



EMPLOYEE RETENTION TAX CREDITS

February 16, 2021

Agenda

- ▶ Employee Retention Tax Credit (ERC)-Overview
- ▶ Explanation of Governmental Order
- ▶ ERC Credit Calculation
- ▶ How to apply for ERC
- ▶ Amended Form 941 Example
- ▶ ERC Treatment for Income and Expenses
- ▶ Q & A

Employee Retention Tax Credit

- ▶ The CARES Act passed in March 2020 created an “employee retention tax credit,” which entitled eligible employers to a refundable tax credit for wages paid to employees during periods that the employer’s business was subject to a suspension, a shutdown, or a significant decline in revenues.
- ▶ The tax credit was not widely used by employers with fewer than 500 employees, primarily due to the fact that employers with Paycheck Protection Program (PPP) loans could not take advantage of the credit. On December 27, 2020, the Consolidated Appropriations Act (the CAA) was signed into law.
- ▶ The CAA significantly expanded the usability of the employee retention tax credit by allowing employers with PPP loans to take advantage of the credit. Further, the CAA increased the amount of the tax credit available.

Comparison of Expanded ERTC

March 13, 2020-December 31, 2020

Amount of wages eligible for retention tax credit

- ▶ 50% of qualified wages
- ▶ Limited to \$10,000 per employee (maximum of \$5,000 total)
- ▶ 50% decline in calendar quarter during 2020 compared to same quarter for 2019
- ▶ Employers with more than 100 employees can only claim credit for wages paid to employees who are not providing services

January 1, 2021-June 30, 2021

Amount of wages eligible for retention tax credit

- ▶ 70% of qualified wages
- ▶ Limited to \$10,000 per employee per quarter (maximum of \$7,000 per employee per quarter -Total maximum benefit -\$14,000)
- ▶ 20% decline in calendar quarter during 2021 compared to same quarter during 2019, or 20% decline in immediately prior quarter compared to same quarter for 2019
- ▶ Employers with more than 500 employees can only claim credit for wages paid to employees who are not providing services

Two Ways to Qualify

For purposes of the Employer Retention Credit (ERC):

- ▶ an eligible employer must be able to reflect that EITHER the business had operations that were fully or partially suspended

OR

- ▶ experienced a significant decline in gross receipts. To be an eligible employer for the ERC they must only meet one of these tests.
- ▶ It is an “OR” test.

Eligible Employer

In order to receive an ERC, an employer must qualify as an “eligible employer.” “Employer” here includes all members of a controlled group under IRC Section 52 (greater than 50% ownership test) or Section 414(m) (affiliated service group) on an aggregated basis.

“Eligible employer” is defined as follow:

For 2020 Q2, Q3 and/or Q4 (for Q2, including March 13 - March 31, 2020), an employer that:

- ▶ (1) Fully or partially suspended its operations due to a governmental order limiting commerce, travel, or group meetings due to COVID-19, **or**
- ▶ (2) Had gross receipts for such quarter that were less than 50% of its gross receipts for the same quarter in 2019.

Eligible Employer

For 2021 Q1 and/or Q2, an employer that:

- ▶ (1) Fully or partially suspends its operations due to a governmental order limiting commerce, travel, or group meetings due to COVID-19, **or**
- ▶ (2) Has gross receipts for such quarter that are less than 80% of its gross receipts for the same quarter in 2019 **or** for the immediately preceding quarter.

Eligible Employer

Small Employer:

- ▶ For 2020 Q2, Q3 and/or Q4 (for Q2, including March 13 - March 31, 2020): For 2019, averaged **100 or fewer** full-time employees (30 hours per week or 130 hours per month).
- ▶ For 2021 Q1 and/or Q2: For 2019, averaged **500 or fewer** full-time employees.

Large Employer:

- ▶ For 2020 Q2, Q3 and/or Q4 (for Q2, including March 13 - March 31, 2020): For 2019, averaged **more than 100** full-time employees.
- ▶ For 2021 Q1 and/or Q2: For 2019, averaged **more than 500** full-time employees.

Credit Eligibility whether an Employee is Working or Not

- ▶ **Original Law:** For a company with **more than 100 employees**, no credit was available for wages paid to an employee performing services for the employer (either teleworking, or working at the workplace, even though at reduced capacity due to reduction in business). Conversely, a company with 100 employees or less was eligible for the credit, even if the employee was working.
- ▶ **New Law:** Effective Jan. 1, 2021, this threshold will be raised to 500 employees, so that for the first two quarters of 2021, a company with **500 or fewer** employees will be eligible for the credit, even if employees are working. Note that in calculating this 500-employee threshold, the employees of all affiliated companies sharing more the 50% common ownership are aggregated.

Governmental Order

Governmental orders include 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. Any football fan that is used to watching NFL games at the local establishment, is well aware of this rule. A significant point of contention that fans could not watch the entire football game at a restaurant due to a 10:00 p.m. curfew enacted by the state as part of COVID containment policies.

Even though restaurants were operating from noon to 10:00 p.m., the inability to operate under their normal hours would be considered a partial shutdown. Therefore, the restaurants in this example would be treated as an eligible employer for the ERC.

The hours restriction must be due to a Federal, State, or local government mandate.

A voluntary change in business hours would not be treated as a partial suspension.

Complete or Partial Business Suspension

- ▶ A suspension of business means that an employer's operations have been limited wholly or partially because of a government order that affects commerce or travel.
- ▶ Limits on the number of people who may congregate in one place, or an order reducing the hours that a business can stay open.
- ▶ If an employer can carry on business operations on a **completely** remote basis through teleworking **despite** the existence of an order affecting physical office presence, the employer **will not be deemed** to have experienced a qualifying suspension of operations.

Essential Business

- ▶ Generally, an **essential business will be exempt** from direct government orders suspending commerce, travel, or other activities. On the surface, it would appear that an essential business would not qualify for the retention credit. However, a deeper analysis reveals direct and indirect effects on commercial activity resulting from government orders related to COVID-19.
- ▶ **The IRS FAQs outline fact patterns in which an employer is or is not an eligible employer. According to IRS FAQ 30, if an essential business is excluded from a business suspension order, it will not be considered to have a full or partial suspension of operations for purposes of the retention credit.**
- ▶ Despite the guidance that an essential business will not be considered suspended if it's allowed to continue operations under governmental orders, IRS FAQ 31 makes an exception for when the essential business cannot get materials because of government orders affecting its suppliers:

Facts and Circumstances

- ▶ If the facts and circumstances indicate that the essential business's operations are fully or partially suspended as a result of the inability to obtain critical goods or materials from its suppliers that were required to suspend operations, then the essential business would be considered an Eligible Employer and may be eligible to receive the Employee Retention Credit.

Example 1

- ▶ Employer A operates an auto parts manufacturing business that is considered an essential trade or business in the jurisdiction where it operates. Employer A's supplier of raw materials is required to shut down its operations due to a governmental order. Employer A is unable to procure these raw materials from an alternate supplier. As a result of the suspension of Employer A's supplier, Employer A is not able to perform its operations.
- ▶ Under these facts and circumstances, Employer A would be considered an Eligible Employer because its operations have been suspended as a result of the governmental order that suspended operations of its supplier.

Key Takeaways

The key element that there may be circumstances under which an essential business is unable to perform its operations because the operations of a third party are suspended as the result of COVID-19-related government orders.

