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OneEastside SPARK Webinar Series

www.OneEastside.org/SPARK

Maximizing the Employee Retention Tax Credit

May 12, 2021 | 1:00pm – 2:00pm

Disclaimer: This material is provided solely for educational purposes and enhancing knowledge of tax matters. It does not provide legal or tax advice to any taxpayer because it does not take into account any specific taxpayer's facts and circumstances. It should not be relied on or used without consulting a lawyer to determine specific circumstances, possible changes to laws and regulations, and other legal issues. Receipt of this material does not establish an attorney-client relationship.

NOTE: To the best of our knowledge, this information was correct as of the time of this webinar. Given the fluidity of the situation, and rapidly changing guidelines, be aware that some of this information may have changed.



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**KRISTINA
HUDSON**

CEO

OneRedmond





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23 Eastside Cities & Towns



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*Center for Business
Resilience and Innovation*

www.OneEastside.org/SPARK

OneEastside SPARK: *Center for Business Resilience and Innovation* is open for our small businesses and non-profits! Offerings include:

- Database of financial opportunities and other resources
- Free 1-1 advising services
- Programs, webinars, & training opportunities in collaboration with our partners
- Businesses and non-profits: connect with your peers in our Facebook Group at <https://tinyurl.com/OneEastside-SPARK-Group>



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Do you:

- Have questions about the Employee Retention Tax Credit program?
- Need help with forms or filing, or
- Want to speak with a CPA about other federal financial assistance programs related to COVID-19?

Are you:

- A small business or non-profit located in East King County?



FREE 1-1 Advising

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Details:

- 1-1 advising with a CPA from Clark Nuber
- Up to 2 hours per business

What should I do:

- Visit <https://oneeastside.org/advising> and fill out the Google Form
- OR
- Email Samantha Paxton at samanthap@oneeastside.org
And she will get you connected!

With thanks to the Seattle Metro Chamber, BHT and King County REACH for the inspiration!

Featured Speakers



Sarah Huang, CPA

Principal Tax

Clark Nuber



Cathye Mason

Stakeholder Liaison

Internal Revenue Service (IRS)



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**SARAH
HUANG**

Principal, Tax
Clark Nuber



Clark Nuber ^{PS}

*Clark Nuber's
Guide to Claiming
the Employee
Retention Credit*

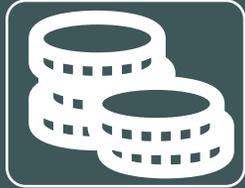
May 12, 2021

- Overview of the Employee Retention Credit
- Latest IRS Guidance on the Employee Retention Credit
- Weighing the Options for Your Refund
- Planning Opportunities for 2021

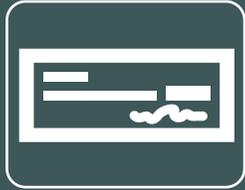


What is the Employee Retention Credit?

Employee Retention Credit Basics



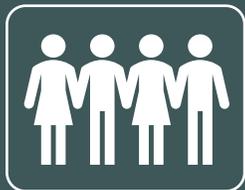
Refundable credit of 50% (2020) or 70% (2021) of qualified wages per employee, up to \$10,000 in 2020 and \$10,000 per quarter in 2021



