

26 USC 3134: Employee retention credit for employers subject to closure due to COVID-19 Text contains those laws in effect on September 25, 2026

From Title 26-INTERNAL REVENUE CODES
Subtitle C-Employment Taxes
CHAPTER 21-FEDERAL INSURANCE CONTRIBUTIONS ACTS
Subchapter D-Credits

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§3134. Employee retention credit for employers subject to closure due to COVID–19

(a) In general

In the case of an eligible employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 70 percent of the qualified wages with respect to each employee of such employer for such calendar quarter.

(b) Limitations and refundability

(1) In general

(A) Wages taken into account

The amount of qualified wages with respect to any employee which may be taken into account under subsection (a) by the eligible employer for any calendar quarter shall not exceed \$10,000.

(B) Recovery startup businesses

In the case of an eligible employer which is a recovery startup business (as defined in subsection (c)(5)), the amount of the credit allowed under subsection (a) (after application of subparagraph (A)) for any calendar quarter shall not exceed \$50,000.

(2) Credit limited to employment taxes

The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes (reduced by any credits allowed under sections 3131 and 3132) on the wages paid with respect to the employment of all the employees of the eligible employer for such calendar quarter.

(3) Refundability of excess credit

If the amount of the credit under subsection (a) exceeds the limitation of paragraph (2) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

(c) Definitions

For purposes of this section-

(1) Applicable employment taxes

The term "applicable employment taxes" means the following:

(A) The taxes imposed under section 3111(b).

(B) So much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b).

(2) Eligible employer

(A) In general

The term "eligible employer" means any employer-

(i) which was carrying on a trade or business during the calendar quarter for which the credit is determined under subsection (a), and

(ii) with respect to any calendar quarter, for which-

(I) the operation of the trade or business described in clause (i) is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19),

(II) the gross receipts (within the meaning of section 448(c)) of such employer for such calendar quarter are less than 80 percent of the gross receipts of such employer for the same calendar quarter in calendar year 2019, or

(III) the employer is a recovery startup business (as defined in paragraph (5)).

With respect to any employer for any calendar quarter, if such employer was not in existence as of the beginning of the same calendar quarter in calendar year 2019, clause (ii)(II) shall be applied by substituting "2020" for "2019".

(B) Election to use alternative quarter

At the election of the employer-

(i) subparagraph (A)(ii)(II) shall be applied-

(I) by substituting "for the immediately preceding calendar quarter" for "for such calendar quarter", and

(II) by substituting "the corresponding calendar quarter in calendar year 2019" for "the same calendar quarter in calendar year 2019", and

(ii) the last sentence of subparagraph (A) shall be applied by substituting "the corresponding calendar quarter in calendar year 2019" for "the same calendar quarter in calendar year 2019".

An election under this subparagraph shall be made at such time and in such manner as the Secretary shall prescribe.

(C) Tax-exempt organizations

In the case of an organization which is described in section 501(c) and exempt from tax under section 501(a)-

(i) clauses (i) and (ii)(I) of subparagraph (A) shall apply to all operations of such organization, and

(ii) any reference in this section to gross receipts shall be treated as a reference to gross receipts within the meaning of section 6033.

(3) Qualified wages

(A) In general

The term "qualified wages" means-

(i) in the case of an eligible employer for which the average number of full-time employees (within the meaning of section 4980H) employed by such eligible employer during 2019 was greater than 500, wages paid by such eligible employer with respect to which an employee is not providing services due to circumstances described in subclause (I) or (II) of paragraph (2)(A)(ii), or

(ii) in the case of an eligible employer for which the average number of full-time employees (within the meaning of section 4980H) employed by such eligible employer during 2019 was not greater than 500-

(I) with respect to an eligible employer described in subclause (I) of paragraph (2)(A)(ii), wages paid by such eligible employer with respect to an employee during any period described in such clause, or

(II) with respect to an eligible employer described in subclause (II) of such paragraph, wages paid by such eligible employer with respect to an employee during such quarter.

(B) Special rule for employers not in existence in 2019

In the case of any employer that was not in existence in 2019, subparagraph (A) shall be applied by substituting "2020" for "2019" each place it appears.