Key Points:

- ▶ Identify vendors that have been affected by COVID-19-related government orders to suspend operations; and
- ▶ Identify how those government orders have resulted in the essential business not being able to conduct specific activities within its business operations.
- ▶ Demonstrating that an essential business has specific types of business activities that are affected by a vendor supply chain disruption would show that the essential business has been partially suspended.
- ▶ In contrast, experiencing a reduced volume of business operations simply because customers are required to stay at home under governmental orders would not be viewed as partially suspending an essential business:

Not Considered a Full or Partial Suspension

- ▶ An employer that operates an essential business that is not required to close its physical locations, or otherwise suspend its operations, **is not considered** to have a full or partial suspension of its operations for the sole reason that its customers are subject to a governmental order requiring them to stay at home.

Example 2

- ▶ Employer B, an engineering business, is an essential business and is not required to close its locations or suspend its operations. Due to a governmental order that limits travel and requires members of the community to stay at home except for certain essential travel, such as going to the grocery store, Employer B's business has declined significantly.
- ▶ Employer B is not considered to have a full or partial suspension of operations due to a governmental order. However, Employer B may be considered an Eligible Employer if it has a significant decline in gross receipts.

Essential Business

While the general rule surrounding ERC for eligible employers' states that essential businesses do not qualify.

A significant exception to this rule:

If the suppliers of the essential business are unable to make deliveries of critical goods or materials due to a governmental order that requires the supplier to suspend its operations.

- ▶ For example, if Pennsylvania production is shut down due to State restrictions and the Ohio manufacturer (deemed an essential business) is unable to operate normally due to the lack of material, the Ohio manufacturer could be viewed as an eligible employer for the ERC under the partial suspension guidelines.

Government Order

- ▶ IRS FAQ 32 appears inconsistent with the statute, which refers to the operation of a trade or business being “partially suspended . . . due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings . . . due to the coronavirus disease 2019.”
- ▶ For example, the operations of the auto repair business have been affected by stay-at-home government orders. The resulting reduction in business will cause a partial suspension of the repair business activity, creating fewer working hours for employees.

Government Order

- ▶ It seems appropriate for the legislation to seek to keep the repair business employees voluntarily paid by their employer the same way that it seeks to keep the employees of a closed restaurant voluntarily paid by their employer. As noted, the statute simply links qualification to the identification of government orders limiting commerce, travel, or group meetings because of COVID-19.
- ▶ The distinction between customers or suppliers causing a suspension of operations appears arbitrary and contradictory to the intent of the law. Congress declared the purpose of the CARES Act as “providing emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic.” It did not draw a distinction between businesses that were affected as the result of governmental orders affecting their suppliers, rather than their customers.

Partial Suspension

Even if a reduction in demand is insufficient to qualify as a partial suspension, the other possibility would be for the business to evaluate its qualification by considering potential direct and indirect effects on the business, such as:

- ▶ What government orders affected the business?
- ▶ Were limitations placed on operating hours?
- ▶ Was there any effect on the availability of parts to sell to customers?
- ▶ Were there travel restrictions limiting the ability to receive or make deliveries?

Effects on the Essential Business

Beyond customer demand, there are likely other effects that could qualify an essential business as an eligible employer. Because it's difficult to apply all the qualifying criteria simultaneously, they can be reordered and identify an order from government related to COVID-19 that limits:

- ▶ (A) commercial activity,
- ▶ (B) travel, or
- ▶ (C) group meetings; and
- ▶ Partially suspends operations.

Direct Impact

It may be more effective to start without a filter and focus on identifying all the COVID-19-related effects on the essential business. It is likely working from the bottom up – that is, the COVID-19-related effects on the business are related to government orders, not to the illness itself.

This analysis could begin by reviewing the material segments of the business, posing these questions:

- ▶ What effect has COVID-19 had on the business?
- ▶ How was the COVID-19 impact connected to government orders?
- ▶ Will the connection between the government order and the COVID-19 impact qualify as a partial suspension of operations?

Locations that are Partially Closed

Another path for essential business qualification would be to identify whether any facilities that remain open have been placed on some type of partial restriction because of government orders.

If a governmental order requires an employer to close its workplace for certain purposes, but the workplace may remain operational for limited purposes, is the employer considered to have a suspension of operations?

- ▶ Yes. If an employer's workplace is closed by a governmental order for certain purposes, but the employer's workplace may remain open for other purposes, or the employer is able to continue certain operations remotely, the employer's operations would be considered to be partially suspended.

Example 3

Employer D, a restaurant business, must close its restaurant locations to in-room dining due to a governmental order closing all restaurants, bars, and similar establishments for sit-down service. Employer D is allowed to continue food or beverage sales to the public on a carry-out, drive-through, or delivery basis.

Employer D's business operations is considered partially suspended due to the governmental order closing all restaurants, bars, and similar establishments to sit-down service.

Example 4

Employer E, a retail business, is forced to close its retail storefront locations due to a governmental order. The retail business also maintains a website through which it continues to fulfill online orders; the retailer's online ordering and fulfillment system is unaffected by the governmental order.

Employer E's business operations would be considered to have been partially suspended due to the governmental order requiring it to close its retail store locations.

Example 5

An essential business may identify partially suspended activities by unbundling a partial suspension of the business elements that have been affected by COVID-19-related government orders. Similarly, an essential business may still be in operation but have a smaller workload because of government orders limiting the operations of its customers.

- ▶ For example, a trucking company — an essential business — could be partially suspended because its customers have closed their physical locations in response to COVID-19-related government orders. All logistics and transportation businesses are likely to be indirectly partially suspended because of government orders affecting their customers or their customers' suppliers. The trucking company might experience a partial suspension of its activity in servicing an auto factory if the automaker is shut down because it can't obtain parts and other material from its suppliers.

Reduced Working Hours

Another way for an essential business qualification is to identify locations where operating hours may have been restricted.

Is employer's operations considered to be partially suspended for purposes of the Employee Retention Credit if the employer is required to reduce its operating hours by a governmental order?

- ▶ **Yes. An employer that reduces its operating hours due to a governmental order is considered to have partially suspended its operations since the employer's operations have been limited by a governmental order.**

Nationwide vs. Location Basis

- ▶ Although not entirely clear, it appears that an essential business will be viewed as partially suspended if it can demonstrate that its operations are limited in some jurisdictions because of governmental orders, even if in other jurisdictions it's an essential industry and not subject to the governmental edicts.
- ▶ Is an employer that operates a trade or business in multiple locations and is subject to a governmental order requiring full or partial suspension of its operations in some jurisdictions, but not in others, considered to have a suspension of operations?

Nationwide vs Location Basis

- ▶ **Yes.** Employers that operate a trade or business in multiple locations and are subject to State and local governmental orders limiting operations in some, but not all, jurisdictions are considered to have a partial suspension of operations.
- ▶ Employers that operate a trade or business on a national or regional basis may be subject to governmental orders requiring closure of their locations in certain jurisdictions but may not be subject to such a governmental order in other jurisdictions, including because it may be an essential business in some of those jurisdictions. To operate in a consistent manner in all jurisdictions, these employers may establish a policy nationwide that complies with the local governmental orders,
- ▶ In this case, even though the employer may not be subject to a governmental order to suspend operations of its trade or business in certain jurisdictions, the employer may merely be following CDC or DHS guidelines in those jurisdictions, the employer would still be considered to have partially suspended operations. Therefore, the employer would be an Eligible Employer with respect to all operations in all locations.

