Form **943**

Department of the Treasury
Internal Revenue Service

Employer's Annual Federal Tax Return for Agricultural Employees

▶ Go to *www.irs.gov/Form943* for instructions and the latest information.

OMB No. 1545-0035

2020

Type or Print

Name (as distinguished from trade name) | Employer identification number (EIN)

Trade name, if any

Address (number and street)

City or town, state or province, country, and ZIP or foreign postal code

If address is different from prior return, check here ▶ ☐

If you don't have to file returns in the future, check here . . . . . ▶ ☐

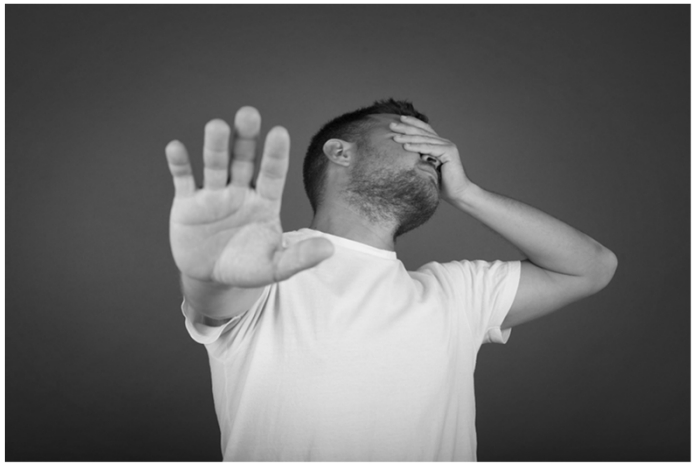
1	Number of agricultural employees employed in the pay period that includes March 12, 2020 . ▶	1	
2	Wages subject to social security tax	2	
a	Qualified sick leave wages	2a	
b	Qualified family leave wages	2b	

COVID-19 CREDITS FOR FARMERS/RANCHERS

CHAPTER 2, PAGE 65

Payroll and Credits

- Applicable to both 2020 and 2021
- Tax practitioners who do not normally handle payroll must understand these credits to best serve their clients.
- These credits impact tax returns as well.



Payroll Tax Basics

pp. 65-66

- Social Security taxes shared by employer and employee
  - 12.4% OASDI up to $142,800 (Note: $147,000 for 2022)
  - Unlimited 2.9% Medicare tax
- Additional 0.9% Medicare tax above $250,000 MFJ ($200,000 others)
- Ag Labor – no Social Security taxes on non-cash wages
- Payroll tax deposit schedule based on amounts held
- Form 943 annually for Ag Labor, otherwise Form 941 quarterly

W-2 Filing Requirements

p. 67

- Forms W-2 to employees, and Forms W-2 and W-3 to the SSA by January 31, 2022.
- E-filing required for 250 or more Forms W-2 unless granted a waiver by the IRS.
- **This filing threshold applies to all information returns, in the aggregate: W-2s, 1099-MISC, 1099-NEC.**
- The Taxpayer First Act of 2019, enacted July 1, 2019, authorized the Department of the Treasury and the IRS to issue regulations that reduce the 250 return requirement for 2021 tax returns.
- On July 23, 2021, IRS issued proposed regulations, **lowering the threshold to 100 for 2022, and 10 after that.**

Employee Retention Credit

Form **941 for 2021:** **Employer's QUARTERLY Federal Tax Return**
(Rev. June 2021) Department of the Treasury — Internal Revenue Service

951121
OMB No. 1545-0029

Employer identification number (EIN) ☐☐ – ☐☐☐☐☐☐☐

Name *(not your trade name)*

Trade name *(if any)*

Address
Number Street Suite or room number

City State ZIP code

Foreign country name Foreign province/county Foreign postal code

Report for this Quarter of 2021
(Check one.)

☐ **1:** January, February, March
☐ **2:** April, May, June
☐ **3:** July, August, September
☐ **4:** October, November, December

Go to *www.irs.gov/Form941* for instructions and the latest information.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: **Answer these questions for this quarter.**

1 **Number of employees who received wages, tips, or other compensation for the pay period including: *June 12* (Quarter 2), *Sept. 12* (Quarter 3), or *Dec. 12* (Quarter 4)** 1

2 **Wages, tips, and other compensation** . . . . . 2 .

3 **Federal income tax withheld from wages, tips, and other compensation** . . . . . 3 .

