



Employer Retention Tax Credit Services Proposal





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To ensure a complete understanding between us, this letter will describe the scope and limitations of the consulting services we will be providing along with the corresponding pricing and terms of engagement. This proposal is good for 15 days from the date of this letter.

Taxcap 's success in securing tax credits for clients is wholly reliant upon the documentation, representations and other factual information provided by clients to determine the eligibility for and calculation of the applicable tax credit.

Our Process: Our Services to Support Employers

COST/BENEFIT ANALYSIS

- High level determination of employer/employee eligibility
- Assessment of the eligibility availability by quarter for the Federal Employer Retention Credit for periods from March 12, 2020-December 31, 2021

QUANTIFICATION

- Identify eligible employees (i.e. furloughed, decreased hours, etc.)
- Determination of qualified wages for periods March 12, 2020-December 31, 2021
- Consultation and coordination towards the maximum available credit as it relates to PPP monies received, expenses attributable, and ordering of expenses to best maximize the credit legally available

COMPLIANCE

- Preparation of Form 7200 for advance receipt of application credit (if applicable) for future periods.
- Preparation of Form 941 for applicable quarter
- Preparation of Amended 941s for previously prepared quarters (if applicable)
- Amend PPP Forgiveness application in coordination with ERC wages credit claimed

CONTINGENCY

- Audit representation to the appellate level should the tax credit claim be subjected to examination by either the IRS or state tax authorities. If our assistance is required beyond the appellate level, any additional work on our part is billed at our standard hourly rates, which are described in a separate engagement letter that outlines the scope of additional services.

In order to qualify for the ERC you must meet one of the following requirements:

- Your business had fully or partially suspended operations during any calendar quarter in 2020 or 2021 due to orders by an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19. (See linked IRS FAQ to determine the definition of full or partially suspended) <https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-when-an-employers-trade-or-business-operations-are-considered-to-be-fully-or-partially-suspended-due-to-a-governmental-order-faqs>

OR

- Your business has experienced a significant decline in gross receipts in any calendar quarter in 2020. In order to meet this requirement, your gross receipts must fall below 50% of the gross receipts from the same quarter in 2019. The eligibility period then ends in the quarter *after* the significant decline in gross receipts exceeds 80% of your gross receipts from the same quarter in 2019.
- For 2021, the reduction in quarterly gross receipts compared to the same quarter in 2019 is changed from a 50% reduction to only a 20% reduction. Accordingly, a business can claim the ERC in 2021 if the business experiences a drop in quarterly receipts for the first or second quarter of 2021 compared to receipts in the first or second quarter of 2019 of at least 20 percent or more.
- For purposes of qualifying for the ERC because of a drop in quarterly receipts, a business can elect to use the prior quarter and the corresponding 2019 quarter. For example, if a business experienced a 20% or greater drop in the fourth quarter of 2020 compared to the fourth quarter of 2019, but did not for the first quarter of 2021 compared to the first quarter of 2019, the business can elect to qualify for the ERC for the first quarter of 2021. Similarly, it appears that, if the business experienced a 20% or greater drop in revenue between the first quarter of 2021 compared to the first quarter of 2019, the business not only qualifies for the ERC for the first quarter of 2021 but will be able to elect to qualify for the second quarter of 2021, regardless of the revenue the business receives in the second quarter of 2021.

Our fee for this service is 10% of the applicable credit at the time of the receipt of the credit. Minimum fee will be \$500.

The Employer Retention Tax Credit is a refundable tax credit that is received by a reduction of your applicable Federal Payroll taxes, the filing of Form 7200, or with the filing of the Employers Quarterly Federal Tax Return (Form 941 or 941X).

