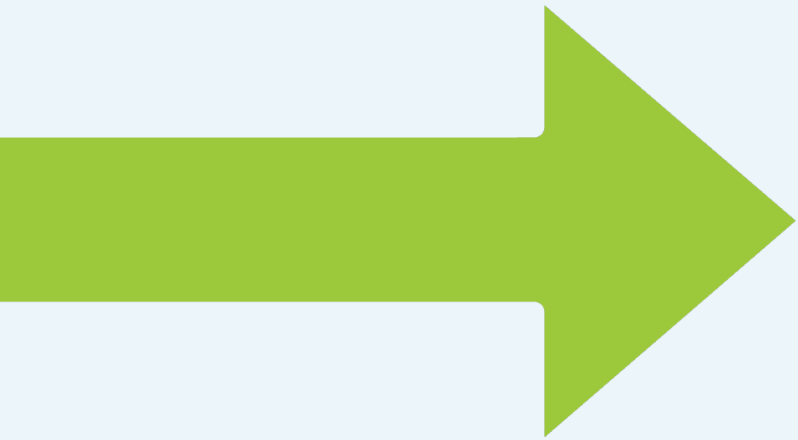
## The Practical Guide to Navigating an *Employee Retention Credit Audit*

Key insights for ERC substantiation  
and audit protection



<https://www.ez-erc.com/practical-guide/>





# Q&A

# *Contacts*



**Adam Fisher, Esq.**  
General Counsel

[adamfischer@ez-erc.com](mailto:adamfischer@ez-erc.com)



**Kyle Morabito, Esq.**  
Managing Director

[kyle@ez-erc.com](mailto:kyle@ez-erc.com)



**Victoria Beck, Esq.**  
Compliance Counsel

[victoria@ez-erc.com](mailto:victoria@ez-erc.com)



**JJ Budzik, JD**  
Managing Director

[jeffb@ez-erc.com](mailto:jeffb@ez-erc.com)