Employee Retention

pp. 65-66

- Fully refundable payroll tax credit.
  - Claimed on Form 943 (or Form 941)
- Implemented by the CARES Act, modified by the CAA, and extended by the ARPA.
- **Update to text**: Infrastructure bill terminated the ERC for wages paid after September 30, 2021
  - Exception for eligible recovery startup businesses

Employee Retention

pp. 65-66

Three time-frames with different rules:

- Wages paid after March 12, 2020, and before January 1, 2021
- Wages paid during Q1 and Q2 of 2021
- Wages paid during Q3 only of 2021

Goals for this Session

- Chapter provides much detail, useful as a resource for specific questions.
- During this session, we will highlight issues most important now.
  - Understanding interaction with PPP after CAA
    - Amending 2020 returns to claim credit
  - Understanding 2021 rules to ensure clients take full advantage of the credit

2020 Employee Retention Credit

pp. 68-85

- Most of these rules apply to the 2021 ERC as well.

- Key Point:
  - CARES Act: no ERC if taxpayer received Paycheck Protection Program loan.
  - CAA changed that retroactively: eligible for but same wages cannot be used for both.
  - Amend to claim.

ERC – Eligible Employers

pp. 68-85

An "eligible employer" is any employer carrying on a "**trade or business**" during calendar year 2020 for which, during any calendar quarter:

(1) the operation of the trade or business carried on during calendar year 2020 is "**fully or partially suspended**" 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, or

(2) such calendar quarter is within the period in which the employer had a "**significant decline in gross receipts**."

Eligible Employers – Fully or Partially Suspended

pp. 69-71

- If a **government order** has "fully suspended" an employer's operations, it will generally qualify for the ERC.
- Employers may also qualify if their operations were "partially suspended" by government order.
  - This is a more complicated question that requires a **facts and circumstances** analysis.

Suspension v. Decline in Gross Receipts

p. 71

Planning Pointer

Suspension v. Decline in Gross Receipts

Determining whether a business was subject to a government suspension is not required if the employer is able to establish a "significant decline in gross receipts." Qualifying under this second criteria is more beneficial for employers because those with a significant decline in gross receipts may consider all wages paid during the quarter in determining qualified wages for purposes of the ERC. Conversely, when qualifying for the ERC because of a governmental order, employers may consider only those wages paid during the shutdown period when calculating the credit. Similarly, an employer need not establish, for purposes of qualifying for the ERC, that a decline in gross receipts was COVID-19 related.

Significant Decline in Gross Receipts

p. 71

- Eligible in 2020 for any quarter where gross receipts were **< 50 percent** of gross receipts for the **same calendar quarter in 2019**.

- Eligibility period ends with the earlier of
  - January 1, 2021, or
  - first calendar quarter **<u>following</u>** 1st calendar quarter where gross receipts > 80 percent of gross receipts for same quarter in 2019.

Ex. 2.3 – Significant Decline in Gross Receipts

p. 71

Custom Feeds had a reduction in customers in early 2020, while it struggled with supply chain issues.

	Quarter One	Quarter Two	Quarter Three
2019 Gross Receipts	$210,000	$230,000	$250,000
2020 Gross Receipts	$100,000	$190,000	$230,000
Percent 2020/2019	48 percent	83 percent	90 percent

Ex. 2.3 – Significant Decline in Gross Receipts

p. 71

- Custom Feeds experienced a significant decline in gross receipts:
  - beginning on the 1st day of the 1st calendar quarter of 2020 and
  - ending on the first day of the third calendar quarter of 2020.
- Eligible for the ERC during the **first <u>and</u> second quarters**.

	Quarter One	Quarter Two	Quarter Three
2019 Gross Receipts	$210,000	$230,000	$250,000
2020 Gross Receipts	$100,000	$190,000	$230,000
Percent 2020/2019	48 percent	83 percent	90 percent

Definition of Gross Receipts

pp. 73-74

- Non-tax exempt: IRC § 448(c).
- Tax-exempt: IRC § 6033
  - Gross receipts includes all gross receipts, not just those from unrelated trade or business income.

Observation

Gross Receipts and Forgiven PPP Proceeds

On August 10, 2021, IRS issued Rev. Proc. 2021-33 providing a safe harbor under which employers can exclude from gross receipts the amount of the forgiveness of a PPP loan. The exclusion must be applied consistently across all quarters.

Farmer/Rancher Gross Receipts

p. 73

- For cash basis farmers, it would appear that gross receipts would include those proceeds received, **regardless of any special election** made on the tax return:
  - Crop insurance proceeds would be gross receipts when received, not when recognized as income.
  - Any payment received under a deferred payment contract would be gross receipts when the payment is received, even if the taxpayer elects out of the installment method and recognizes the income in a prior year.
- **IRS has not provided guidance**. Taxpayers should use the same method for calculating gross receipts for all periods.

Calculating the 2020 ERC

p. 74

- For 2020, the maximum ERC is **50 percent** of "**qualified wages**" (including allocable health plan expenses) that an eligible employer paid in a calendar quarter.
- The **maximum amount** of qualified wages which can be taken into account for the 2020 ERC is $10,000 per employee for all quarters.
- Therefore, the **maximum 2020 ERC is $5,000 per employee**.