Client's Acknowledgment

CLIENT SIGNATURE

Date

GENERAL TERMS OF ENGAGEMENT

- A. **Services.** It is understood and agreed that Taxcap Business Services Inc (hereinafter referred to as "Taxcap") services frequently include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of client. In connection with its services, We shall be entitled to rely on all representations, decisions, and approvals of client and his representatives and agents. Client understands and acknowledges that neither We nor its employees, agents or representatives are providing legal services in connection with this agreement.
- B. **Payment of Invoices.** Our invoices are payable and due upon receipt. Without limiting its rights or remedies, we shall have the right to halt or terminate its services and / or withhold the "product deliverable" until payment is received on all invoices. Should invoices not be paid within thirty (30) days from the date of said invoice, We will charge an additional 1 ½% of such outstanding invoice for each thirty day period that elapses once payment is due; this is limited to 18% per annum.
- C. **Limitation on Damages.** client agrees that Taxcap and its personnel shall not be liable to client or any related parties for any claims, liabilities, or expenses relating to this engagement for an aggregate amount in excess of the fees paid to us by client. In no event shall Taxcap or its personnel be liable for consequential, special, indirect, incidental, punitive, or exemplary losses or damages relating to this engagement. This limitation on liability provision shall apply to the fullest extent of the law, whether in contract, statute, tort, or otherwise.
- D. **Duty to Cooperate.** Our success in securing tax credits for client is wholly reliant upon the documentation, representations and other factual information provided by client to implement the tax credit program. To fully certify an employee as tax credit eligible, the U.S. Government requires substantiating documentation that only the client may have. In those instances, a Taxcap representative will reach out to client to obtain those documents. client agrees to cooperate with us in a timely manner in responding to those requests. If client fails to cooperate or if it is determined that the documentation, representations or other factual information provided by client are false, then any representations or warranties provided by us in this agreement, save for fees due and payable to Taxcap, will be deemed to be null and voidable at our sole discretion and we may withhold tax credit reports until those requested documents are provided or past due balances are paid in full.
- E. **Third Parties and Internal Use.** Except as otherwise agreed, all services hereunder shall be solely for client's internal purposes and use, and this engagement does not create privity between Taxcap and any person or party other than client. This engagement is not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner or for any purpose, on the advice, opinions, reports, or other services of Taxcap.
- F. **Information and Data.** Taxcap shall be entitled to assume, without independent verification, the accuracy of all representations, assumptions, information and data that client and his representatives provide to us. All assumptions, representations, information and data to be supplied by client and his representatives will be complete and accurate to the best of his knowledge.
- G. **Based on Current Tax Laws.** Client's understanding that any tax assistance provided pursuant hereto will be based upon the law, regulations, cases, rulings and other tax authority in effect at the time specific tax assistance is provided. If there are subsequent changes in or to the foregoing tax authorities (for which we shall have no specific responsibility to advise you), client acknowledges that such changes may result in that tax assistance being rendered invalid or necessitate (upon client's request) a reconsideration of that prior tax assistance.

Employer Retention Tax Credit Eligibility Declaration

Dear Taxcap :

I have reviewed the rules for qualification for the Employer Retention Tax Credit and am eligible for the following periods:

Eligible due to significant decline in gross receipts:

2020 1st Qtr ____ 2nd Qtr ____ 3rd Qtr ____ 4th Qtr ____

2021 1st Qtr ____ 2nd Qtr ____ 3rd Qtr ____ 4th Qtr ____

Eligible due to fully or partially suspended operation:

2020 1st Qtr ____ 2nd Qtr ____ 3rd Qtr ____ 4th Qtr ____

2021 1st Qtr ____ 2nd Qtr ____

I certify that the above information is true and correct.

Signature

Date

Printed Name

Company

FULLY OR PARTIALLY SHUTDOWN RULES ASSESSMENT

The language of the CARES ACT and the Consolidated Appropriations Act, 2021 (CAA) defines qualification for the Employee Retention Tax Credit based upon business operations being fully or partially suspended by a government order imposing restrictions curbing travel, commerce, or group meetings due to COVID-19.

- What does this mean?
 - Congressional intent not well documented
 - CARES Act statutory language
 - Many IRS FAQs, not considered substantial authority
 - Grassley FAQs published March 30, 2020
 - Legal interpretations
 - Government order triggered – Any regulatory body at any government level
 - Can be indirect – supplier or key vendor is subject to an order which causes adverse impact on your business
 - Facts and circumstances based, reviewing the FAQs, guidance from Congress, Senate Finance Committee, other professionals and experts

This is a **JUDGMENTAL TEST** with many interpretations. It appears that many employers may have a reasonable argument that they are still eligible for the ERC if their business is “partially” shut down due to a gradual lifting of the governmental shutdown or stay-at-home orders. Partial suspensions may not always be obvious. For example, modifications made to meet social distancing requirements can constitute a partial suspension if the restrictions have more than a nominal effect on business operations.