(C) Severely financially distressed employers

(i) In general

Notwithstanding subparagraph (A)(i), in the case of a severely financially distressed employer, the term "qualified wages" means wages paid by such employer with respect to an employee during any calendar quarter.

(ii) Definition

The term "severely financially distressed employer" means an eligible employer as defined in paragraph (2), determined by substituting "less than 10 percent" for "less than 80 percent" in subparagraph (A)(ii)(II) thereof.

(D) Exception

The term "qualified wages" shall not include any wages taken into account under sections 41, 45A, 45P, 45S, 51, 1396, 3131, and 3132.

(4) Wages

(A) In general

The term "wages" means wages (as defined in section 3121(a)) and compensation (as defined in section 3231(e)). For purposes of the preceding sentence, in the case of any organization or entity described in subsection (f)(2), wages as defined in section 3121(a) shall be determined without regard to paragraphs (5), (6), (7), (10), and (13) of section 3121(b) (except with respect to services performed in a penal institution by an inmate thereof).

(B) Allowance for certain health plan expenses

(i) In general

Such term shall include amounts paid by the eligible employer to provide and maintain a group health plan (as defined in section 5000(b)(1)), but only to the extent that such amounts are excluded from the gross income of employees by reason of section 106(a).

(ii) Allocation rules

For purposes of this section, amounts treated as wages under clause (i) shall be treated as paid with respect to any employee (and with respect to any period) to the extent that such amounts are properly allocable to such employee (and to such period) in such manner as the Secretary may prescribe. Except as otherwise provided by the Secretary, such allocation shall be treated as properly made if made on the basis of being pro rata among periods of coverage.

(5) Recovery startup business

The term "recovery startup business" means any employer-

(A) which began carrying on any trade or business after February 15, 2020, and

(B) for which the average annual gross receipts of such employer (as determined under rules similar to the rules under section 448(c)(3)) for the 3-taxable-year period ending with the taxable year which precedes the calendar quarter for which the credit is determined under subsection (a) does not exceed \$1,000,000.

(6) Other terms

Any term used in this section which is also used in this chapter or chapter 22 shall have the same meaning as when used in such chapter.

(d) Aggregation rule

All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (m) or (o) of section 414, shall be treated as one employer for purposes of this section.

(e) Certain rules to apply

For purposes of this section, rules similar to the rules of sections 51(i)(1) and 280C(a) shall apply.

(f) Certain governmental employers

(1) In general

This credit shall not apply to the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing.

(2) Exception

Paragraph (1) shall not apply to-

(A) any organization described in section 501(c)(1) and exempt from tax under section 501(a), or

(B) any entity described in paragraph (1) if-

(i) such entity is a college or university, or

(ii) the principal purpose or function of such entity is providing medical or hospital care.

In the case of any entity described in subparagraph (B), such entity shall be treated as satisfying the requirements of subsection (c)(2)(A)(i).

(g) Election to not take certain wages into account

This section shall not apply to so much of the qualified wages paid by an eligible employer as such employer elects (at such time and in such manner as the Secretary may prescribe) to not take into account for purposes of this section.

(h) Coordination with certain programs

(1) In general

This section shall not apply to so much of the qualified wages paid by an eligible employer as are taken into account as payroll costs in connection with-

(A) a covered loan under section 7(a)(37) or 7A of the Small Business Act,

(B) a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, or

(C) a restaurant revitalization grant under section 5003 of the American Rescue Plan Act of 2021.

(2) Application where PPP loans not forgiven

The Secretary shall issue guidance providing that payroll costs paid during the covered period shall not fail to be treated as qualified wages under this section by reason of paragraph (1) to the extent that-

(A) a covered loan of the taxpayer under section 7(a)(37) of the Small Business Act is not forgiven by reason of a decision under section 7(a)(37)(J) of such Act, or

(B) a covered loan of the taxpayer under section 7A of the Small Business Act is not forgiven by reason of a decision under section 7A(g) of such Act.

Terms used in the preceding sentence which are also used in section 7A(g) or 7(a)(37)(J) of the Small Business Act shall, when applied in connection with either such section, have the same meaning as when used in such section, respectively.