Qualified Wages for 2020

p. 74

- Limited to FICA wages paid after March 12, 2020, and before January 1, 2021.
  - Tips included on W-2 are qualified wages
  - Commodity wages, wages to H-2A workers, as well as compensation to ministers are **not qualified wages** for the ERC.
- However, also includes employer expense for group health plans

Ex. 2.5 2020 ERC Calculation

p. 75

FIGURE 2.3 – Mannie Hands Payroll

	Quarter Two	Q2 Credit	Quarter Three	Q3 Credit	Quarter Four	Q4 Credit
Employee 1	$2,500 wages, $500 healthcare benefits	$3,000 qualified wages/2 = $1,500 ERC	$2,500 wages, $500 healthcare benefits	$3,000 qualified wages/2 = $1,500 ERC	$2,500 wages, $500 healthcare benefits	$3,000 qualified wages/2 = $1,500 ERC
Employee 2	$8,000 wages, $500 healthcare benefits	$8,500 qualified wages/2=$4,250 ERC	$8,000 wages, $500 healthcare benefits	$1,500 qualified wages/2=$750 ERC	$8,000 wages, $500 healthcare benefits	0 qualified wages/2= 0 ERC
Employee 3	$10,000 wages, $500 healthcare benefits	$10,000 qualified wages/2=$5,000 ERC	$10,000 wages, $500 healthcare benefits	0 qualified wages/2= 0 ERC	$10,000 wages, $500 healthcare benefits	0 qualified wages/2= 0 ERC
Employee 4	No wages, $500 healthcare benefits	$500 qualified wages/2 = $250 ERC	No wages, $500 healthcare benefits	$500 qualified wages/2 = $250 ERC	No wages, $500 healthcare benefits	$500 qualified wages/2 = $250 ERC
		$11,000 ERC		**$2,500 ERC**		**$2,000 ERC**

For 2020, Mannie was eligible for an ERC of **$15,500**, attributable to $67,500 in qualified wages paid across three quarters.

Large vs Small Employer

p. 76

- Over 100 employees, only wages paid while not working
- 100 or fewer employees, workers can be paid while working

ERC – Related Individuals

p. 76

- CARES Act provides wages paid to related individuals may not be taken into account for determining qualified wages for the ERC.
- Know who your relatives are
  - see list – up, down, and across the family tree
  - Family attribution rules also apply

ERC – Related Individuals

A related individual is any employee who has of any of the following relationships to the employer, who is an individual:

- A child or a descendant of a child;
- A brother, sister, stepbrother, or stepsister;
- The father or mother, or an ancestor of either;
- A stepfather or stepmother;
- A niece or nephew;
- An aunt or uncle;
- A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

ERC – Related Individuals

- For **corporations**, a related individual is any person that bears a relationship described above with an individual owning, **directly or indirectly**, more than 50 percent in value of the outstanding stock of the corporation.
- For an **entity other than a corporation**, then a related individual is any person that bears a relationship described above with an individual owning, **directly or indirectly**, more than 50 percent of the capital and profits interests in the entity.
- For an estate or trust, then a related individual includes a grantor, beneficiary, or fiduciary of the estate or trust, or any person that bears a relationship described above with an individual who is a grantor, beneficiary, or fiduciary of the estate or trust.

ERC – Related Individuals

- For purposes of I.R.C. § 51(i)(1), indirect ownership is determined through the application of I.R.C. § 267(c), which provides the following (among other) rules:
  - An individual shall be considered as owning the stock owned, **directly or indirectly, by or for his family**
  - The family of an individual shall include only his:
    - brothers and sisters (whether by the whole or half-blood),
    - spouse,
    - ancestors, and
    - lineal descendants

ERC – Related Individuals

p. 77

- **Step one** with a corporation, partnership, or LLC:
  - Apply 267(c) to owners to find any owners with a majority interest, direct or indirect.
- **Step two** with a corporation, partnership or LLC:
  - Any wages paid to someone who is related to the majority owner (by attribution) are <u>not</u> qualified wages

ERC – Related Individuals

p. 77

- A **majority owner of a corporation** is a related individual whose wages are not qualified wages, **if the majority owner has a brother or sister (whether by whole or half-blood), ancestor, or lineal descendant.**
- The **spouse of a majority owner** is a related individual, whose wages are not qualified wages, **if the majority owner has a family member who is a brother or sister (whether by whole or half-blood), ancestor, or lineal descendant <u>and</u>** the spouse bears a listed relationship that family member.

ERC – Related Individuals

p. 77

- **If** the majority owner has **no brother or sister (whether by whole or half-blood), ancestor, or lineal descendant**,
- **then** neither the majority owner nor the spouse is a related individual and the wages paid to the majority owner and/or the spouse are qualified wages, assuming the other requirements for qualified wages are satisfied.

