Employee Retention Credit (ERC) Eligibility Tree

START

Was the entity operational in 2020?

NO → No Credit

YES

Is the entity part of an affiliated group?

YES → Consider Affiliated Group Rules for:
- Test #1 and #2 below

AND
- Total # of employees for determination of large/small Employer (see below)

NO

Tests for Eligibility
ONLY *ONE* NEEDS TO APPLY TO QUALIFY

Test #1
Full or partial suspension of operations due to gov't order?

NO → No Credit for evaluation period

YES → Applies only to time period Gov't order was in place (limits commerce, travel or group meetings due to COVID-19.)

Test #2
Gross receipts decline compared to same quarter in 2019?
>50% for 2020
>20% for 2021

NO → No Credit for evaluation period

YES → Credit for quarter and subsequent quarters until the quarter after a less than 20% gross receipts decline occurs

Wages and health plan (HP) expenses; Use cash basis wages/HP paid during that period.
2020: Wages after 3/12/2020
2021: Entire year through 12/31/21

Does entity have related individual (RI) employees of owner(s)?

YES → Rules similar to section 51(i)(1) apply to RI. RI's are children, siblings, parents, in-laws, aunts, uncles, nieces, nephews, etc. and would not be eligible for ERC.

NO

Is entity large or small?
Entity needs to determine using 2019 average full-time employees (30 hrs or more per wk or 130 hrs per month)

If large → Large:
>100 for 2020
>500 for 2021
Wages/HP only for those employees not providing services

If small → Small:
<100 for 2020
<500 for 2021
Wages/HP for all employees (except RI's, see above)

Wages/HP that qualify
Wage/HP max is per employee
$10k per year: 2020
$10k per quarter: 2021
Do not use wages for PPP, FFCRA, other wage credits, or wages/HP used for other grants, etc.

Percentage used against wages/HP for credit, (per employee):
50% of 1st $10k for 2020
70% of 1st $10k for 2021
Max $5,000 per year: 2020
Max $7,000 per quarter: 2021

Is ERC eligibility known for pay period and before payroll taxes are submitted?

YES → Tax deposit is reduced by credit.
If tax deposit is less than credit, file Form 7200 to get difference refunded.

NO

Is ERC eligibility known after end of quarter, but before form 941 is filed?

YES → File Form 941 and claim credit, due 30 days after end of quarter.

NO → File Form 941-X to amend original 941 filed.
Must file no later than 3 years from original filing or 2 years from paying the tax

Wage/HP expenses used for credit are not tax deductible. May need to consider amending income tax return.

Entity must reconcile any advance deposits (Form 7200) received when filing respective Form 941

FINISH

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