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Pandemic Tax Relief (PPP & ERC)

GYF VIRTUAL CPE DAY 2021

Presented by:

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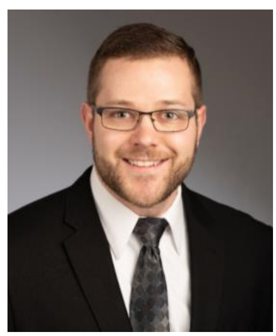

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INTRODUCTION

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INTRODUCTION

Paycheck Protection Program (PPP)

- General overview
- Applying for second round forgiveness

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INTRODUCTION

Employee Retention Tax Credit (ERC)

- General Overview
- 2021 Guidance
- Common Issues
- Considerations with PPP Forgiveness Application

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PAYCHECK PROTECTION PROGRAM

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PAYCHECK PROTECTION PROGRAM

Second Draw Loans

- 8-24 Week Covered Period
- Forgiveness Deadline – Covered Period plus 10 months
- At least 60% of the proceeds are spent on payroll costs

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PAYCHECK PROTECTION PROGRAM

Eligible Expenses (Expanded)

- Covered Operations Expenditures
- Covered Property Damage Costs
- Covered Supplier Costs
- Covered Worker Protection Expenditures

PAYCHECK PROTECTION PROGRAM

Important Considerations

- Integration with Employee Retention Tax Credit
- Importance of non-payroll utilization and understanding the permissible categories
- Understanding the overlap between covered periods and eligible quarters for the ERC

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EMPLOYEE RETENTION TAX CREDIT

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Points of Discussion

- Background and basics
- 2021 guidance issued by the Internal Revenue Service
- Coordination with PPP forgiveness and other Covid-relief programs
- Claiming the Employee Retention Tax Credit

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Overview

- Employee Retention Tax Credit (ERC) was included in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) passed on March 27, 2020
  - *CARES Act allowed for credit equal to up to 50% of qualified employee wages per employee for all quarters of calendar year 2020*

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Overview

- ERC amended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020
  - *Extended the ERC through the calendar quarter ended June 30, 2021*
  - *Increased the allowable credit to up to 70% of qualified employee wages per employee*
  - *Other substantial changes to ERC credit qualification*

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2021 Guidance

- The American Rescue Plan Act of 2021 extended the ERC to quarters from June 30, 2021, to quarters before January 1, 2022
- The Infrastructure Investment and Jobs Act (enacted on November 15, 2021) eliminates the Employer Retention Tax Credit for Q4 2021
  - *Only businesses meeting the requirements to be classified as a recovery startup business may still utilize the ERC in Q4 2021*

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Application in 2020 and 2021

- Qualification:
  - *Business must have been fully or partially suspended due to an order from an appropriate governmental authority, or*
  - *Experienced a significant decline in gross receipts during the calendar quarter*

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Significant decline in gross receipts (2020)

- The first calendar quarter in which an employer's gross receipts are less than 50% of its gross receipts for the same calendar quarter in 2019
- Eligible for quarter in which gross receipts declined by greater than 50% and until the period of significant decline in gross receipts "ends"
  - *This period "ends" in the quarter after the employer's gross receipts are greater than 80% of the same calendar quarter of 2019*

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EXAMPLE 1: Significant decline in gross receipts (2020)

Scenario #1					
	Gross Receipts 2019	Gross Receipts 2020	Percentage Change	Percentage of PY Receipts	ERC Qualifies/ Does Not Qualify
Q1	$50,000	$35,000	(30%)	70%	
Q2	$55,000	$26,500	(52%)	48%	Qualifies
Q3	$45,000	$36,900	(18%)	82%	Qualifies
Q4	$52,500	$39,375	(25%)	75%	Does not Qualify

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EXAMPLE 2: Significant decline in gross receipts (2020)