Ex. 2.6 – Related Individual by Attribution

p. 77

- Sue Sherman is a 60% owner of Sherman Steers, Inc.
- Her co-owner is Bob Bradley, who is not related to her or her husband.
- Sue employs her husband, Jim Sherman and pays him a wage.
- Sue cannot count Jim's wages:
  - Sue has a living brother, Sam, who is not part of the business, but is a constructive majority owner in the business.
  - Jim is a brother-in-law to Sam, a majority owner, a barred relationship under I.R.C. § 152.

Ex. 2.7 – Family Attribution and Disallowance

p. 78

- Don Rolfes owns 80% of a farming S corporation with his daughter Dina Rolfes, who owns the other 20%.
- Don and Dina are both deemed 100% owners in the business under family attribution rules.
- They both have a barred relationship to a majority owner.
- Don and Dina cannot count their wages as qualifying wages.

ERC – IRS Example

Corporation

- Father (100 percent)
- Has a child, but child is not an owner or an employee
  - Father and Child are both 100 percent owners.
  - Father's wages are **disallowed**.

Ex. 2.8 – No Living Relatives

p. 78

- Ronald King is the 100% owner of King Farms, Corp. and his wife is a non-owner employee.
- His wife, Jean, is deemed to be a 100% owner of the business.
- Ron and Jean have no other relatives listed under I.R.C. § 267.
- As such, no other person has an indirect majority ownership interest in King Farms, and neither Ron nor Jean bear a relationship listed in I.R.C. § 152 to a majority owner.
- *In this rare circumstance, the wages of Ron and his wife qualify as qualified wages.*

ERC – Related Individuals

p. 78

FIGURE 2.4 – Related Individuals

Owner(s)	Employee(s)	Result
Mother – 100% Owner	Son	Wages disallowed
Sole Proprietor Husband – 100% Owner	Spouse	No entity, no attribution, Spouse wages should be allowed
Father – Daughter (50/50) Corporation	Daughter or Father	Attribution applies to both to make them each 100 percent owners. Wages disallowed
Spouse-Unrelated Party (50/50) Corporation	Spouse or Owner	No family attribution applies to make >50 percent owner. Wages allowed.
Owner-Unrelated Party (60/40) Corporation	Owner	Attribution makes any living family member an indirect 60 percent owner. This would disallow owner wages as a "brother," "father," etc. of the > 50% owner.
Spouse-Spouse (50/50) Corporation	Owners	Attribution applies to make each spouse a 100 percent owner. But that doesn't disallow the wages. But attribution would to apply to make any shared children 100 percent owners. In that case spouses would be parents of 100 percent owners, and their wages would be disallowed.

ERC – Related Individuals

No Double Use of Wages Duplication

p. 81

IRS Notice 2021-20

- Eligible employer that received a PPP loan is deemed to have made an election not to take those wages into account for the ERC.
- Election only applies to the amount listed on the forgiveness application.
  - Must look at forgiveness application.
  - Can't add non-payroll expenses after the fact.
  - Now they tell us!!

Ex. 2.9 Wages Used for PPP Loan

p. 81

Good Farms, Inc. received a PPP loan of $100,000.

- On its forgiveness application, it included $100,000 in payroll costs that would qualify as wages.
- Good Farms also had eligible non-payroll costs in the amount of $40,000 but did not report those on the forgiveness application.
- The loan was forgiven.
- Good Farms is deemed to have made an election **not to take into account $100,000 of qualified wages for purposes of the ERC.**
- Good Farms is **not eligible** for the ERC for this period.

Ex. 2.10

p. 81

Raleigh Poultry, Inc. received a PPP loan of $100,000.

- On its forgiveness application, RP included $100,000 in payroll costs that would qualify as wages.
- RP also included non-payroll costs in the amount o $40,000 on the forgiveness application.
- The loan was forgiven.
- **RP is eligible to claim the ERC for $40,000 in qualified wages paid during this period.**
- **<u>Wages not required for forgiveness do not prevent ERC</u>.**

ERC and the PPP

p. 82

Planning Pointer

Payroll Costs, Non-payroll Costs, and Qualified Wages

Because of the rules discussed above, employers should first allocate toward forgiveness any non-payroll costs and payroll expenses that are not "qualified wages" eligible for the ERC—such as owner compensation replacement, partner compensation, or retirement compensation—before excluding otherwise qualified wages from ERC eligibility.

Tax Treatment of the ERC

p. 82

- The employer **must reduce the deduction for qualified wages**, including qualified health plan expenses, by the amount of the ERC.
- Employers **do not** reduce the deduction for the employer's share of the SS and Medicare taxes even though the credit is claimed first against those taxes.
- Note, corrective action may be needed: Taxpayer records may not show a deposit for the full amount of this credit but may instead simply show the net payroll tax paid.
- Notice 2021-49 confirmed that amended tax returns must be filed if ERC is retroactively claimed.