Effective for wages paid starting March 13, 2020 through December 31, 2021

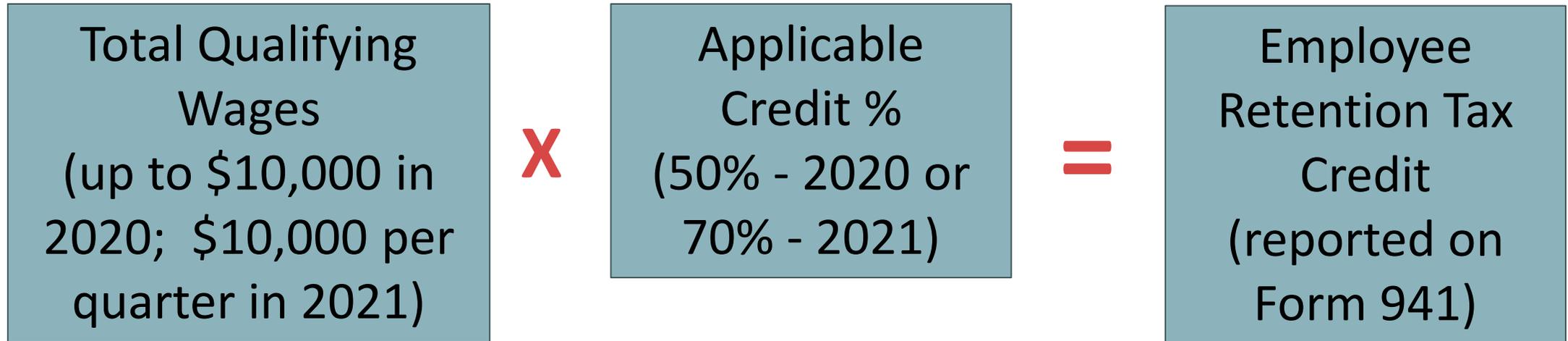


Can file a refund claim in advance (Form 7200), can claim it in a current quarter (Form 941), or can make a retroactive claim (Form 941-X)



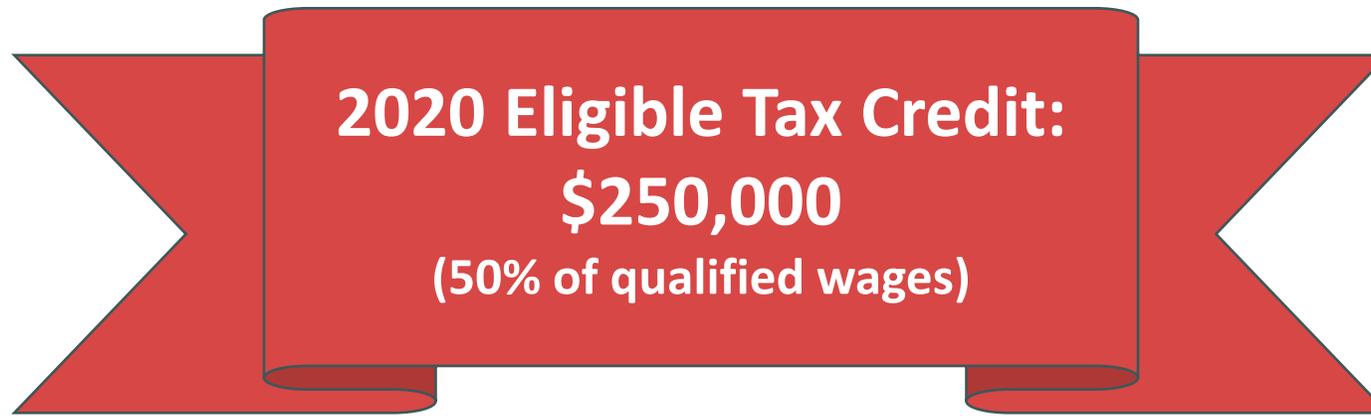
Credit calculation differs depending on the average number of full-time employees in 2019

How is the Credit Calculated?



