





# COVID-19-Related Employee Retention Credits: Interaction with Other Credit and Relief Provisions FAQs

*This FAQ is not included in the Internal Revenue Bulletin, and therefore may not be relied upon as legal authority. This means that the information cannot be used to support a legal argument in a court case.*

## **78. May an Eligible Employer that receives a Paycheck Protection Program (PPP) loan receive the Employee Retention Credit?**

No. An employer may not receive the Employee Retention Credit if the employer receives a PPP loan that is authorized under the CARES Act. An Eligible Employer that receives a PPP loan, regardless of the date of the loan, cannot claim the Employee Retention Credit.

## **79. Is an employer that repays its Paycheck Protection Program (PPP) loan by May 18, 2020, eligible for the Employee Retention Credit? (updated May 26, 2020)**

A. Yes. An employer that applied for a PPP loan, received payment, and repays the loan by May 18, 2020 (originally May 7, 2020, as provided by the Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan Request in the Interim Final Rules issued by the Small Business Administration (SBA) effective on April 28, 2020, but extended by FAQs 43 and 47 in the SBA's PPP FAQs updated on May 5, 2020 and May 13, 2020, respectively), will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an Eligible Employer. For more information, see [Business Loan Program Temporary Changes; Paycheck Protection Program—Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility](#)  and [SBA's PPP Loans FAQs](#) .

## **80. 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](#).

## **81. Is an employer eligible to receive an Employee Retention Credit after the Paycheck Protection Program (PPP) loan is forgiven?**

No. An employer that receives a PPP loan may not receive an Employee Retention Credit, regardless of whether and when the loan is forgiven. For more information on Eligible Employers, see [Determining Which Employers are Eligible to Claim the Employee Retention Credit](#).

## **81a. How is eligibility for the Employee Retention Credit affected if an employer acquires the stock or other equity interests of a target employer that had received a Paycheck Protection Program (PPP) loan and, under the aggregation rules, the employers are treated as a single employer as a result of the transaction? (added November 16, 2020)**

The following rules apply for purposes of determining whether an employer (Acquiring Employer) that acquires the stock or other equity interests of an entity (Target Employer) in a transaction that results in the Target Employer becoming a member of an aggregated group with the Acquiring Employer that is treated as a single employer under the aggregation rules (the Aggregated Employer Group) is eligible for the Employee Retention Credit on and after the transaction closing date.

### **PPP loan is fully satisfied or escrow established pre-transaction**

If the Target Employer had received a PPP loan, but prior to the transaction closing date, the Target Employer fully satisfied the PPP loan in accordance with paragraph 1 of the Small Business Administration Notice effective October 2, 2020 (the SBA October 2 Notice), or submitted a forgiveness application to the PPP lender and established an interest-bearing escrow account in accordance with paragraph 2.a of the SBA October 2 Notice, then, after the closing date, the Aggregated Employer Group will not be treated as having received a PPP loan, provided that the Acquiring Employer (including any member of the Acquiring Employer's pre-transaction Aggregated Employer Group) had not received a PPP loan before the closing date and no member of the Aggregated Employer Group receives a PPP loan on or after the closing date. In this case, any employer that is a member of the Aggregated Employer Group, including the Target Employer, may claim the Employee Retention Credit for qualified wages paid on and after the closing date, provided that the Aggregated Employer Group otherwise meets the requirements to claim the Employee Retention Credit. In addition, any Employee Retention Credit claimed by the Acquiring Employer's pre-transaction Aggregated Employer Group for qualified wages paid before the closing date will not be subject to recapture under section 2301(l)(3) of the CARES Act.

### **PPP loan is not fully satisfied and no escrow established pre-transaction**

If the Target Employer had received a PPP loan, but prior to the transaction closing date, the PPP Loan is not fully satisfied and no escrow account was established in accordance with paragraphs 1 or 2.a of the SBA October 2 Notice, then, after the closing date, the Aggregated Employer Group (other than the Target Employer) will not be treated as having received a PPP loan, provided that the Acquiring Employer (including any member of the Acquiring Employer's pre-transaction Aggregated Employer Group) had not received a PPP loan before the closing date and no member of the Aggregated Employer Group receives a PPP loan on or after the closing date. Any employer (other than the Target Employer) that is a member of the Aggregated Employer Group may claim the Employee Retention Credit for qualified wages paid on and after the closing date, provided that the Aggregated Employer Group otherwise meets the requirements to claim the Employee Retention Credit. In addition, any Employee Retention Credit claimed by the Acquiring Employer's pre-transaction Aggregated Employer Group for qualified wages paid before the closing date will not be subject to recapture under section 2301(l)(3) of the CARES Act. However, the Target Employer that received the PPP loan prior to the transaction closing date and that continues to be obligated on the PPP loan after the closing date is ineligible for the Employee Retention Credit for any wages paid to any employee of the Target Employer before or after the closing date.

## **81b. How is eligibility for the Employee Retention Credit affected if an employer acquires the assets of an employer that received a Paycheck Protection Program (PPP) loan? (added November 16, 2020)**

The following rules apply for purposes of determining whether an employer (Acquiring Employer) that acquires the assets and liabilities of an entity (Target Employer) is eligible for the Employee Retention Credit.

### **No assumption of PPP loan obligations**

An Acquiring Employer that acquires the assets of a Target Employer that had received a PPP loan will not be treated as having received a PPP loan by virtue of the asset acquisition, provided that the Acquiring Employer does not assume the Target Employer's obligations under the PPP loan. In this case, the Acquiring Employer will be eligible for the Employee Retention Credit after the transaction closing date if the employer otherwise meets the requirements to claim the credit. In addition, any Employee Retention Credit claimed by the Acquiring Employer for qualified wages paid before the closing date will not be subject to recapture under section 2301(l)(3) of the CARES Act.

### **Assumption of PPP loan obligations**

If, as part of the acquisition of the Target Employer's assets and liabilities, the Acquiring Employer assumes the Target Employer's obligations under the PPP loan, then after the transaction closing date, the Acquiring Employer generally will not be treated as having received a PPP loan, provided that the Acquiring Employer had not received a PPP loan before or on or after the closing date; however, the wages that may be treated as qualified wages after the closing date will be limited. Specifically, the wages paid by the Acquiring Employer after the closing date to any individual who was employed by the Target Employer on the closing date shall not be treated as qualified wages. Subject to this limitation, the Acquiring Employer may claim the Employee Retention Credit for qualified wages paid on and after the closing date, provided that the employer otherwise meets the requirements to claim the Employee Retention Credit. In addition, any Employee Retention Credit claimed by the Acquiring Employer for qualified wages paid before the closing date will not be subject to recapture under section 2301(l)(3) of the CARES Act.

## **82. May employers receive both the paid family and medical leave credit (section 45S of the Internal Revenue Code) 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 section 45S credit. Thus, an employer may not claim a credit under section 45S with respect to the qualified wages for which it claims the Employee Retention Credit, but it may be able to take a credit under section 45S with respect to any additional wages paid, provided the requirements of section 45S are met with respect to the additional wages.

## **83. May employers receive the credits under section 51 of the Internal Revenue Code (the Work Opportunity Tax Credit or WOTC) and the Employee Retention Credit for the same employee for the same period?**

No. An Eligible Employer may not claim the Employee Retention Credit and the WOTC for the same employee for the same period of time.

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