Scenario #2					
	Gross Receipts 2019	Gross Receipts 2020	Percentage Change	Percentage of PY Receipts	ERC Qualifies/ Does Not Qualify
Q1	$50,000	$35,000	(30%)	70%	
Q2	$55,000	$26,500	(52%)	48%	Qualifies
Q3	$45,000	$33,750	(25%)	75%	Qualifies
Q4	$52,500	$49,875	(5%)	95%	Qualifies

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Significant decline in gross receipts (2021)

- Any calendar quarter in which an employer's gross receipts are less than 20% of its gross receipts for the same calendar quarter in 2019 as compared to ***2021***
- **Safe Harbor** – A taxpayer may qualify based on a significant decline in gross receipts in the immediately preceding quarter for tax year 2021
  - ***When considering 2021 Q1 qualification using the safe harbor rule, taxpayers may look to a comparison of 2019 Q4 as compared to 2020 Q4***

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EXAMPLE 1: Significant decline in gross receipts (2021)

Scenario #1					
	Gross Receipts 2019	Gross Receipts 2021	Percentage Change	Percentage of PY Receipts	ERC Qualifies/ Does Not Qualify
Q1	$50,000	$35,000	(30%)	70%	Qualifies
Q2	$55,000	$48,400	(12%)	88%	Qualifies
Q3	$45,000	$35,100	(22%)	78%	Qualifies

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EXAMPLE 2: Significant decline in gross receipts (2021)

Scenario #2

	Gross Receipts 2019	Gross Receipts 2020	Gross Receipts 2021	Percentage Change 2019 v. 2020	Percentage Change 2021 v. 2019	ERC Qualifies/ Does Not Qualify
Q4	$50,000	$35,000	N/A	(30%)	(10%)	N/A
Q1	$55,000	N/A	$52,250	N/A	(5%)	Qualifies – 2020 S/H
Q2	$52,500	N/A	$40,950	N/A	(22%)	Qualifies
Q3	$52,500	N/A	$55,000	N/A	105%	Qualifies – Prior Qtr S/H

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Partial or Full Closure Due to a Government Shutdown Order

- Orders must be issued by federal, state or local government that limit commerce, travel, or group meetings
- Orders <u>not</u> from federal, state, or local government do not qualify a taxpayer for the Employee Retention Tax Credit
  - *<u>**Example**</u>: The governor of a state issues an order preventing the operations of all "non-essential businesses" from operating for a period of time = qualifies as a government shutdown order*
  - *<u>**Example**</u>: The mayor of a city encourages residents during a press conference to practice social distancing = does <u>not</u> qualify as a government shutdown order*

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Partial Shutdown Due to a Government Order

- Requires "more than a nominal portion" of its business operations are suspended due to a government order
- Definition of a "nominal portion"
  - *Gross receipts from business segment are at least 10% or more of total receipts of the same calendar quarter of 2019, or*
  - *The hours of service performed by employees from the business segment is at least 10% of the total service hours performed for the same calendar quarter of 2019*

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Supplier Issues

- An employer may be considered to have experienced a full or partial suspension of operations if the business's suppliers are unable to make deliveries of critical goods or materials due to a governmental order that causes the supplier to suspend operations

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Qualified Wages – Depends on Employer Size

- **Large Employer** = Average number of 2019 full-time employees >500 (2021) and >100 (2020)
  - *Then, qualified wages only equal to gross wages paid when employee is **not** providing services as an employee of the employer*
- **Small Employer** = Average number of 2019 full-time employees <500 (2021) and <100 (2020)
  - *Then, qualified wages equal to gross wages paid to all qualifying employees in any calendar quarter in which the employer qualifies due to government shutdown order or significant decline in gross receipts*

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Qualified Wages – Exception

- Exception to large employer rule for "severely financially distressed employers"
  - *These are employers whose 2019 gross receipts in a 2021 quarter are less than 10% of the corresponding 2019 calendar quarter – meaning these employers experienced a decrease of greater than 90% in gross receipts when comparing a quarter of 2021 compared to 2019*

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Qualified Health Plan Expenses

- Includes the employer portion of health, vision, and dental insurance paid on behalf of employees