Employee Retention Credit Example - 2020

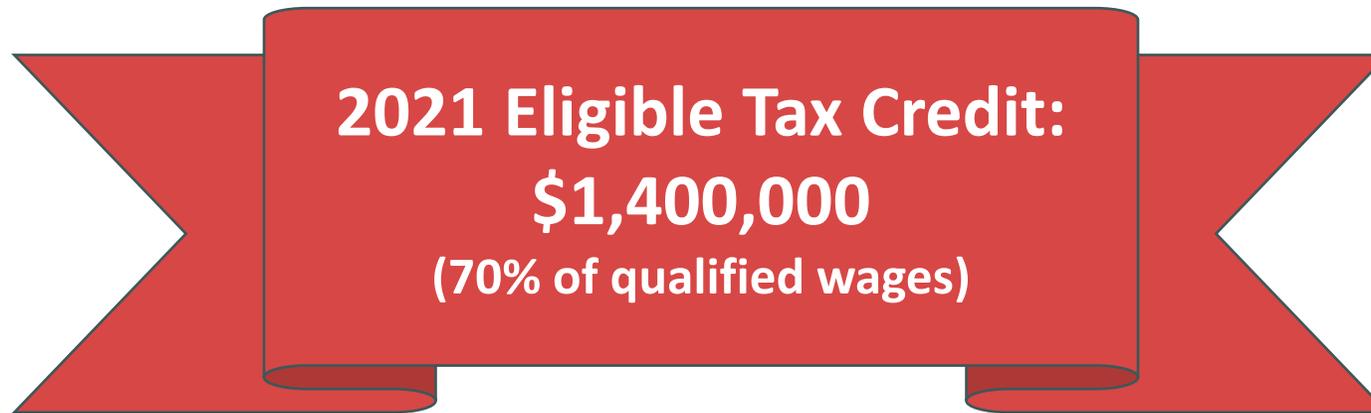
- **Example: Restaurant with ≤ 100 full-time employees**
 - 50 employees, each paid \$60,000 annually (\$15k quarterly)
 - Indoor dining not allowed due to government order starting in March 2020. Allowed to operate at 25% indoor capacity starting September 2020.
 - 2020 eligible wages for credit: $\$10,000 \times 50 \text{ employees} = \$500,000$



2020 Eligible Tax Credit:
\$250,000
(50% of qualified wages)

Employee Retention Credit Example - 2021

- Example: Restaurant with ≤ 100 full-time employees
 - 50 employees, each paid \$60,000 annually (\$15k quarterly)
 - Indoor dining at 25% capacity on January 1, 2021. By December 31, 2021, indoor dining still limited to 50% capacity.
 - 2021 eligible wages for credit: \$10,000 per quarter x 50 employees = \$500,000 per quarter



2021 Eligible Tax Credit:
\$1,400,000
(70% of qualified wages)

1

Do you have related entities subject to the aggregation rules?

- Employers are aggregated when determining:
 - Number of **full-time employees** for 2019
 - **Full or partial suspension** of operations
 - A **significant decline** in gross receipts

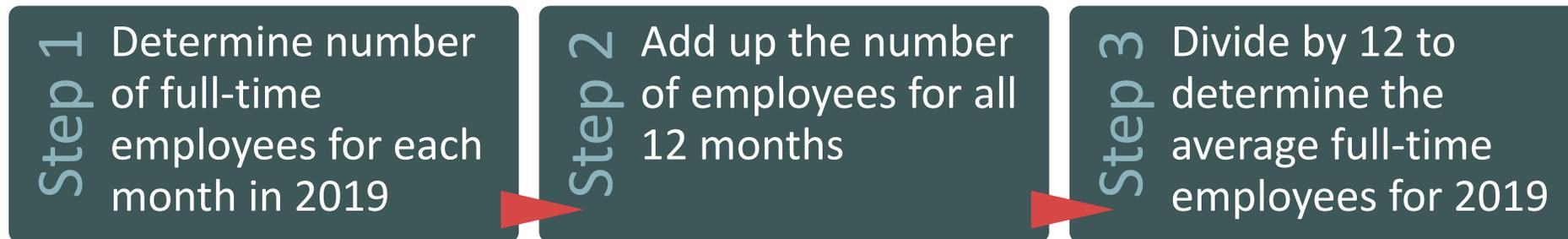
2

Are you an **eligible employer** experiencing a **full/partial shutdown** or facing a **significant decline in gross receipts**?