Reduction of Workload

The second qualifying category of qualifying wages is associated with reduced workload for employees who report to work but have downtime attributable to COVID-19 governmental orders that have caused a partial suspension of business activity.:

- ▶ For example: Employer U, in the business of staging homes that are for sale, averaged more than 100 fulltime employees in 2019. Employer U's non-exempt salaried employees cannot perform their usual services of delivering and installing furniture to be used in staging houses because open houses are prohibited in its service area during the second quarter of 2020. However, the employees are required to provide Employer U with periodic status updates about furniture that has been leased out. Employer U continues to pay wages to employees at their normal rates even though the employees cannot provide their normal services. Employer U has determined that its employees are working 20 percent of the time. **Employer U is entitled to treat 80 percent of the wages paid as qualified wages and claim an Employee Retention Credit for 80 percent of the wages paid.**

Example 6

- ▶ Employer V, a large fitness club business that employed an average of more than 100 full-time employees in 2019, closed all of its locations in City B by order of City B's mayor. Employer V continues to pay its exempt managerial employees their regular salaries. While the clubs are closed and there is not sufficient administrative work to occupy the managerial employees full-time, they continue to perform some accounting and similar administrative functions. Employer V has determined, based on the time records maintained by employees, that they are providing services for 10 percent of their typical work hours. **In this case, 90 percent of wages paid to these employees during the period the clubs were closed are qualified wages.**

Example 7

- ▶ Employer W, a large consulting firm that employed an average of more than 100 full-time employees in 2019, closed its offices due to various governmental orders and required all employees to telework. Although Employer W believes that some of its employees may not be as productive while working remotely, employees are working their normal business hours. **Because employees' work hours have not changed, no portion of the wages paid to the employees by Employer W are qualified wages.**

Significant Decline in Gross Receipts

For wages paid during 2020:

- ▶ A decline in gross receipts had to be 50% or more for a calendar quarter in 2020 compared to the same quarter in 2019.
 - Q1 2019 vs. Q1 2020
 - Q2 2019 vs. Q2 2020
 - Q3 2019 vs. Q3 2020
 - Q4 2019 vs. Q4 2020
- ▶ Thus, an employer may retroactively take a tax credit for calendar quarters during 2020 if it meets the decline in gross receipts standard.

Significant Decline in Gross Receipts

For wages paid in 2021:

- ▶ A significant decline in gross receipts means that an employer experienced a decline of at least 20% in gross receipts during a calendar quarter in 2021 compared to the same calendar quarter in 2019
 - Q1 2019 vs. Q1 2021
 - Q2 2019 vs. Q2 2021
- ▶ Alternatively, for calendar quarters in 2021, an employer may elect to use the immediately preceding calendar quarter and compare gross receipts to the same quarter during 2019 to determine whether the employer qualifies (i.e., to determine eligibility for the tax credit during Q1 of 2021, an employer could compare Q4 of 2020 to Q4 of 2019).
 - For Q1 2021: Q4 2019 vs. Q4 2020
 - For Q2 2020: Q1 2019 vs. Q1 2021

Gross Receipts Defined

Includes all revenues received or accrued from whatever source (in accordance with the entity's accounting method)

- ▶ Sales of products and services
- ▶ Interest, dividends, rents, and royalties
- ▶ Fees or commissions
- ▶ Reduced by returns and allowances

For sole proprietors, independent contractors, or self-employed individual

- ▶ Gross receipts is total income (Gross Income **MINUS** costs of goods sold) and excludes capital gains or losses as defined on IRS tax return

Gross Receipts Calculation

- ▶ The gross receipts calculation is made quarterly, such that if an employer qualifies during **any** particular quarter, all qualifying wages paid to employees during the quarter are eligible for credit.

Qualified Wages

- ▶ Qualified wages - means cash compensation as well as “qualified health plan expenses” (both the employer and employee portions of premiums paid for group medical coverage).
 - ▶ Gross Wages PLUS Employer Health Plan Expenses
- ▶ Qualified wages include the employer’s contribution of qualified health plan expenses. Therefore, qualified health plan expenses paid by the employer for furloughed employees would be included as a qualified wage for large employers.
- ▶ Wages must have been paid from March 13, 2020, through December 31, 2020 for 2020 and from January 1, 2021, through June 30, 2021 for 2021 credits.
- ▶ In addition, the wages paid to employees who weren’t working full time may also be considered.
 - ▶ If you continue to pay someone their full salary even though they are only working 25 hours a week. The compensation for the “non-working” 15 hours a week could be considered a qualified wage for a larger employer. Documentation surrounding these conclusions will be key.

Amount of Credit

- ▶ For 2020, the amount of the credit is total qualified wages up to \$10,000 annually times 50%.
 - ▶ Maximum \$5,000 per employee for the year.
- ▶ For 2021, the amount of the credit is total qualified wages up to \$10,000 quarterly times 70%.
 - ▶ Maximum \$7,000 per employee per quarter
 - ▶ Maximum \$14,000 per employee for the year
 - ▶ This means that a 10-person business could get a maximum ERC of \$140,000 and a 300-person company could generate a \$4,200,000 ERC