A DEEPER DIVE into the “Full or Partial Suspension of Operations” Provision

Economic hardship due to governmental order

Orders from an appropriate governmental authority (Q&A 28). An employer that carries on a trade or business may be eligible for the employee retention credit if it fully or partially suspends operations during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel or group meetings (for commercial, social, religious or other purposes) due to COVID-19. An order from an appropriate governmental authority limits commerce, travel or group meetings in a manner that affects an employer’s operation of its trade or business, including orders that limit hours of operations. This includes orders, proclamations or decrees from any federal, state or local government that has jurisdiction over the employer’s operations.

An employer is an eligible employer when a governmental order is in place, without regard to the level of enforcement of the order. Governmental orders include (1) an order from a city’s mayor closing all non-essential businesses for a specified period of time, (2) a state’s emergency proclamation that residents must shelter in place (other than employees of essential businesses) for a specified period of time, or (3) an order from a local official imposing a curfew on residents that impacts the operating hours of a trade or business for a specified period of time.

Voluntary suspension of operations (Q&A 29). When an employer is not subject to a governmental order but voluntarily suspends operation of a trade or business, the employer is not generally eligible to use the ‘fully or partially suspended’ provisions (but might be able to use the 50% decline in gross receipt provisions, if applicable).

A BREAKDOWN OF THE IRS FAQs

According to FAQ #30, an employer that operates an essential business may be considered to have a partial suspension of operations under the following circumstances:

- More than a *nominal* portion of their business operations were suspended by a government order.
- The business was required to close by a government order for a period of time during normal working hours.

According to FAQ #31, an employer that operates an essential business may be considered to have a partial suspension of operations if their suppliers were forced to close by a government order. The example noted by the IRS is an auto parts manufacturing business whose supplier of raw materials is shutdown, and the manufacturer is unable to procure alternate supplies of the raw material.

According to FAQ #32, an employer that operates an essential business whose customers were forced to stay at home by a government order would not qualify as a full or partial suspension of operations. The example noted by the IRS is an automotive repair business who could stay open, but customers were told to stay at home except for essential travel, such as going to a grocery store.

According to FAQ #33, an employer that was required to close their workplace but could “continue operations comparable to its operations prior to the closure” is not considered to have been fully or partially suspended. The definition of “comparable to its operations prior” is illustrated in three examples, which are summarized below. This is considered one of the main “gray areas” of the guidance.

Example 1 in FAQ #33: The office of a software development company was required to close by a governmental order. Prior to the closure, employees generally worked from home once or twice a week, and customer meetings were held at various locations. After the government order, the company required mandatory remote work and limited customer meetings to telephone or video conferences. According to the IRS, the software company is not considered to have been fully or partially suspended because the business operations may continue in a comparable manner.

Example 2 in FAQ #33: A physical therapy facility was required to close by a governmental order. Prior to the order, none of the employees provided services remotely and all appointments, administration, and other duties were carried out at the workplace. After the government order, some services were provided online, but employees could not access specific equipment or tools typically used in therapy; as well, not all clients could be served remotely. According to the IRS, the physical therapy facility is considered to be fully or partially suspended.

Example 3 in FAQ #33: A scientific research company was required to close by a governmental order. It conducted research in a laboratory setting and through the use of computer modeling. Prior to the order, the laboratory-based research could not be conducted remotely (other than certain related administrative tasks). This computer

modeling research could be conducted outside of the office, and employees often worked remotely. After the order, all employees engaged in computer modeling research were directed to work remotely. This research work is considered to be comparable to work performed prior to the order. In contrast, the employees engaged in laboratory-based work were unable to continue this type of work, except for certain administrative tasks. The company's operations are considered to be partially suspended by the government order because the laboratory-based business operations cannot continue in a comparable manner.

FAQ #34, per the IRS, addresses a situation where an employer is required to close their workplace for certain purposes but can remain open for other limited purposes. In general, this business would be considered to have been partially suspended. However, if all of the business operations could continue, even if subject to modification (i.e. social distancing), such modification is not considered to be a partial suspension – unless the order has a more than *nominal* effect on its business operations. This is another one of the main areas of uncertainty in the guidance. There are six examples provided in the FAQ, which are summarized below:

Example 1 in FAQ #34: A restaurant business must close its onsite dining due to a governmental order. It is allowed to operate on a carryout, drive-through, or delivery basis. This business is considered to be partially suspended.