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Limitations – 2020 vs. 2021

- ERC is limited to $5,000 per employee in tax year 2020
  - *The credit per employee is limited to a total credit of $5,000 across all quarters of 2020 per employee*
- ERC is limited to $7,000 per calendar quarter in tax year 2021
  - *The credit per employee is permitted up to $7,000 per quarter for a potential total of $21,000 per employee in 2021*

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Refundable and Nonrefundable Portions of ERC – 2020 vs. 2021

- For quarters beginning before June 30, 2021
  - *The ERC's nonrefundable piece is equal to the employer's Social Security tax liability of 6.2% of applicable wages*
- For quarters beginning after June 30, 2021 (Q3 of 2021)
  - *The ERC's nonrefundable piece is equal to the employer's Medicare tax liability of 1.45% of applicable wages.*

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Recovery Startup Business

- Application
  - *Qualifying businesses for the third and fourth calendar quarters of 2021*
- Qualifying businesses
  - *Began business after February 15, 2020*
  - *For which average annual gross receipts of the employer does not exceed $1,000,000, and*
  - *That is not otherwise an eligible business due to a full or partial suspension of operations due to a government order or a decline in gross receipts*

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Recovery Startup Business

- Limitation
  - *The amount of the credit for each of calendar quarters Q3 and Q4 of 2021 may not exceed $50,000 per quarter*
  - *Note – this limitation only applies when applying as a recovery startup business – other quarters in which a business qualifies for the ERC based on a government order or gross receipts decline are not limited to $50,000*

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Coordination with Other Programs

- Wages utilized for ERC may not also be used for PPP forgiveness as payroll costs
  - *Taxpayers who receive PPP loans and qualify for the ERC should ensure that the maximum amount of "nonpayroll costs" are utilized for purposes of applying for PPP forgiveness (up to 40% of the PPP loan amount)*
  - *Only the portion of the payroll costs reported on a PPP loan forgiveness needed to reach forgiveness are excluded from the ERC (if the wages otherwise qualify)*
- Similar rules apply for purposes of the Shutter Venue Operator Grants and Restaurant Revitalization Grants

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Aggregation Rules

- Members of a controlled group of corporations or members of an affiliated service group are treated as a single employer for purposes of applying for the ERC
  - *This applies when:*
    - Determining qualification due to a government shutdown order or decline in gross receipts
    - Determining application of large vs. small employer requirements when computing qualified ERC wages (i.e. all wages paid in qualifying quarter vs. only wages paid to employees who are not providing services in qualifying quarter)
    - Determining the maximum credit per employee (if employee paid by more than own entity within the aggregated group)

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Claiming the ERC for Past Quarters

- Requires the filing of Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*
- Form 941-X is required to be paper filed (may not be e-filed)
- Processing time by the IRS = up to 16 weeks or more

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Claiming the ERC for Past Quarters

- It is important to consider the requirement that wage expense be reduced by the amount of the ERC received in the tax year to which the wages were paid
  - *Therefore, taxpayers amending 2020 payroll tax returns for the ERC must file amended 2020 income tax returns and reduce wage expense in the year the related wages were paid (IRS Notice 2021-49)*

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Related Party Rules Applicable to the ERC

- The wages of a corporation's majority owner and his/her spouse may only be considered qualified wages for purposes of the ERC if certain conditions are met
- These conditions require that the owner not have a brother or sister, ancestor, or lineal descendant
  - *This is because the owner's ownership is attributed to these family members, resulting in a related party, which disqualifies the owner and/or spouse's wages from the ERC*
  - *If a majority owner does not have one of the family members above, then the owner and/or the spouse's wages are qualified for the ERC*

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CLOSING THOUGHTS

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CLOSING THOUGHTS

Key Points to Remember:

- Second round PPP loans forgiveness covered windows will soon be ending for most organizations.
- The Employee Retention Credit is available to taxpayers that received PPP loans for tax years 2020 and 2021. If a taxpayer qualifies, amended returns can be used to receive refunds related to past periods.
- Special care must be taken when completing second round PPP forgiveness applications for the interplay between PPP and ERC.

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Questions?

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