Amending 2020 Returns to Claim ERC

p. 83

1. Determine quarter(s) of eligibility
2. Determine qualified wages (including allocable health care expenses paid)
3. Eliminate wages used on a successful PPP forgiveness application, those for which a FFCRA credit was taken, or, if the basis of qualification was a shutdown, those wages attributable to period during which employees were working
4. Eliminate unqualified employees (related parties, those for whom a work opportunity credit was claimed in 2020 quarter)
5. Calculate the ERC by quarter
6. But, wait, there's more!

Amending 2020 Returns to Claim ERC

p. 83

6. Fill out and file the Form 941-X, 943-X, or 944-x (and accompanying worksheets), as appropriate.
7. Amend **2020 income tax return** as necessary to reduce a prior deduction for qualified wages in the amount of the ERC.

Three years to file 941-X or 943-X.

Limitations Period

p. 84

- Agricultural employers that file an annual Form 943 may claim their 2020 ERC by filing a Form 943-X.
- Must file their Form 943-X within three years of the date the Form 943 was filed. **Form 943 is considered filed on April 15 of the succeeding calendar year if filed before that date**.

Example 2.11 – Amending the 943 to Claim the 2020 ERC p. 84

FIGURE 2.6 – Angus Paul Payroll Information (Quarters Three and Four)

	Quarter Three Payroll	FFCRA Wages	Payroll Costs Needed for Forgiveness	Qualified Wages for ERC	ERC	Quarter Four Payroll	Qualified Wages for ERC	Payroll Costs Needed for Forgiveness
Employee 1	$15,000 wages, $1,500 healthcare benefits	$2,555 in FFCRA wages, plus $125 in allocable healthcare expenses	$3,820 payroll costs	$10,000 in qualified wages	$10,000/2 =**$5,000**	$15,000 wages, $1,500 healthcare benefits	Qualified Wages Limit Reached	$7,847 payroll costs
Employee 2	$12,000 wages, $1,500 healthcare benefits		$3,500 payroll costs	$10,000 in qualified wages	$10,000/2 =**$5,000**	$12,000 wages, $1,500 healthcare benefits	No Qualified Wages Limit Reached	
Employee 3	$8,500 wages, $1,500 healthcare benefits			$10,000 qualified wages	$10,000/2 =**$5,000**	$8,5000 wages, $1,500 healthcare benefits	Qualified Wages Limit Reached	
	$40,000 wages and healthcare		**$7,320 payroll costs**	**$30,000 qualified wages for ERC**	**$15,000 ERC**	**$40,000 wages and healthcare expenses**	**$0 qualified wages for ERC**	**$7,847 payroll costs**

Example 2.11 – Amending the 943 to Claim the 2020 ERC p.84

FIGURE 2.7 - Form 943-X Worksheet 1

Worksheet 1. Adjusted Credit for Qualified Sick and Family Leave Wages and the Employee Retention Credit—*(continued)*

Step 3.		**Figure the employee retention credit**				
	3a	Qualified wages (excluding qualified health plan expenses) for the employee retention credit (Form 943, line 20, or, if corrected, Form 943-X, line 28, column 1)	3a	28,500		
	3b	Qualified health plan expenses allocable to qualified wages for the employee retention credit (Form 943, line 21, or, if corrected, Form 943-X, line 29, column 1)	3b	1,500		
	3c	Add lines 3a and 3b	3c	30,000		
	3d	**Retention credit.** Multiply line 3c by 50% (0.50)			3d	15,000
	3e	Enter the amount of the employer share of social security tax from Step 1, line 1i	3e	2,043		
	3f	Enter the amount of the nonrefundable portion of the credit for qualified sick and family leave wages from Step 2, line 2j	3f	0		
	3g	Subtract line 3f from line 3e	3g	2,043		
	3h	**Nonrefundable portion of employee retention credit.** Enter the smaller of line 3d or line 3g. Enter this amount on Form 943-X, line 15, column 1			3h	0
	3i	**Refundable portion of employee retention credit.** Subtract line 3h from line 3d and enter this amount on Form 943-X, line 24, column 1			3i	15,000

Amending 2020 Returns to Claim ERC

p. 84

Observation:

- The ERC is not required.
- Credit may not be sufficient to justify amendments and increased tax liability.
- No penalty relief currently applies to corresponding increase in tax liability

2021 Employee Retention Credit

p. 86

- Credit is significantly expanded for all quarters in 2021.
  - ERC credit is increased from 50 percent to 70 percent of qualified wages.
  - Limit remains $10,000, but is for **each quarter**, not across quarters.
- **Update: Eligible employer can claim up to $21,000 credit per employee in 2021**
- Highlight this – it did happen! No ERC for Q4 of 2021

Observation

ERC Could End September 30

At the time of this writing, Congress was considering an infrastructure bill that would end the ERC early on September 30. If such a law passes, there would be no ERC for the fourth quarter of 2021.