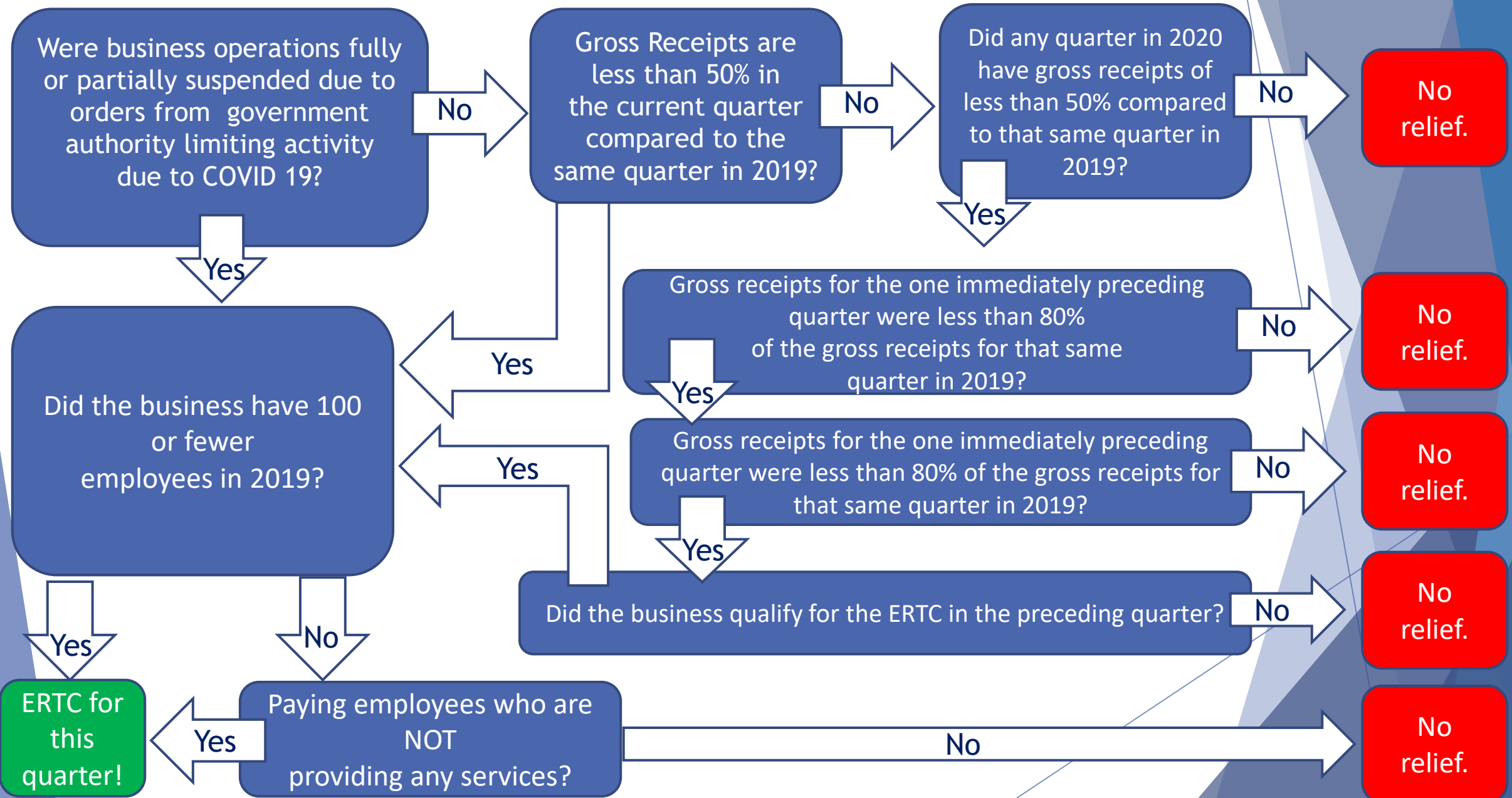
Limitation Based on Employee Population

- ▶ For 2020, the limitation is a 100-employee maximum as of 2019, such that employers with more than 100 employees can only claim a credit for employees who **are not providing services**, and those employers with fewer than 100 employees can claim a credit for any employee, regardless of whether the employee is actively at work.
- ▶ For 2021, the limitation is a 500-employee maximum as of 2019, such that employers with more than 500 employees can only claim a credit for employees who **are not providing services**, and those employers with fewer than 100 employees can claim a credit for any employee, regardless of whether the employee is actively at work.

Definition of Full-Time Employee

For ERC purposes, the definition of a full-time employee is based on the Internal Revenue Code. The term full-time employee for purposes of the ERC means an employee who for a calendar month in 2019 had an average of at least 30 hours of service week or 130 hours of service in the month, as determined in accordance with IRC §4980H. Any employee who consistently worked 30 hours per week in a month would be counted as one employee. Employees who work part-time can be combined with the other part-time employees for the month and divided by 130 to create a full-time employee equivalent. While it can be confusing, the fact that part-time employee hours can be added together to form a full-time employee equivalent most likely will allow businesses to have fewer employees for the ERC than what they reported for PPP.

ERTC 2020 Flow Chart



ERTC 2021 Flow Chart

Were business operations fully or partially suspended due to orders from government authority limiting activity due to COVID 19 during Q1 or Q2 ?

No

Were the controlled group's gross receipts for Q1 or Q2 less than 80% of its gross receipts for the same quarter in 2019 or for the immediately preceding quarter?

No

No relief.

Yes

Yes

For 2019, on average, did the controlled group have 500 or fewer full-time employees (30 hours/week or 130 hours/month)?

No

Paying employees who are NOT providing any services?

No

No relief.

Yes

Yes

Small employer:
Qualified Wages* =

All wages/employer health plan premiums (plus employee pre-tax premiums) paid in quarter (limited to \$10,000 per employee for each of Q1 and Q2)

Large employer:
Qualified Wages* =

Only wages/employer health plan premiums (plus employee pre-tax premiums) paid in quarter (limited to \$10,000 per employee for each of Q1 and Q2)

Other Changes

A few other notable changes implemented by the CAA with respect to retention tax credits:

- ▶ Previously, an employer could not claim a tax credit for increases in an employee's pay rate made within 30 days before March 13, 2020. This limitation on pay raises has been eliminated for credits claimed after January 1, 2021.
 - ▶ If you are filing the amended return for 2020 or 2021 in 2021, this is not applicable.
- ▶ Previously, governmental and tax-exempt entities were not eligible for the credit. For wages paid after January 1, 2021, these entities may claim the tax credit.

Example 8

- ▶ Company X has fewer than 100 FTEs and has gross receipts as reflected in the table below.

Gross Receipts	Q2	Q3	Q4
2019	\$210,000	\$155,000	\$180,000
2020	\$100,000	\$120,000	\$150,000
Reduction %	52%	23%	17%

- ▶ Eligible quarters for 2020 start once receipts drop by more than 50% and continue until the **END** of a quarter in which receipts exceed 80% of the receipts for the same quarter in 2019. In the example below, each quarter is an eligible quarter.

Example 8 - Continued

During those quarters, Company X paid salary to employees in the following sums:

	Wages Paid Q2	ERTC	Wages Paid Q3	ERTC	Wages Paid Q3	ERTC
Employee A	\$8,000	\$4,000 <i>(\$8,000*50%)</i>	\$7,000	\$1,000 <i>(((\$10,000-\$8,000)*50%))</i>	\$10,000	\$0
Employee B	\$12,000	\$5,000 <i>(\$10,000*50%)</i>	\$10,000	\$0	\$11,000	\$0
Employee C	\$4,000	\$2,000 <i>(\$4,000*50%)</i>	\$4,000	\$2,000 <i>(\$4,000*50%)</i>	\$4,000	\$1,000 <i>(((\$10,000-\$8,000)*50%))</i>
Employee D	\$2,000	\$1,000 <i>(\$2,000*50%)</i>	\$2,000	\$1,000 <i>(\$2,000*50%)</i>	\$2,000	\$1,000 <i>(\$2,000*50%)</i>
Total		\$12,000		\$14,000		\$2,000

Example 8 - Continued

- ▶ In Q2, X Co. has \$24,000 in qualified wages (\$8,000 + \$10,000 + \$4,000 + \$2,000). B is topped out and disqualified for the rest of 2020, because in 2020, the maximum amount of qualified wages for any one employee is \$10,000 for ALL quarters.
- ▶ In Q3, X Co. has \$8,000 in qualified wages (\$2,000 + \$0 + \$4,000 + \$2,000). A is now topped out and disqualified for the rest of 2020.
- ▶ In Q4, X Co. has \$4,000 in qualified wages (\$0 + \$0 + \$2,000 + \$2,000). C was topped out during the quarter.
- ▶ The total credit is \$18,000 (50% * \$36,000).

Example 9

- ▶ In 2021, Company X has fewer than 500 FTEs and has gross receipts as reflected in the table below.

Gross Receipts	Q1	Q2
2019	\$180,000	\$210,000
2021	\$140,000	
Reduction %	22%	22% using Q1 2021 vs. Q1 2019 comparison

- ▶ Because gross receipts for each of Q1 were less than 80% of the receipts for the same quarter in 2019, and for Q2 utilizing the immediately preceding calendar quarter and comparing gross receipts to the same quarter during 2019 to determine whether the employer qualifies, both quarters are eligible quarters.

Example 9 - Continued

During those quarters, Company X paid salary to employees in the following sums:

	Wages Paid Q1	ERTC	Wages Paid Q2	ERTC
Employee A	\$8,000	\$5,600 <i>(\$8,000*70%)</i>	\$7,000	\$4,900 <i>(\$7,000*70%)</i>
Employee B	\$12,000	\$7,000 <i>(\$10,000*70%)</i>	\$14,000	\$7,000 <i>(\$10,000*70%)</i>
Employee C	\$4,000	\$2,800 <i>(\$4,000*70%)</i>	\$4,000	\$2,800 <i>(\$4,000*70%)</i>
Employee D	\$6,000	\$4,200 <i>(\$6,000*70%)</i>	\$6,000	\$4,200 <i>(\$6,000*70%)</i>
Total		\$19,600		\$18,900

Example 9 - Continued

- ▶ In Q1, X Co. has \$28,000 in qualified wages (\$8,000 + \$10,000 + \$4,000 + \$6,000).
- ▶ In Q2, X Co. has \$27,000 in qualified wages (\$7,000 + \$10,000 + \$4,000 + \$6,000). As opposed to 2020, B has eligible wages even after being paid \$10,000 in a previous quarter, because the limit is now \$10,000 per employee PER QUARTER.
- ▶ The total credit is \$38,500 (70% * \$55,000).
- ▶ The credit is DOUBLE what it was for 2020, despite the fact that 2021 has only two qualifying quarters, while 2020 had three.

