# Checklist: Applying for the Employee Retention Credit (ERC)? Ask Yourself These Questions First

- **Did you document the decline in Gross Receipts/Revenue by quarter correctly?** Ensure you've accounted for non-operating income and investment income. Determine first if aggregation is required, per a control group scenario. Remember not to include unrealized gains and losses or PPP loan proceeds. Last, be sure you can tie the ERC reported revenue back to financial statements and/or tax reporting documents.
- **Did you take part in other federal grant programs (including PPP loans)?** Wages and health care expenses may not be used for the ERC if they are used for PPP loan forgiveness, or other tax credits and grants. Complicated guidance has been issued (Notice 2021-20). Incorrectly submitting the PPP forgiveness application may lead to the inadvertent exclusion of ERC eligible wages.
- **Did you take an advance ERC in Q4 of 2021?** Employers who took an advance ERC before the program had been officially terminated will have to pay that money to the IRS by the end of Q4 2022 or face penalties and interest.
- **Have you carefully documented local/state shutdown "orders"?** These orders will be local and state orders, not federal "guidance," nor will this apply to choices made by management to curtail operations in the interest of safety. Orders that disrupted businesses are those that made conducting business unlawful and impossible. A business that is "essential" will have more difficulty qualifying.
- **Do you utilize a payroll company or payroll technology?** While the ERC was originally intended to provide immediate cash relief, refunds are taking many months to reach taxpayers. Organizations using a PEO will likely find that their credits are further complicated by the reporting requirements for filers who operate under co-employment agreements.
- Additionally, payroll platforms may offer to process this credit, but their "opt in" programs have small print leaving the eligibility determination to the taxpayer and advising them to consult experts. Further, payroll processors do not have access to all the information required. Most importantly, the ERC documentation they provide is inadequate, leaving any future audit protection or preparation to the taxpayer.
- **Are you a part of a larger controlled group?** Determining Control Group status is complicated and should be done first, by experts. If there are related entities, via common ownership or control, all the entities in that group must be assessed as one common employer; each entity does not qualify alone. This is different from the PPP qualification process.
- **Did you correctly report ERC wages?** ERC wages are not deductible for federal income tax purposes in the year of payment and should be recorded and reported in the quarter to which the credit applies. For cash basis taxpayers, this is an unwelcome surprise. Improper claims, or late reporting, could result in interest and penalties. Also, many times, owner wages must be excluded from the calculations.
- **Did you review and account for (or not) owner and owner's family payroll?** You may not be allowed to include owner wages, or employees who are related to the owner.
- **Did you file the correct version of form 941X?** Form 941X has been reissued multiple times. Taxpayers must use the correct version, or they'll be rejected.
- **Have you considered all reporting requirements, even before credits are received?** Most of these credits are material and should be reported on tax returns and financial statements well before the credits have been received.

[Click here for a more in-depth overview of the ERC program]

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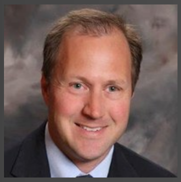
**Jenn McCabe**
Partner
Consulting
Jenn.McCabe@armaninollp.com
424.220.6070



**Mark Reis**
Director
Tax
Mark.Reis@armaninollp.com
208.510.5387