2021 Employee Retention Credit

In Q3 and Q4, "**recovery startup businesses**" may receive the credit, limited to **$50,000 per quarter**. A recovery startup business is an employer that:

- Began carrying on a trade or business after February 15, 2020;
- Had average annual gross receipts of $1 million or less for the three tax years ending with the tax year before the calendar quarter in which the employee retention credit is claimed; and
- Isn't otherwise eligible for the third or the fourth quarter because business operations weren’t fully or partially suspended due to a governmental order or because gross receipts aren't less than 80 percent of the gross receipts for the same calendar quarter in calendar year 2019.

2021 Employee Retention Credit p. 88

Significant Decline in Gross Receipts

- Reduced from >50% decline to >20% decline
- Still measured quarter to quarter from 2019 levels.

2021 Employee Retention Credit

p. 88

- In 2021, an employer may elect to use an **alternative quarter** to calculate gross receipts.
- Under this election, an employer may generally determine if the decline in gross receipts test is met for a calendar quarter in 2021 by comparing its gross receipts **for the immediately preceding calendar quarter** with those for the corresponding calendar quarter in 2019
- The election is made quarter by quarter
- If the employer did not exist as of the beginning of that quarter in 2019 the corresponding quarter from 2020 is used.

2021 Employee Retention Credit

- This means that for the first quarter of 2021, an employer may elect to use its gross receipts for the fourth calendar quarter of 2020 compared to those for the fourth calendar quarter of 2019 to determine if the gross receipts test is met.
  - **Note**: If an employer was not in existence as of the beginning of the fourth calendar quarter of 2019, then the alternative quarter election will not be available for the first calendar quarter of 2021.
- **Notice 2021-49** confirmed that the election to use an alternate quarter calculation is made on a quarter-by-quarter basis and **can be changed**.
  - Two quarters to qualify for the whole year.

Ex. 2.12 Calculating the 2021 Credit

p. 89

For 2021, Mannie is eligible for an ERC of **$46,200,** attributable to $67,500 in wages paid across three quarters.

Example 2.12 – Calculating the 2021 Credit

Mannie Hands (from example 2.5) employed the same four employees throughout 2021 and provided the same pay and benefits to those employees as he did in 2020. The livestock business was eligible for the ERC for quarters one through three of 2021. Its payroll was as follows:

	Quarter One	Q1 Credit	Quarter Two	Q2 Credit	Quarter Three	Q3 Credit
Employee 1	$2,500 wages, $500 healthcare benefits	$3,000 qualified wages *.7 = $2,100 ERC	$2,500 wages, $500 healthcare benefits	$3,000 qualified wages *.7 = $2,100 ERC	$2,500 wages, $500 healthcare benefits	$3,000 qualified wages *.7 = $2,100 ERC
Employee 2	$8,000 wages, $500 healthcare benefits	$8,500 qualified wages *.7 =$5,950 ERC	$8,000 wages, $500 healthcare benefits	$8,500 qualified wages *.7 =$5,950 ERC	$8,000 wages, $500 healthcare benefits	$8,500 qualified wages *.7 =$5,950 ERC
Employee 3	$10,000 wages, $500 healthcare benefits	$10,000 qualified wages*.7=$7,000 ERC	$10,000 wages, $500 healthcare benefits	$10,000 qualified wages*.7=$7,000 ERC	$10,000 wages, $500 healthcare benefits	$10,000 qualified wages*.7=$7,000 ERC
Employee 4	No wages, $500 healthcare benefits	$500 qualified wages*.7 = $350 ERC	No wages, $500 healthcare benefits	$500 qualified wages*.7 = $350 ERC	No wages, $500 healthcare benefits	$500 qualified wages*.7 = $350 ERC
		$15,400 ERC		**$15,400 ERC**		**$15,400 ERC**

2021 ERC – Extended Audit Period

p. 89

- The ARPA includes a new **five-year statute of limitations** for IRS to audit and assess a deficiency for claiming the ERC in Q3 of 2021.
- Prior quarters are subject to the standard three-year audit rule.