- Eligible Employers: carry on a trade or business during 2020 that is **either** –
 - **Full or partial suspension** in operations during a calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19
 - If a business can operate remotely in a comparable manner, this is not considered a full or partial suspension (see IRS FAQ 33)
 - Experiencing a **significant decline in gross receipts** (>50% in 2020; >20% in 2021) during the calendar quarter



- “Full-time” employee defined as someone who:
 - Averaged at least 30 hours per week during a month; or
 - Worked at least 130 hours in a month



Summary of the Employee Retention Credit

	Calculation for 2020	Calculation for 2021
What is the Timeframe?	Qualified wages paid from March 13, 2020 – December 31, 2020.	Qualified wages paid from January 1, 2021 – December 31, 2021.
How is the Credit Calculated?	50% of qualified wages paid during the year, up to \$10,000 of annual wages per employee.	70% of qualified wages paid during the quarter, up to \$10,000 of quarterly wages per employee.
Which Employers are Eligible?	1. Carrying on a trade or business during 2020 ; and 2. Full or partial suspension due to government order OR significant decline of more than 50% (2020) or 20% (2021) in gross receipts when compared to the same quarter in 2019	
Are Government Employers Eligible?	No. The federal government, governments of any State or political subdivision thereof, and any agency or instrumentality of these government are not eligible for the employee retention credit.	Beginning January 1, 2021, certain government entities are now eligible , including college or universities, hospital or medical care facilities, and certain government corporations, including federal credit unions.
Impact on Employer Size	Employers with 100 or fewer average monthly full-time employees during 2019 can claim a credit for all qualified wages paid to any employee during the period, subject to \$10,000 of maximum wages during the year . Employers with more than 100 average monthly full-time employees during 2019 may only claim a credit for employees not providing services during the time period.	Employers with 500 or fewer average monthly full-time employees during 2019 can claim a credit for all qualified wages paid to any employee during the period, subject to \$10,000 of maximum wages/ per quarter . Employers with more than 500 average monthly full-time employees during 2019 may only claim a credit for employees not providing services during the time period.

Summary of the Employee Retention Credit

	Calculation for 2020	Calculation for 2021
What are Qualified Wages?	Includes wages, compensation, and health plan expenses paid by the employer. No double benefit on wages paid – wages used for FMLA and FFCRA credits may not be counted towards the ERC and PPP loan wages forgiven.	
What is a Full or Partial Suspension?	An employer is required to fully or partially suspend more than a nominal portion (10%) of its operations through a government order . This may include a reduction in business hours or the inability to operate certain business activities. Note, if an employer can continue its operations comparably in a telework manner, this is not considered a full or partial suspension.	
What is a Significant Decline in Gross Receipts?	A decrease of more than 50% for a 2020 quarter when compared to that same quarter in 2019. Employer may continue to qualify for the ERC including to the first quarter in 2020 where gross receipts are greater than 80% of that same quarter in 2019.	A decrease of more than 20% for a 2021 quarter when compared to that same quarter in 2019. For 2021 only, employers have the option to look at the immediately preceding calendar quarter to determine eligibility for 2021 Q1 and Q2.
Is the Credit Refundable?	Yes! Any excess credit is treated as overpayment that is refundable.	Yes – no changes.
Interaction with PPP Loans	Originally, employers that received a PPP loan could not claim the ERC. With the Consolidated Appropriations Act in December 2020, this limitation was retroactively repealed . The credit may not be claimed for wages paid with PPP loan proceeds.	