Example 10

- ▶ If an employer qualifies during the first quarter of 2021 and second quarter of 2021 and pays \$10,000 in qualified wages to an employee during each quarter, then the employer can claim a tax credit of up to \$7,000 during each quarter for this particular employee. Further, if the employer qualifies during a particular quarter during 2020 and pays the same employee \$10,000 during the quarter, then another \$5,000 in tax credits can be taken for the employee, for a total of \$19,000.

Example 11

- ▶ **Example.** Employer P is a local chain of full-service restaurants in State X that averaged 250 FTEs in 2019. State X forced P to discontinue sit-down service to customers for Q2 and Q3 of 2020. P continues to pay its kitchen staff to come in and prepare food every day. It also pays its wait staff to stay at home and not work. Even though P had its operations partially suspended, because P has more than 100 FTEs for 2019, only those wages paid to employees NOT TO WORK are eligible for the credit. The amount P pays its kitchen staff to cook are not eligible for the ERC. The wages paid to the wait staff, however, are eligible wages.
- ▶ Fast forward to 2021, however, and the wages paid to BOTH the wait staff and the kitchen staff are eligible wages, because beginning in 2021, the change in treatment of wages does not kick in until P has more than 500 FTEs, assuming 20% reduction in gross receipts in 2021 or the preceding period.

Does it make sense if PPP Loan Forgiveness Application has not been filed to shift payroll costs to other expenses?

Under the renewed program, the list of eligible non-payroll expenses has been expanded to include four new categories, including:

Covered worker protection:

Costs for personal protective equipment and adaptive investments that help a PPP loan recipient comply with federal and/or health and safety guidelines related to COVID-19;

Covered operations expenditures

Payments for the processing, payment, or tracking of payroll expenses, human resources, business software or cloud computing service that facilitates business operations, product or service delivery, sales and billing functions, or accounting or tracking of supplies, inventory, records, and expenses.

Covered property damage costs:

Any spending not covered by insurance that is related to property damage due to vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation

Covered supplier costs

Spending to suppliers that covered costs essential to the business operations at the time the outlay occurred. For instance, restaurants' purchases of perishable goods.

► **Check if expenses applied to first and second draw PPP Loans**

Example 12

- ▶ Let's assume that Company A received a second draw PPP loan on February 15th for \$300,000 which is 2.5 times their 2019 average monthly payroll costs of \$120,000.
- ▶ Company A's PPP covered period will start on February 15th and end on August 1st, a maximum covered period of 24 weeks.
- ▶ Company A employs 10 employees. Company A has a decrease in 2021 average monthly salaries, and it will take them 14 weeks to incur payroll expenses of \$300,000. This is approximately \$21,400 per week or \$2,140 per employee.
- ▶ Company A also qualifies as an eligible employer for 2021 Q1 ERC.

Example 12 - Continued

- ▶ Company A can utilize the first six weeks of 2021 payroll to reach the maximum qualified wage amount for the ERC.
 - ▶ \$120,000 monthly payroll expense = \$180,000 payroll expense in Q1 prior to PPP funding
 - ▶ $\$180,000 / 10 \text{ employees} = \$18,000$ of payroll expense per employee
- ▶ Each employee would be capped at the \$10,000 per employee maximum amount before PPP Funding was utilized.
- ▶ The \$10,000 qualified wage amount will generate a credit of \$7,000 (or 70%) and the ERC for 2021 Q1 will be \$70,000.
- ▶ This leaves the payroll starting February 16th open to use towards the PPP debt forgiveness. The 14 weeks needed to incur the \$300,000 of payroll for the second draw PPP debt forgiveness will be met by May 24th, which is ample time prior to the covered period end date of June 26th.
- ▶ Proper planning allowing for the maximization of the federal stimulus programs is reflected in this example, and as a result \$370,000 to be received by Company A.

Example 12 - Continued

- ▶ This example also assumes that all PPP debt forgiveness will be incurred through payroll.
- ▶ However, only 60% of the PPP Second Draw principal balance is required to be utilized toward payroll.
- ▶ Other expenses, such as covered mortgage and rent obligation payments, covered utility payments, covered operation expenditures, damage costs, supplies costs and worker protection expenditures can be utilized toward debt forgiveness. These non-payroll expenses cannot exceed 40% of the Second Draw principal balance.
- ▶ It has become increasingly important to identify these non-payroll expenses in order to ensure that the maximum amount of payroll can be applied to the ERC.

Claiming the Employer Retention Credit

- ▶ In the guidance posted to its website, the IRS indicates that if an employer received a PPP loan and included wages paid in the second and/or third quarter of 2020 as payroll costs to support an application for loan forgiveness, instead of claiming the ERC for those wages, and whose request for forgiveness was denied, it can claim the ERC for those qualified wages on its fourth quarter 2020 Form 941, Employer's Quarterly Federal Tax Return.
- ▶ Also, where employers report any ERC attributable to health expenses that are qualified wages that weren't included on their second and/or third quarter Form 941 are permitted. The IRS has instructions for how to claim the credits on the form.

How does an Eligible Employer claim the Employee Retention Credit for Qualified Wages?

Eligible Employers will report their total qualified wages for purposes of the Employee Retention Credit for each calendar quarter on their federal employment tax returns usually on the Form 941, Employer's Quarterly Federal Tax Return. Employers also report any qualified sick leave and qualified family leave wages for which they are entitled to a credit under FFCRA on Form 941. The Form 941 is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's share of social security and Medicare tax.

In anticipation of receiving the Employee Retention Credit, Eligible Employers can fund qualified wages by:

- ▶ (1) accessing federal employment taxes, including withheld taxes that are required to be deposited with the IRS, and
- ▶ (2) requesting an advance of the credit from the IRS for the amount of the credit that is not funded by accessing the federal employment tax deposits, by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

.

Employer identification number (EIN)	5	3	-	2	8	5	4	9	4	2
Name (not your trade name)	Johnson Development LLC									
Trade name (if any)										
Address	2400 Town Blvd									
Number	Street				Suite or room number					
Pittsburgh	City				PA	State		15238	ZIP code	
	Foreign country name					Foreign province/county			Foreign postal code	

Report for this Quarter of 2020
(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: Sept. 12 (Quarter 3) or Dec. 12 (Quarter 4)	1	62
2	Wages, tips, and other compensation	2	285585 . 56
3	Federal income tax withheld from wages, tips, and other compensation	3	16908 . 76
4	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/> Check and go to line 6.	
		Column 1	Column 2
5a	Taxable social security wages	222014 . 20	$\times 0.124 =$ 27529 . 76
5a	(i) Qualified sick leave wages	253 . 58	$\times 0.062 =$ 15 . 72
5a	(ii) Qualified family leave wages		$\times 0.062 =$
5b	Taxable social security tips	63317 . 78	$\times 0.124 =$ 7851 . 40
5c	Taxable Medicare wages & tips	285585 . 56	$\times 0.029 =$ 8281 . 98
5d	Taxable wages & tips subject to Additional Medicare Tax withholding		$\times 0.009 =$
5e	Total social security and Medicare taxes. Add Column 2 from lines 5a, 5a(i), 5a(ii), 5b, 5c, and 5d	5e	43678 . 86
5f	Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions)	5f	
6	Total taxes before adjustments. Add lines 3, 5e, and 5f	6	60587 . 62
7	Current quarter's adjustment for fractions of cents	7	. 2
8	Current quarter's adjustment for sick pay	8	
9	Current quarter's adjustments for tips and group-term life insurance	9	
10	Total taxes after adjustments. Combine lines 6 through 9	10	60587 . 64
11a	Qualified small business payroll tax credit for increasing research activities. Attach Form 8974	11a	
11b	Nonrefundable portion of credit for qualified sick and family leave wages from Worksheet 1	11b	257 . 26
11c	Nonrefundable portion of employee retention credit from Worksheet 1	11c	17441 . 18

▶ You MUST complete all three pages of Form 941 and SIGN IT.