Comparing the Provisions…(p. 90-91)

	2020, All Quarters (CARES Act)	Quarters 1 & 2, 2021 (CARES Act extended by CAA)	Quarters 3 & 4, 2021 (I.R.C. § 3134)
Time Period for Wages	March 13 – December 31, 2020	January 1 – June 30, 2021	July 1, 2021 – December 31, 2021
Amount of Credit	ERC is **50 percent** of "qualified wages" (including allocable health plan expenses). Only $10,000 in qualified wages may be taken into account per employee for all quarters, so maximum ERC is $5,000 per employee for the year.	ERC is **70 percent** of "qualified wages" (including allocable health plan expenses). Only $10,000 in qualified wages per employee may be taken into account for *each* quarters so maximum ERC is $28,000 per employee for the year.	
Decline in Gross Receipts Test	Employers whose operations were fully or partially suspended or had **reduction of gross receipts of more than 50 percent** for quarter as compared to 2019 (lose eligibility quarter after first quarter where gross receipts > 80 percent 2019 gross receipts)	Employers whose operations were fully or partially suspended or had **reduction of gross receipts of > 20 percent** for quarter as compared to 2019. May use prior quarter and compare to equivalent 2019 quarter to establish eligibility.	
Employees Not Providing Service	Employers with **100 or fewer full-time employees** in 2019 can claim ERC for all qualified	Employers with **500 or fewer full-time employees** in 2019 can claim ERC for all	Same as quarters one and two, 2020, but also allows large employers with "**severely**

Sick and Family Leave Credits

Pages 92-100

Family and Sick Leave Credits

p. 92

- From April 1, 2020, through December 31, 2020, the FFCRA provided for many employees to receive paid coronavirus-related leave :
  1. The Emergency Paid Sick Leave Act (EPSLA): up to 80 hours of paid sick time for certain reasons related to COVID-19, and
  2. The Emergency Family and Medical Leave Expansion Act (Expanded FMLA)
- Employers with fewer than 500 employees receive credits to offset their cost of providing the paid leave

Family and Sick Leave Credits

p. 93

Practitioner Note

Qualified Sick Leave and Family Leave Wages

When determining qualified sick and family leave wages, employers may include only (1) wages defined in I.R.C. § 3121(a), determined without regard to I.R.C. § 3121(b)(1)-(22). Although this generally means that qualified leave wages must be FICA wages, employers may claim tax credits for wages paid to H-2A workers because I.R.C. § 3121(b)(1), which excludes from "employment" services performed by H-2A workers, does not apply in determining qualified wages.

Family and Sick Leave Credits

p. 94

The **CAA extended** the FFCRA leave credits through March 31, 2021, for both employers and the self-employed.

- It did not, however, extend the requirement that employers provide this leave.
- Through March 31, 2021, credits claimed in 2020 reduced the credits available in the first quarter of 2021.

Family and Sick Leave Credits

p. 94

The ARPA added a new period of availability for paid family and sick leave credits:

- Credits available for paid leave taken from April 1, 2021 through September 30, 2021.

Family and Sick Leave Credits

pp. 94-95

- New category of sick or family leave beginning April 1:
  - the time the employee is seeking or awaiting the results of a COVID-19 diagnostic test (conditions apply), or
  - the employee is obtaining COVID-19 immunizations or recovering from an injury, disability, illness, or condition related to such immunization.
- Additionally, employers may provide paid family leave if the employee is unable to work due to any of the conditions for which employers may provide paid sick leave.

Family and Sick Leave Credits

p. 95

On July 29, 2021, IRS announced that this covers an employee who takes leave:

- to accompany an individual to obtain immunization related to COVID-19, or
- to care for an individual who is recovering from any injury, disability, illness, or condition related to the immunization.

Family and Sick Leave Credits - ARPA

p. 95

- Retains the same daily wage thresholds for the sick leave wage credit.
- Retains the 80 hours (**10 days**) limit on qualified sick leave wages but the limitation ***resets*** *on April 1, 2021*.
- Increases the aggregate cap on qualified family leave wages from $10,000 to **$12,000** and resets the cap on April 1, 2021 (12 weeks as opposed to 10 weeks).

Family and Sick Leave Credits

p. 96

- Qualified sick and family leave wages prior to April 1, 2021 were only subject to the employer's share of Medicare tax (and not the social security tax);
  - therefore, the employer was entitled to receive credits to offset only the Medicare tax for those periods.
- Under ARPA, qualified family and sick leave wages are subject to both social security and Medicare taxes,
  - the credit is increased to cover both taxes.

Claiming Family and Sick Leave Credits

p. 96

- Sick and family leave credits are claimed on the Form 941 or 943.
- Advance payments may be requested on Form 7200.

Family and Sick Leave Credits – Tax Treatment

p. 96

- Credits received are includible in gross income.
- Qualified leave wages continue to be deductible
- For tax-exempt eligible employers:
  - Only that portion of the credit allocable to any unrelated trade or business must be included in gross income.

Self-Employed – Family and Sick Leave Credits p. 98

- Same rules as employees (payments through Sept. 30)
  - Sick leave credit for up to **10 days** in 2021
  - Family leave credit **up to 60 days**.
- Taxpayer may elect to use the **prior year's net earnings** if it would result in a higher tax credit.