Latest Guidance on the ERC

- Issued March 1, 2021
- Applies to the **2020** employee retention calculation; also applies to 2021 to the extent the rules have not changed (see Notice 2021-23)
- Key Highlights:

Interplay with PPP
loans

10% safe harbor for
a “more than
nominal” suspension
of operations

Documentation
guidance

- PPP borrowers who have submitted their forgiveness application may be out of luck
 - Election is deemed to be made when filing the PPP forgiveness application to count wages towards PPP loan. Wages **claimed and utilized** for forgiveness are then ineligible for the ERC.
 - No ability to retroactively change the allocation on the forgiveness application
 - Only the wages actually used for forgiveness are counted for the PPP loan, even if the employer reports additional wages on the forgiveness application
 - Non-payroll costs are used first, up to a cap of 40%
- Planning opportunities for borrowers who have yet to submit application - **maximize non-payroll costs to the extent possible**

IRS Notice 2021-20 – Safe Harbor for “More than Nominal”

- Applicable for employers claiming eligibility through a full or partial suspension of operations
- “More than nominal” means:
 - Gross receipts from the line of business are at least **10% of the total gross receipts** during the same calendar quarter in 2019, or
 - Employee hours from the line of business are at least **10% of the total hours** for all employees during the same calendar quarter in 2019

IRS Notice 2021-20 – Documentation for the ERC Claim

1. How the organization met the eligibility requirements for a full or partial shutdown or significant decline in gross receipts
2. How the employer determined the amount of qualified wages per employee
3. How the employer determined the amount of qualified health plan expenses per employee
4. Whether the employer is a member of an aggregated group and how the credit has been allocated as a result
5. Copies of all Forms 7200 that have been filed with the IRS for an advance refund claim
6. Copies of all Forms 941 that have been filed with the IRS that claim the credit.

- Eligibility documentation for a **suspension in operations** should include:
 - Copies of government orders that require a suspension in operations with the applicable effective dates
 - Listing of modifications made to business activities and determination on how those activities are more than a nominal portion of operations
- Eligibility documentation for a **gross receipts decline** should include:
 - Records of quarterly gross receipts for the quarter of the claim and corresponding quarter in 2019
 - Make sure the gross receipts ties back to your accounting records or tax returns

Weighing the Options for Your Refund

How Do I Get the Credit?

- Claim it on your current **Form 941**
 - **Pros:** Cleanest approach, avoids amended return, overpayment can be refunded or applied to a future quarter
 - **Cons:** Timing of refund request is unknown, PPP interplay can be challenging
- Use **Form 941-X** to receive a refund for a prior quarter
 - **Pros:** Gives you additional time to weigh all options and prepare calculations
 - **Cons:** Timing of refund request is unknown, additional compliance costs
- Request an advance refund by filing **Form 7200** (for future refunds only)
 - **Pros:** Refunds issued in 2 weeks (in theory), gets cash in your pocket now
 - **Cons:** Can't be used for prior quarter refunds, actual refund time may be longer than 2 weeks, additional form to file for a refund, may create issues when filing Form 941

Key Opportunities and The Unknowns

The Current Unknowns

What is the appropriate method for determining gross receipts – GAAP/book basis vs. Tax/cash basis?

Are S-corporation shareholders eligible for the ERC on their own wages?

Are PPP loan proceeds considered gross receipts?

Will I be audited by the IRS if I claim the employee retention credit?

1. Determine Employee Retention Credit Eligibility

- Identify whether aggregation rules apply
- Evaluate eligibility for 2020 and 2021 under suspension of operations or significant gross receipt decline
- Calculate 2019 full-time employees

2. Calculate 2020 Employee Retention Credit

- For 2020 PPP loan recipients, determine whether maximum ERC can be achieved in 2020 Q4 alone to minimize the number of quarters that require an amended payroll filing
- Prepare Forms 941-X for any 2020 quarters where employee retention credit is available
- Reminder: The ERC for wages paid from March 13, 2020 – March 31, 2020 are included on a Form 941-X for Q2, not Q1

3. Calculate 2021 Q1 Employee Retention Credit

- For 2021 PPP loan recipients, calculate the projected timing for use of PPP funds (maximize non-payroll costs to extent allowed)
- Pull payroll information for 2021 Q1 (if eligible)
- Allocate 2021 Q1 wages between PPP loan and Employee Retention Credit
- File 2021 Form 941-X for Q1 and wait for a refund