For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher.

Cat. No. 17001Z

Form 941 (Rev. 7-2020)

Next ➞

950220

Name (not your trade name)

Employer identification number (EIN)

Johnson Development LLC

53-2854942

Part 1: Answer these questions for this quarter. (continued)

- 11d Total nonrefundable credits. Add lines 11a, 11b, and 11c 11d 17698 . 44
- 12 Total taxes after adjustments and nonrefundable credits. Subtract line 11d from line 10 . 12 42889 . 20
- 13a Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, or 944-X (SP) filed in the current quarter 13a 60330 . 38
- 13b Deferred amount of social security tax 13b
- 13c Refundable portion of credit for qualified sick and family leave wages from Worksheet 1 13c
- 13d Refundable portion of employee retention credit from Worksheet 1 13d 68836 . 43
- 13e Total deposits, deferrals, and refundable credits. Add lines 13a, 13b, 13c, and 13d . . . 13e 129166 . 81
- 13f Total advances received from filing Form(s) 7200 for the quarter 13f
- 13g Total deposits, deferrals, and refundable credits less advances. Subtract line 13f from line 13e . 13g 129166 . 81
- 14 Balance due. If line 12 is more than line 13g, enter the difference and see instructions . . . 14
- 15 Overpayment. If line 13g is more than line 12, enter the difference 86277 . 61 Check one: ☐ Apply to next return. ☒ Send a refund.

Legend=

Step 1

- 1a 941 line 5a col 2
- 1b 941 line 5b col 2
- 1c add 1a and 1b
- 1d 1c * .5

Calculations based on the spreadsheet inputs

amt col 1 amt col 2

\$	27,545.48
\$	7,851.40
\$	35,396.88
\$	17,698.44

- 1e third-party payor of sick pay that isn't an agent claiming credits for your ees (er fica ss portion from line 8 - enter as positive)

1f 1d - 1e

\$	17,698.44
----	-----------

- 1g If you received 3121g notice put er share of ss (line 5f)

1h 1f + 1g

\$ 17,698.44

- 1i 941 part 1, line 11a (credit from Form 8974)

\$	-
----	---

- 1j 5884-C line 11 for this quarter (941 line 23)

\$	-
----	---

- 1k add 1i and 1j

\$ -

- 1l ER share of SS remaining for nonrefundable credits

\$ 17,698.44

Step 2

2a	Qual sick leave wages 5a(i) col 1	\$	253.58	
2ai	Qual sick wages on 5c but not in 5ai since over limit	\$	-	
2aii	total qual sick wages (2a + 2ai)	\$	253.58	
2b	Qual health plan 941 part 3 line 19	\$	-	
2c	ER share of MED 941 (2aii * 1.45%)	\$	3.68	
2d	Credit for qual sick wages (2aii + 2b+2c)			\$ 257.26
2e	Qual family wages - 941 part1 line 5aii col 1	\$	-	
2ei	Qual family wages on 5c but not in 5aii since over limit	\$	-	
2eii	Total qual family wages (2e + 2ei)	\$	-	
2f	Qual health plan (941 part 3 line 20)	\$	-	
2g	ER share of MED 941 (2eii * 1.45%)	\$	-	
2h	Credit for famil leave (2eii + 2f+2g)			\$ -
2i	Credit for qual sick and family wages (2d+2h)			\$ 257.26
2j	non refundable portion of credit (smaller of 1l and 2i)			\$ 257.26
2k	refundable portion (2i - 2j)			\$ -

Step 3

3a	Qual wages for ee retention (part3 line 21)	\$	172,416.76	
3b	Qual health for ee retention (part3 line 22)	\$	138.46	
3c	Qual wages for Q1 ee retention (part 3 line 24)	\$	-	
3d	Qual health for Q1 ee ret (part 3 line 25)	\$	-	
3e	3a+3b+3c+3d	\$	172,555.22	
3f	Retention credit (3e * .5)			\$ 86,277.61
3g	Er share of SS (from 1l)	\$	17,698.44	
3h	nonrefundable portion of credit (from 2j)	\$	257.26	
3i	3g-3h remaining er share of ss	\$	17,441.18	
3j	nonrefund portion of ee credit (smaller of 3f or 3i)			\$ 17,441.18
3k	refund portion (3f-3j)			\$ 68,836.43

When should you file an Amended Form 941 or Form 7200?

Some businesses may not be evaluating the ERC now because they do not believe the ERC can be claimed until they file the Form 941. While that is one way to claim the ERC, businesses who need or want cash now should instead be adjusting their federal employment tax deposits by the amount of ERC reasonably expected. If businesses wait to claim the credit on their Form 941, the IRS could take 4-6 months to process the refund.

The IRS has noted that an eligible employer that pays qualified wages in a calendar quarter will not be subject to a penalty under IRC §6656 for failing to deposit federal employment taxes.

Payroll companies are coming up to speed with these rules and have adjusted their systems accordingly to properly record the qualified wages per employee. Many of the payroll companies will not assist the business in determining what the qualified wages are per employee.

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

Read the separate instructions before completing this form. Use this form to correct errors you made on Form 941 or 941-SS. Use a separate Form 941-X for each quarter that needs correction. Type or print within the boxes. You MUST complete all four pages. Don't attach this form to Form 941 or 941-SS unless you're reclassifying workers; see the instructions for line 36.

Part 1: Select ONLY one process. See page 5 for additional guidance.

- ☐ 1. **Adjusted employment tax return.** Check this box if you underreported amounts. Also check this box if you overreported amounts and you would like to use the adjustment process to correct the errors. You must check this box if you're correcting both underreported and overreported amounts on this form. The amount shown on line 27, if less than zero, may only be applied as a credit to your Form 941, Form 941-SS, or Form 944 for the tax period in which you're filing this form.

- ☒ 2. **Claim.** Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 27. Don't check this box if you're correcting ANY underreported amounts on this form.

Part 2: Complete the certifications.

- ☒ 3. I certify that I've filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

Note: If you're correcting underreported amounts only, go to Part 3 on page 2 and skip lines 4 and 5. If you're correcting overreported amounts, for purposes of the certifications on lines 4 and 5, Medicare tax doesn't include Additional Medicare Tax. Form 941-X can't be used to correct overreported amounts of Additional Medicare Tax unless the amounts weren't withheld from employee wages or an adjustment is being made for the current year.

4. If you checked line 1 because you're adjusting overreported federal income tax, social security tax, Medicare tax, or Additional Medicare Tax, check all that apply. You must check at least one box.

I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected federal income tax or Additional Medicare Tax for the current year and the overcollected social security tax and Medicare tax for current and prior years. For adjustments of employee social security tax and Medicare tax overcollected in prior years, I have a written statement from each affected employee stating that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- ☐ b. The adjustments of social security tax and Medicare tax are for the employer's share only. I couldn't find the affected employees or each affected employee didn't give me a written statement that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- ☐ c. The adjustment is for federal income tax, social security tax, Medicare tax, or Additional Medicare Tax that I didn't withhold from employee wages.

5. If you checked line 2 because you're claiming a refund or abatement of overreported federal income tax, social security tax, Medicare tax, or Additional Medicare Tax, check all that apply. You must check at least one box.

I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security tax and Medicare tax. For claims of employee social security tax and Medicare tax overcollected in prior years, I have a written statement from each affected employee stating that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security tax and Medicare tax. For refunds of employee social security tax and Medicare tax overcollected in prior years, I also have a written statement from each affected employee stating that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I couldn't find the affected employees, or each affected employee didn't give me a written consent to file a claim for the employee's share of social security tax and Medicare tax, or each affected employee didn't give me a written statement that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, Medicare tax, or Additional Medicare Tax that I didn't withhold from employee wages.