Example 2 in FAQ #34: Start with the same facts as Example 1, but then two months later, the restaurant is allowed to offer sit-down service in its outdoor space (but indoor dining continues to be closed). During the period that indoor dining remains closed, the business is considered to be partially suspended, because under the facts and circumstances, a more than *nominal* portion of its business operations (the indoor dining) remains closed due to a government order.

The following month, the order that closed down indoor dining is lifted, and indoor tables are required to be spaced six feet apart. Under the facts and circumstances, the government order restricting the spacing of tables limits its indoor dining capacity and has more than a *nominal* effect on its business operations. Therefore, during the period, its business operations continue to be partially suspended.

Example 3 in FAQ #34: A retail business is closed by a governmental order. The business also maintains a website through which it continues to fulfill online purchases unaffected by the order. The business is considered to have been partially suspended due to the order requiring it to close its in-person store locations.

Example 4 in FAQ #34: A hospital is considered to be an essential business under a government order with respect to its emergency department, intensive care, and other services requiring urgent medical care. However, elective and non-urgent medical procedures are prevented from being performed under the order. Although the hospital is an essential business, it is considered to have a partial suspension of operations due to the government order that prevents it from performing elective and non-urgent medical care.

Example 5 in FAQ #34: A grocery store is considered to be operating an essential business under a governmental order. However, the order requires it to discontinue self-service offerings, such as salad bars (although it may still offer prepared or prepackaged food). The store modifies its operations to close the salad bar and other self-service offerings. The order is deemed to not have a more than *nominal* effect on its business operations. The business is therefore not considered to be partially suspended.

Example 6 in FAQ #34: A large retailer is required to close its storefront due to a government order but is permitted to provide customers with curbside service to pick up items ordered online or by phone. During this period, the business operations are considered to have been partially suspended. Two months later, the order permits it to reopen its storefront. Restrictions of the new order require it to only permit one customer per 1,000 square feet. This restriction results in customers waiting in line a short period of time to enter the store during busy times of the week. The size of the store is large enough to accommodate all of its customers after these short waits. The government order requiring the social distancing guidelines does not have a more than *nominal* effect on its business operations. Therefore, during this subsequent period, the operations are not considered to be partially suspended.

According to FAQ #35, an employer that is ordered to reduce their operating hours is considered to have been partially suspended. The example provided is a food processing facility that normally operates 24 hours a day. A government order requires all such businesses to deep clean the facility once every 24 hours. In order to comply with the order, the facility operating hours are cut by five hours a day for the deep cleaning. The business is considered to have been partially suspended.

FAQ #36, per the IRS, addresses a situation where an employer operates in multiple locations and is required to suspend their operations in some jurisdictions and not others. In general, an employer who operates in a consistent manner in all jurisdictions, despite not being required, would be considered to have partially suspended operations. Therefore, the employer would be eligible for all of their operations in all locations. This is despite merely following CDC or DSH guidelines in certain jurisdictions without a government order. It is not clear of the impact, had the business not applied a uniform policy across all jurisdictions.

Example: A national retail store has operations in every state. In some jurisdictions, the stores are forced to close to walk-in customers but permitted to provide customers with curbside service for order placed online or over the phone. In other jurisdictions, the stores are not required to close. The company adopts a nationwide policy to close all stores and only operate curbside pick-up, even where not required to. The company is considered to have a partial suspension of operations and is eligible for the employee retention credit nationwide.

According to FAQ #37, if the operations of one member of an aggregated group are suspended by a government order, the operations of the other members of that same group are considered to have been fully or partially suspended.

According to FAQ #38, if an employer is subject to a government order to fully or partially suspend its business operations, and then the order is subsequently lifted, the employer is considered to have business operations that were suspended. However, remember that this is only for periods during the calendar quarters in which the business was fully or partially

suspended. The employee retention credit can only be claimed for the wages paid during the period the order is enforced.

Example: An order to close all non-essential businesses from March 10 through April 30. A business subject to this order would be eligible for the credit for both the first and second quarter 2020. However, it is only for the period the order is in effect. Therefore, for the first quarter, the credit can be claimed from March 10 through March 31. And for the second quarter, the credit is available on wages paid from April 1 through April 30.

For more information, see the complete IRS FAQs:

<https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-when-an-employers-trade-or-business-operations-are-considered-to-be-fully-or-partially-suspended-due-to-a-governmental-order-faqs>