4. Planning for 2021 Q2 – Q4 Employee Retention Credit

- Project which quarters are eligible for the credit
- Plan ahead for PPP and ERC wage allocation
- Consider reducing payroll tax deposits in real time to create additional cash flow
- Continue creating contemporaneous documentation
- Claim credits on 2021 Form 941 for Q2 – Q4 (if applicable)

Opportunities for Planning

PPP #1: Covered Period – April 13, 2020 to September 27, 2020



PPP #2: Covered Period – January 25, 2021 to July 11, 2021

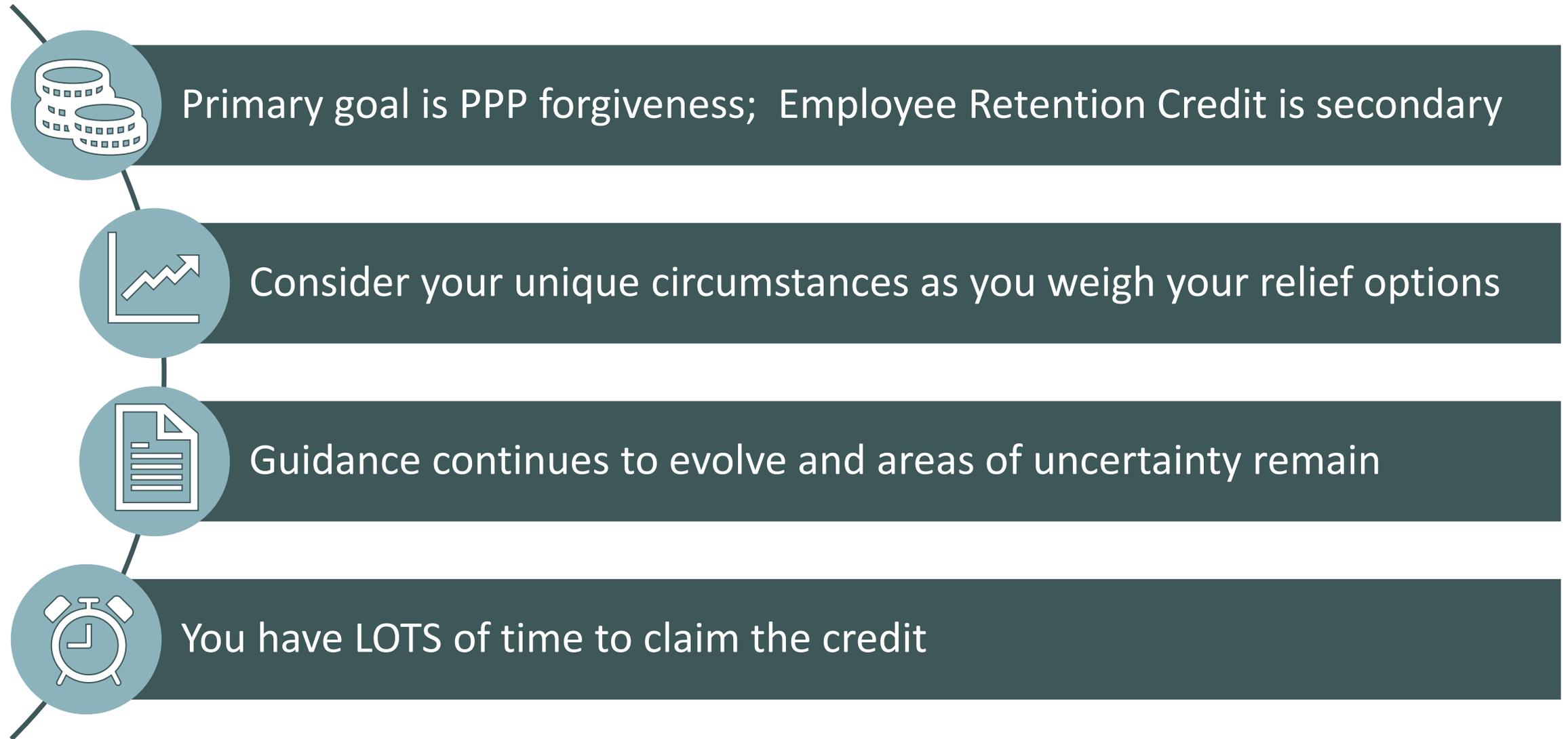


PPP Loan Proceeds

- Less eligible **non-payroll costs** (rent, interest, utilities, PPE costs, etc.)
 - Less **state/local payroll taxes**
 - Less **wages not eligible for the ERC** (separation pay, pre-tax dependent care, pre-tax transportation, wages for relatives, etc.)
 - Less employer provided **non-taxable benefits not eligible for the ERC** (retirement benefits, life insurance coverage, etc.)
-
- Less employer provided **health insurance benefits** (medical, dental, vision)

= Total PPP Wages for Maximum Forgiveness

Key Takeaways



Employee Retention Credit Resource Materials

- IRS Employee Retention Credit Overview:

<https://www.irs.gov/coronavirus/employee-retention-credit>

- IRS Employee Retention Credit FAQs:

<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

- IRS Notices:

<https://www.irs.gov/pub/irs-drop/n-21-20.pdf>

<https://www.irs.gov/pub/irs-drop/n-21-23.pdf>

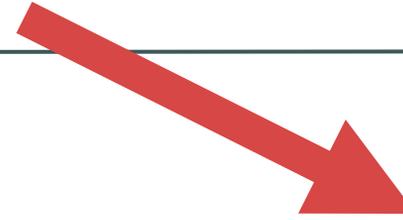
- Clark Nuber Articles on Employee Retention Credit:

<https://clarknuber.com/articles/changes-employee-retention-credit/>

<https://clarknuber.com/articles/the-cares-act-employee-retention-credit-program-eligibility-requirements-and-definitions/>

<https://clarknuber.com/articles/employee-retention-credit-latest-updates-and-extension-through-2021/>

To stay up to date on the latest news:



The image shows a screenshot of the Clark Nuber PS website. The header is dark with white text. In the top right corner, there are three links: 'Client Access', 'Submit RFP', and 'Subscribe'. The 'Subscribe' link is circled in red. Below the header is a navigation menu with links for 'Who We Serve', 'What We Do', 'News & Resources', 'Blog', 'Careers', and 'About'. A search icon is located on the right side of the navigation menu. The main content area features a large banner with the text 'COVID-19: Information and Resources for Businesses, Nonprofits and Individuals'. Below this text is a red button with a white right-pointing arrow and the text 'Information and Resources'. The background of the banner shows hands typing on a laptop keyboard with various digital icons overlaid.



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**CATHYE
MASON**

*Stakeholder
Liaison*

**U.S. Internal
Revenue Service**





Families First Coronavirus Response Act (FFCRA)

The FFCRA provides businesses with tax credits to cover certain costs of providing employees with paid sick leave and expanded family and medical leave for reasons related to COVID-19, for periods of leave from April 1, 2020, through September 30, 2021

- No longer mandatory after 12/31/20
- From April 2021 through September 2021, sick leave for vaccinations is eligible





Work Opportunity Tax Credit Extended

- **Now available for new hires through December 31, 2025**
- **Applies to those with certain barriers to employment**
- **Includes individuals who have been out of work for 27 weeks or more at the time of hire**
- **For more information, check out the page on IRS.gov:
<https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit>**





Stakeholder Liaison

irs.gov/childtaxcredit2021



There have been important changes to the Child Tax Credit that will help many families receive advance payments starting this summer.



Q & A



Sarah Huang, CPA

Principal Tax

Clark Nuber

Shuang@clarknuber.com



Cathye Mason

Stakeholder Liaison

Internal Revenue Service (IRS)



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THANK YOU FOR JOINING US!