Return You're Correcting...

Check the type of return you're correcting.

- ☒ 941
☐ 941-SS

Check the ONE quarter you're correcting.

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

Enter the calendar year of the quarter you're correcting.

(YYYY)

Enter the date you discovered errors.

/ /
(MM / DD / YYYY)

- ☒ 2. **Claim.** Check this box if you overreported amounts only and you would like to use the claim process to ask for a refund or abatement of the amount shown on line 27. Don't check this box if you're correcting ANY underreported amounts on this form.

- ☒ 3. I certify that I've filed or will file Forms W-2, Wage and Tax Statement, or Forms W-2c, Corrected Wage and Tax Statement, as required.

5. If you checked line 2 because you're claiming a refund or abatement of overreported federal income tax, social security tax, Medicare tax, or Additional Medicare Tax, check all that apply. You must check at least one box. I certify that:

- ☐ a. I repaid or reimbursed each affected employee for the overcollected social security tax and Medicare tax. For claims of employee social security tax and Medicare tax overcollected in prior years, I have a written statement from each affected employee stating that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- ☐ b. I have a written consent from each affected employee stating that I may file this claim for the employee's share of social security tax and Medicare tax. For refunds of employee social security tax and Medicare tax overcollected in prior years, I also have a written statement from each affected employee stating that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- ☐ c. The claim for social security tax and Medicare tax is for the employer's share only. I couldn't find the affected employees, or each affected employee didn't give me a written consent to file a claim for the employee's share of social security tax and Medicare tax, or each affected employee didn't give me a written statement that he or she hasn't claimed (or the claim was rejected) and won't claim a refund or credit for the overcollection.
- ☒ d. The claim is for federal income tax, social security tax, Medicare tax, or Additional Medicare Tax that I didn't withhold from employee wages.

Next ➞

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 3 (1, 2, 3, 4)
Johnson Development LLC	53-2854942	Correcting calendar year (YYYY)
		2020

Part 3: Enter the corrections for this quarter. If any line doesn't apply, leave it blank.

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction	
6. Wages, tips, and other compensation				Use the amount in Column 1 when you	
7. Federal income tax on wages, tips, and other compensation					
8. Taxable social security wages (Form 941 or 941-SS, line 1)	18. Nonrefundable portion of employee retention credit (Form 941 or 941-SS, line 11c)	17698 . 44	0 . 00	= 17698 . 44	See instructions -17698 . 44
9. Qualified sick leave wages (Form 941 or 941-SS, line 1)	19. Special addition to wages for federal income tax			=	See instructions
10. Qualified family leave wages (Form 941 or 941-SS, line 1)	20. Special addition to wages for social security taxes			=	See instructions
11. Taxable social security wages (Form 941 or 941-SS, line 1)	21. Special addition to wages for Medicare taxes			=	See instructions
12. Taxable Medicare wages (Form 941 or 941-SS, line 1)	22. Special addition to wages for Additional Medicare Tax			=	See instructions
13. Taxable wages for federal income tax withholding (Form 941 or 941-SS, line 1)	23. Combine the amounts on lines 7 through 22 of Column 4				-17698 . 44

17. Nonrefundable portion of credit for qualified sick and family leave wages (Form 941 or 941-SS, line 11b)			=		See instructions
18. Nonrefundable portion of employee retention credit (Form 941 or 941-SS, line 11c)	17698 . 44	0 . 00	=	17698 . 44	See instructions -17698 . 44
19. Special addition to wages for federal income tax			=		See instructions
20. Special addition to wages for social security taxes			=		See instructions
21. Special addition to wages for Medicare taxes			=		See instructions
22. Special addition to wages for Additional Medicare Tax			=		See instructions
23. Combine the amounts on lines 7 through 22 of Column 4					-17698 . 44
24. Deferred amount of social security tax* (Form 941 or 941-SS, line 13b)			=		See instructions
25. Refundable portion of credit for qualified sick and family leave wages (Form 941 or 941-SS, line 13c)			=		See instructions

Next

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 3 (1, 2, 3, 4)
		Correcting calendar year (YYYY)
Johnson Development LLC	53-2854942	2020

Part 3: Enter the corrections for this quarter. If any line doesn't apply, leave it blank. (continued)

	Column 1 Total corrected amount (for ALL employees)	Column 2 Amount originally reported or as previously corrected (for ALL employees)	Column 3 Difference (If this amount is a negative number, use a minus sign.)	Column 4 Tax correction
26. Refundable portion of employee retention credit (Form 941 or 941-SS, line 13d)	68836 . 43	0 . 00	68836 . 43	-68836 . 43
27. Total. Combine the amounts on lines 23 through 26 of Column 4				-86277 . 61

If line 27 is less than zero:

- If you checked line 1, this is the amount you want applied as a credit to your Form 941 or 941-SS for the tax period in which you're filing this form. (If you're currently filing a Form 944, Employer's ANNUAL Federal Tax Return, see the instructions.)
- If you checked line 2, this is the amount you want refunded or abated.

If line 27 is more than zero, this is the amount you owe. Pay this amount by the time you file this return. For information on how to pay, see *Amount you owe* in the instructions.

28. Qualified health plan expenses allocable to qualified sick leave wages (Form 941 or 941-SS, line 19)			
29. Qualified health plan expenses allocable to qualified family leave wages (Form 941 or 941-SS, line 20)			
30. Qualified wages for the employee retention credit (Form 941 or 941-SS, line 21)	172416 . 76	0 . 00	172416 . 76
31. Qualified health plan expenses allocable to wages reported on	138 . 46	0 . 00	138 . 46

Name (not your trade name)	Employer identification number (EIN)	Correcting quarter 3 (1, 2, 3, 4)
Johnson Development LLC	53-2854942	Correcting calendar year (YYYY) 2020

Part 4: Explain your corrections for this quarter.

- ☐ 35. Check here if any corrections you entered on a line include both underreported and overreported amounts. Explain both your underreported and overreported amounts on line 37.
- ☐ 36. Check here if any corrections involve reclassified workers. Explain on line 37.
37. You must give us a detailed explanation of how you determined your corrections. See the instructions.

Taxpayer is amending 941 to claim employee retention tax credits applicable to qualified wages paid July 1 - September 30, 2020 under the CARES Act and extended through the the COVID-19 related Tax Relief Act of 2020 as included in the Consolidated Appropriations Act, 2021. The qualified wages were calculated per employee, per week and used to determine the total qualified wages for the period. This total was then used to calculate the credit amount, based on 50% of qualified wages, up to a maximum amount of \$5,000 per employee for tax year 2020. The nonrefundable portion of the employee retention tax credit, which equals the employer share of social security tax for the period was calculated using Worksheet 1. The retention credit was then calculated as 50% of total qualified wages for the period. The total employee retention credit appear on line 27.

Example 13

Company A calculated that they would receive a \$70,000 ERC for 2021 Q1. They could simply place the \$70,000 on their Form 941 filed in April, and patiently wait for their refund.

Alternatively, Company A could stop remitting the employee and the employer portion of Social Security and Medicare, as well as the employee federal withholdings every pay period. Assuming the federal employment deposit is \$4,000 for the business bi-weekly pay periods, the business would not remit \$24,000 (6 bi-weekly periods x 4,000) over the first quarter and instead allow the cash to remain in the business. The remaining \$46,000 (70,000-24,000) can be credited to 2021 Q2 employment taxes or requested to be refunded based on what box is checked on Form 941.

