



January 26, 2021

Interaction Between PPP Loans and the Employee Retention Credit

As you should be aware, Congress included everything but the kitchen sink in the Consolidated Appropriations Act of 2021. Included in its over 5,000 pages was the Taxpayer Certainty and Disaster Tax Relief Act of 2020 and included in the Disaster Act was Sec 206(c), which had nothing to do with disasters, and was a provision liberalizing the interaction between PPP Loans and the Employee Retention Credit (ERC).

Under section 206(c) an employer that is eligible for the ERC can claim the ERC even if the employer has received a Small Business Interruption Loan under the Paycheck Protection Program (PPP). This overrides the original law that disallowed any ERC by borrowers of PPP loans. Under Act Sec 206(c):

- An eligible employer can claim the ERC on any qualified wages that are not counted as payroll costs in obtaining PPP loan forgiveness.
- Any wages that could count toward eligibility for the ERC or PPP loan forgiveness can be applied to either of these two programs, **but not both**.

The Appropriations Act also added group insurance payments, including vision, dental, disability and life insurance, to the definition of payroll costs.

PPP Loan Forgiveness Denied - If a borrower received a PPP loan and included wages paid in the 2nd and/or 3rd quarter of 2020 as payroll costs in support of an application to obtain forgiveness of the loan (rather than claiming ERC for those wages), **and** the request for forgiveness was denied, the borrower can claim the ERC related to those qualified wages on their 4th quarter 2020 Form 941, Employer's Quarterly Federal Tax Return.

They can also report on their 4th quarter Form 941 any ERC attributable to health expenses that are qualified wages that weren't included on their 2nd and/or 3rd quarter Form 941.

If the borrower chooses to use this limited 4th quarter procedure, they should add the ERC attributable to the 2nd and/or 3rd quarter qualified wages and health expenses on line 11c or line 13d (as relevant) of their original 4th quarter Form 941 (along with any other ERC for qualified wages paid in the 4th quarter).

They should also:

- Include the amount of these qualified wages paid during the 2nd and/or 3rd quarter (excluding health plan expenses) on line 21 of their original 4th quarter Form 941 (along with any qualified wages paid in the 4th quarter).
- Enter the same amount on Worksheet 1, Step 3, line 3a.
- Include the amount of these health plan expenses from the 2nd and/or 3rd quarter on line 22 of the 4th quarter Form 941 (along with any health expenses for the 4th quarter)
- Enter the same amount on Worksheet 1, Step 3, line 3b.

Too Late to Adjust 941 - Since the 4th quarter 941 is due on February 1, 2021, it may be too difficult or too late to implement the foregoing procedure. The employer may instead choose the regular process of filing an adjusted return or claim for refund for the appropriate quarter to which the additional ERC relates using Form 941-X.

Taxpayer Qualified but Never Took the ERC Credit – If a taxpayer did not obtain a PPP Loan, qualified for the ERC in 2020 and did not previously take the payroll credit, they can still do so by filing Form 941-X. The Form 7200 cannot be used in this situation since it must be filed before the original 941.