



# Employee Retention Credit Eligibility Checklist: Help understanding this complex credit

[The Employee Retention Credit \(ERC or ERTC\)](#) is a complex tax credit for businesses and tax-exempt organizations that kept paying employees during the COVID-19 pandemic either when they were shut down due to a government order or when they had the required decline in gross receipts during certain eligibility periods in 2020 and 2021.

The IRS continues to see aggressive marketing that lures ineligible taxpayers to claim the ERC. While the credit is real, many promoters are aggressively misrepresenting who can qualify for the credit. In many instances, the IRS is seeing businesses and tax-exempt organizations being misled by promoters into thinking they're eligible when they are not.

As a reminder, anyone who incorrectly claims the ERC must pay it back, possibly with penalties and interest. The IRS wants to help taxpayers avoid this situation, so they prepared this question-and-answer chart to help employers figure out if they may be eligible for the credit. You can use this chart with someone who is considering claiming the credit or with someone who has already submitted a claim to the IRS.

The IRS is committed to helping taxpayers while preventing incorrect ERC claims and fraud.

## Part A: Checking your eligibility

This chart can help a business or other organization quickly decide if they may qualify for the Employee Retention Credit. This is a very technical area of the law, but this chart includes the main eligibility factors. Answer these questions in numerical order to see if you may be eligible to claim the ERC.

Eligibility questions	Next steps
<p>1. Did you 1) operate a trade, business or tax-exempt organization <b>and</b> 2) have employees and pay wages to them between March 13, 2020, and Dec. 31, 2021?</p> <p>For more info, see <a href="#">IRS.gov/ercqualified</a>. Note – Household employers are not eligible for ERC.</p>	<ul style="list-style-type: none"> <li>• If yes, go to #2.</li> <li>• If no, you aren't eligible to claim the ERC. If you incorrectly claimed ERC, see Part C.</li> </ul>
<p>2. Did your trade or business experience the required decline in gross receipts during the eligibility periods in 2020 or the first three calendar quarters (Jan. through Sept.) of 2021?</p> <p>For more info and examples, see <a href="#">IRS.gov/ercdecline</a></p>	<ul style="list-style-type: none"> <li>• If yes, you may be eligible for the ERC. You will need to confirm that your decline in receipts meets requirements. See <a href="#">IRS.gov/ercdecline</a>. If you meet the requirements, skip to Part B.</li> <li>• If no, go to #3.</li> </ul>
<p>3. Are you claiming the ERC because of supply chain issues?</p> <p>For more info, see <a href="#">IRS.gov/ercsupply</a> and the IRS legal memo on <a href="#">supply chain disruptions</a> (AM-2023-005), which includes examples.</p>	<ul style="list-style-type: none"> <li>• If yes, be extremely cautious. A supply chain disruption by itself doesn't qualify you for the ERC. Carefully review <a href="#">IRS.gov/ercsupply</a> and examples in the legal memo on <a href="#">supply chain disruptions</a> (AM-2023-005). Be sure your supplier's government order meets the criteria in #4; then go to Part B. If you incorrectly claimed ERC, go to Part C.</li> <li>• If no, see #4.</li> </ul>



<p>4. Was the operation of your business or organization fully or partially suspended by a <b>government order</b> due to the COVID-19 pandemic during 2020 or the first three calendar quarters (Jan. through Sept.) of 2021?</p> <ul style="list-style-type: none"><li>• The order must be a <b>government order</b>, not guidance, a recommendation or a statement.</li><li>• The government order must be <b>due to the COVID-19 pandemic</b> and must have fully or partially <b>suspended your operations</b>.</li><li>• You can only claim ERC for periods the order was in effect <b>and</b> your operations were suspended.</li></ul> <p>For more info, see <a href="https://www.irs.gov/ercqualifying">IRS.gov/ercqualifying</a></p>	<ul style="list-style-type: none"><li>• If yes, you may be eligible for the ERC. For more information and examples of government orders and full or partial suspension see <a href="https://www.irs.gov/ercqualifying">IRS.gov/ercqualifying</a>. Make sure you have documentation of the government order related to COVID-19, how and when it suspended your operations, and the qualified wages you paid. The IRS will consider your operations to be partially suspended if you can show that more than a <a href="https://www.irs.gov/ercqualifying">nominal portion</a> of your business was suspended by a government order. You can only use wages paid during the period the government order was in effect when calculating your credit. Go to Part B.</li><li>• If no, go to #5.</li></ul>
<p>5. Were you a recovery startup business (RSB)? This means you:</p> <ul style="list-style-type: none"><li>• Began carrying on a trade or business after Feb. 15, 2020,</li><li>• Had \$1 million or less in average annual gross receipts for the prior 3 tax years, and</li><li>• Didn't qualify for ERC under the gross receipts test (#2) or suspension test (#4)?</li></ul> <p>For more info, see <a href="https://www.irs.gov/ercrecover">IRS.gov/ercrecover</a></p>	<ul style="list-style-type: none"><li>• If yes, you may be eligible for the ERC. See <a href="https://www.irs.gov/ercrecover">IRS.gov/ercrecover</a>. RSBs are limited to a maximum of \$50,000 in ERC per quarter and can claim ERC only for the third and fourth quarters of 2021. If you meet all the requirements, skip to Part B.</li><li>• If no, you are not eligible to claim the ERC. If you incorrectly claimed ERC, go to Part C.</li></ul>

## Part B: Claiming the ERC if you're eligible

If the previous questions directed you to Part B, you may qualify for the ERC based on the information you provided. Be sure you have thorough records that show wages paid, gross receipts, government orders and other required documents. If you need help, you should work with a [trusted tax professional](https://www.irs.gov/erc). You can find more information at [IRS.gov/erc](https://www.irs.gov/erc) such as frequently asked questions, examples, guidance, warning signs of scams and more.

## Part C: Resolving an incorrect ERC claim

If you incorrectly claimed the Employee Retention Credit, you can use the ERC claim withdrawal process outlined at [IRS.gov/withdrawmyerc](https://www.irs.gov/withdrawmyerc) if **all** of the following apply:

- You made the claim on an **adjusted employment tax return** (Forms 941-X, 943-X, 944-X, CT-1X).
- You filed your adjusted return **only to claim the ERC**, and you made **no other adjustments**.
- You want to withdraw the **entire amount** of your ERC claim.
- The **IRS has not paid your claim**, or the IRS has paid your claim but **you haven't cashed or deposited the refund check**.

Requesting a withdrawal means you're asking the IRS **not** to process your entire adjusted return that included your ERC claim. If the IRS accepts your request, the claim will be treated as if it was never filed.

If you're not able to use the withdrawal process, you can still file another adjusted return if you need to [reduce the amount of your ERC claim](https://www.irs.gov/erc) or [make other changes to your adjusted return](https://www.irs.gov/erc).

If you incorrectly claimed the credit and cashed or deposited your refund check, watch [IRS.gov/erc](https://www.irs.gov/erc) for updates. You can't use the withdrawal process. However, the IRS is working on guidance to help employers that were misled into incorrectly claiming the ERC and received the credit.