Example 14

- ▶ Employer G paid \$20,000 in qualified wages to two employees (each employee was paid \$10,000 in qualified wages), and is therefore entitled to a credit of \$10,000, and is otherwise required to deposit \$8,000 in federal employment taxes on all wages paid, after deferring its employer's share of social security tax under Section 2302 of the CARES Act. Employer G has no paid sick or family leave credits under the FFCRA. Employer G can keep the entire \$8,000 of taxes that Employer G was otherwise required to deposit without penalty as a portion of the credits it is otherwise entitled to claim on the Form 941. Employer G may file a request for an advance credit for the remaining \$2,000 by completing Form 7200.

Example 15

- ▶ Employer E paid \$10,000 in qualified wages (including qualified health plan expenses) and, after deferral of the employer's share of social security tax, is otherwise required to deposit \$8,000 in federal employment taxes for all of its employees for wage payments made during the same quarter as the \$10,000 in qualified wages. Employer E has no paid sick or family leave credits under the FFCRA. Employer E may keep up to \$5,000 of the \$8,000 of taxes Employer E was going to deposit, and it will not owe a penalty for keeping the \$5,000. Employer E will later account for the \$5,000 it retained when it files Form 941, Employer's Quarterly Federal Tax Return, for the quarter.

Does an Eligible Employer Receiving an Employee Retention Credit for Qualified Wages Need to Include any Portion of the Credit as Income?

- ▶ **No.** An employer receiving a tax credit for qualified wages, including allocable qualified health plan expenses, does not include the credit in gross income for federal income tax purposes. Neither the portion of the credit that reduces the employer's applicable employment taxes, nor the refundable portion of the credit, is included in the employer's gross income.

Salary and wage deduction and deduction for payroll taxes

- ▶ The reference to IRC Section 280C(a) is significant in determining the tax results of the ERC. Specifically, IRC Section 280C(a) provides that "no deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the sum of the credits determined for the taxable year under [IRC] sections 45A(a) [Indian employment credit], 45P(a) [employer wage credit for employees who are active military service members], 45S(a) [employee credit for paid family and medical leave], 51(a) [Work Opportunity Tax Credit], and 1396(a) [Empowerment zone employment credit]." In contrast to the ERC, which is creditable against the employer share of Social Security tax but also wholly refundable, each of these tax credits specifically referenced in IRC Section 280C(a) is accumulated as part of the general business credit under IRC Section 38² and, thus, a credit against federal income tax liability, not employment tax liability.³
- ▶ To assist employers with understanding the wide variety of issues raised by the enactment of the ERC, on April 30, 2020, the IRS issued a series of questions and answers under the title "FAQs: Employee Retention Credit under the CARES Act" (IRS ERC FAQs).⁴ In IRS ERC FAQ 85, which specifically addresses whether deductions for "qualified wages" used to compute the ERC would be disallowed in computing an employer's federal taxable income under IRC Section 280C(a), the IRS stated its view that "... a similar deduction disallowance (i.e., the disallowance of deductions under IRC Section 280C(a)) would apply under the [ERC], such that an employer's aggregate deductions would be reduced by the amount of the credit as result of this disallowance rule." Thus, the IRS believes that any employer receiving an ERC must reduce its deduction for salaries and wages by the amount of the ERC.

Example 16

- ▶ *For example, assume an employer pays \$2,500 of qualified wages for the quarter and claims an employee retention credit of \$1,250 for qualified wages paid during the quarter. The employer's resulting OASDI [Old Age Survivors Disability Insurance or "Social Security"] tax liability (under [IRC S]section 3111(a)) for the quarter is \$155. Under the provision [CARES Act Section 2301(e)], the employer reduces its payroll tax expense by \$155 and may deduct only \$1,405 of qualified wages¹⁴⁸ (assuming such wages are not subject to capitalization).*
- ▶ *[FN]¹⁴⁸ $\$2,500 - (\$1,250 - \$155) = \$1,405$*

Questions?

Question 1:

If multiple entities are treated as a single employer under the aggregation rules, and only one of these entities has received a Paycheck Protection Program (PPP) loan, does this mean that all of the other entities in the aggregated group are not eligible for the Employee Retention Credit?

- ▶ Yes. An employer that is treated as a single employer under the aggregation rules, may not receive the Employee Retention Credit if any member of the employer's aggregated group receives a PPP loan.
- ▶ For more information on the aggregation rules, see [Determining Which Entities are Considered a Single Employer Under the Aggregation Rules](#).

Question 2:

Can employers receive both the paid family and medical leave credit and the Employee Retention Credit?

- ▶ Yes, but not for the same wage payments. Any qualified wages for which an Eligible Employer claims the Employee Retention Credit may not be taken into account for purposes of determining a paid family and medical leave credit.

Question 3:

Can an Eligible Employer receive an advance of the Employee Retention Credit to fund the payment of qualified wages if the Eligible Employer does not have sufficient federal employment taxes set aside for deposit to cover those payments?

- ▶ Yes. Because quarterly employment tax returns are not filed until after qualified wages are paid, some Eligible Employers may not have sufficient federal employment taxes set aside for deposit to the IRS to fund their qualified wages through reduction of the amount to be deposited, particularly after taking into account the permitted deferral of the employer's share of social security tax under section 2302 of the CARES Act.

Question 4:

Do only small companies, with fewer than 500 employees qualify for the 2021 ERC?

- ▶ To be deemed an eligible employer, a business must prove that they have a significant decline in gross receipts OR operations that have been fully or partially suspended. If either of those tests are met, the employer is eligible for the ERC and the number of employees will determine the amount of qualified wages the employer is able to consider when calculating the credit.

Question 5:

Can a business only offset the employer portion of Social Security and Medicare taxes?

- ▶ The IRS has made clear that the federal employment deposit is not required if there is a reasonable expectation that an ERC is expected. The federal employment deposit includes the employee AND the employer portion of Social Security and Medicare, as well as the employee federal withholdings.
- ▶ Employees will still be credited as if the business paid the federal government the Social Security, Medicare, and withholdings to the federal government. This is merely a more efficient and quicker way to allow businesses to keep the cash they are due from the federal government related to ERC.

Question 6:

Must I wait for my quarter payroll Form 941 to be filed in order to request the cash payment related to the ERC?

- ▶ First, it is important to realize that the ERC is a payroll credit and not an income tax credit. The fact that the ERC is a payroll credit should allow businesses the opportunity to receive the credit, and thereby the refund, more quickly as payroll forms are filed quarterly. For example, the Form 941 for the 2021 first calendar quarter is generally due by April 30, 2021.
- ▶ Some businesses may not be evaluating the ERC now because they do not believe the ERC can be claimed until they file the Form 941. While that is one way to claim the ERC, businesses who need or want cash now should instead be adjusting their federal employment tax deposits by the amount of ERC reasonably expected. If businesses wait to claim the credit on their Form 941, the IRS could take 4-6 months to process the refund.
- ▶ The IRS has noted that an eligible employer that pays qualified wages in a calendar quarter will not be subject to a penalty under IRC §6656 for failing to deposit federal employment taxes.

Question 7:

Do I have to wait for my 2021 First Quarter to be completed in order to certify the company can qualify for ERC?

- ▶ New for 2021 ERC, the most recent legislation introduces a prior calendar quarter test when trying to assess if a significant decline in gross receipts took place. Therefore, every business can assess whether they qualify for the 2021 Q1 ERC today. If the fourth quarter receipts of 2020 declined more than 20% when compared to the fourth quarter receipts of 2019, the employer automatically qualifies for the ERC in Q1 2021.
- ▶ The employer does NOT have to wait until the end of March to make this determination. The employer can access the cash related to the ERC by reducing federal employment tax deposits every pay period during the first quarter. This can create a significant cash inflow today, as opposed to 4-6 months from now when the IRS finally refunds the money.

Closing Remarks

Please contact our office for more information or a personal consultation.

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