Self-Employed – Family and Sick Leave Credits p. 98

- Claim credit on 2021 return using Form 7202.
- IRS requires SE to maintain documentation establishing eligibility for credits.
- Credit based on Average Daily Self Employment earnings
  - Sickness of owner – 100% ADSE, up to $511
  - Sickness of family or family leave – 2/3 ADSE, up to $200

Self-Employed – Ex. 2.13

p. 98

- Jeremy Strassman runs a farm trucking business. He is self-employed and files a Schedule C. During July of 2021, Jeremy was unable to work for 14 days because he suffered from COVID-19.
- In August, he was unable to work for two days because he had to care for his 12-year-old daughter who was sick from a COVID-19 vaccination.
- Jeremy's net income on his 2021 Schedule C is $36,000.

Self-Employed – Ex. 2.13

p. 98

Jeremy will be entitled to

- a sick leave credit for **10 days**, and
- a family leave credit for **six days** (days in excess of 10 that he was sick plus days he missed to care for a family member).

Self-Employed – Example 2.13

p. 98

- Jeremy first calculates his ADSE income by dividing his net Schedule C income by 260. (36,000/260 = 138)
- Jeremy is entitled to a **$1,380** credit for his qualified sick leave wages ($138 * 10 days) and a **$555** credit for his qualified family leave wages [(2/3*$138)*6 days].
- Jeremy will claim his **$1,935** credit on Form 7202 when he files his 2021 return.
- He may reduce his estimated payments to account for the anticipated credit.

Family and Sick Leave Credits – Fig. 2.9 Comparison by Period

pp. 99-100

	Quarters 2-4, 2020 (FFCRA)	Quarter 1 2021 (FFCRA, extended by CAA)	Quarters 2-3, 2021 (I.R.C. §§ 3131-3133)
Time Period for Wages	April 1 – December 31, 2020	January 1 – March 31, 2021	April 1, 2021 – September, 2021
Eligible Employers	Businesses and tax exempt organizations with fewer than 500 employees were eligible for credits. No eligibility for federal, state, or local governments. Tribal governments were eligible.		State and local governments were newly eligible, regardless of size.
Leave Mandate	Employers were required to provide paid sick and family leave to eligible employees.	Leave was optional, but credits were available to compensate eligible employers that provide it.	
Sick Leave Reasons	(1) Employee subject to quarantine or isolation or (2) advised by healthcare professional to quarantine, or (3) experiencing		New eligibility if (1) seeking or awaiting the results of a

Repaying Deferred Tax

P. 101

Repayment of Deferred Employer Payroll Tax

- One-half of the employer share of this social security tax is due by **December 31, 2021**, and the **remainder is due December 31, 2022**.
- Use EFTPS "deferred Social Security tax"

Repayment of Deferred Employer Payroll Tax

- Section 2302 of the CARES Act allowed employers to temporarily defer payment of the employer's portion of social security and RRTA payroll taxes (6.2%).
- This deferral was available from March 21, 2020 through December 31, 2021.
- One-half of the employer share of this social security tax is due by **December 31, 2021**, and the **remainder is due December 31, 2022**.

Repayment of Deferred Employer Payroll Tax p. 108

- Any payments or deposits made before December 31, 2021, are first applied against the payment due on December 31, 2021. They are then applied against the payment due on December 31, 2022.
- **Example 2.14**
  - Employer's social security tax obligation for the third quarter of 2020 was $30,000. Employer deposited $10,000 of the $30,000 during the third quarter of 2020, but deferred $20,000 on Form 941, line 13b.
  - Employer must pay $5,000 by December 31, 2021, and $15,000 by December 31, 2022.

Repayment of Deferred Employer Payroll Tax

- **Example 2.15**
  - Employer's share of social security tax for the third quarter of 2020 was $20,000 and Employer deposited $15,000 of the $20,000 during the third quarter of 2020, deferring $5,000 on Form 941, line 13b.
  - Employer is not required to pay any deferred amount until December 31, 2022, because 50% of the amount that could have been deferred has already been paid.

Repayment of Deferred SE Tax p. 109

- The CARES Act allowed self-employed individuals to also defer payments of 50% of social security tax imposed on their net self-employment earnings, beginning March 27, 2020, and ending December 31, 2020.
- Self-employed individuals who deferred these payments were not subject to a penalty for failure to make estimated tax payments.
- Like employers, self-employed individuals are required to repay the deferred tax in two installments, **50% by December 31, 2021, and the rest by December 31, 2022.**

Repayment of Deferred Employer Payroll Tax

- On July 6, 2021, IRS posted on its website that individuals can pay the deferred amount any time on or before the due date by making payments through the EFTPS or by credit or debit card, money order or with a check.
- These should be **separate payments** from other tax payments to ensure they are applied to the deferred tax balance on the tax year 2020, Form 1040.
- IRS will not recognize the payment for deferred tax if it is with other tax payments or paid with the current Form 1040. Taxpayers should designate the payment as "deferred Social Security tax."