(i) Third party payors

Any credit allowed under this section shall be treated as a credit described in section 3511(d)(2).

(j) Advance payments

(1) In general

Except as provided in paragraph (2), no advance payment of the credit under subsection (a) shall be allowed.

(2) Advance payments to small employers

(A) In general

Under rules provided by the Secretary, an eligible employer for which the average number of full-time employees (within the meaning of section 4980H) employed by such eligible employer during 2019 was not greater than 500 may elect for any calendar quarter to receive an advance payment of the credit under subsection (a) for such quarter in an amount not to exceed 70 percent of the average quarterly wages paid by the employer in calendar year 2019.

(B) Special rule for seasonal employers

In the case of any employer who employs seasonal workers (as defined in section 45R(d)(5)(B)), the employer may elect to apply subparagraph (A) by substituting "the wages for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates" for "the average quarterly wages paid by the employer in calendar year 2019".

(C) Special rule for employers not in existence in 2019

In the case of any employer that was not in existence in 2019, subparagraphs (A) and (B) shall each be applied by substituting "2020" for "2019" each place it appears.

(3) Reconciliation of credit with advance payments

(A) In general

The amount of credit which would (but for this subsection) be allowed under this section shall be reduced (but not below zero) by the aggregate payment allowed to the taxpayer under paragraph (2). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

(B) Excess advance payments

If the advance payments to a taxpayer under paragraph (2) for a calendar quarter exceed the credit allowed by this section (determined without regard to subparagraph (A)), the tax imposed under section 3111(b) or so much of the tax imposed under section 3221(a) as is attributable to the rate in effect under section 3111(b) (whichever is applicable) for the calendar quarter shall be increased by the amount of such excess.

(k) Treatment of deposits

The Secretary shall waive any penalty under section 6656 for any failure to make a deposit of any applicable employment taxes if the Secretary determines that such failure was due to the reasonable anticipation of the credit allowed under this section.

(l) Extension of limitation on assessment

(1) In general

Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 6 years after the latest of-

- (A) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed,
- (B) the date on which such return is treated as filed under section 6501(b)(2), or
- (C) the date on which the claim for credit or refund with respect to such credit is made.

(2) Deduction for wages taken into account in determining improperly claimed credit

(A) In general

Notwithstanding section 6511, in the case of an assessment attributable to a credit claimed under this section, the limitation on the time period for credit or refund of any amount attributable to a deduction for improperly claimed ERTC wages shall not expire before the time period for such assessment expires under paragraph (1).

(B) Improperly claimed ERTC wages

For purposes of this paragraph, the term "improperly claimed ERTC wages" means, with respect to an assessment attributable to a credit claimed under this section, the wages with respect to which a deduction would not have been allowed if the portion of the credit to which such assessment relates had been properly claimed.

(m) Regulations and guidance

The Secretary shall issue such forms, instructions, regulations, and other guidance as are necessary-

- (1) to allow the advance payment of the credit under subsection (a) as provided in subsection (j)(2), subject to the limitations provided in this section, based on such information as the Secretary shall require,
- (2) with respect to the application of the credit under subsection (a) to third party payors (including professional employer organizations, certified professional employer organizations, or agents under section 3504), including regulations or guidance allowing such payors to submit documentation necessary to substantiate the eligible employer status of employers that use such payors, and
- (3) to prevent the avoidance of the purposes of the limitations under this section, including through the leaseback of employees.

Any forms, instructions, regulations, or other guidance described in paragraph (2) shall require the customer to be responsible for the accounting of the credit and for any liability for improperly claimed credits and shall require the certified professional employer organization or other third party payor to accurately report such tax credits based on the information provided by the customer.

(n) Application

This section shall only apply to wages paid after June 30, 2021, and before October 1, 2021 (or, in the case of wages paid by an eligible employer which is a recovery startup business, January 1, 2022).

(Added Pub. L. 117–2, title IX, §9651(a), Mar. 11, 2021, 135 Stat. 177 ; amended Pub. L. 117–58, div. H, title VI, §80604(a), Nov. 15, 2021, 135 Stat. 1341 ; Pub. L. 119–21, title VII, §70605(e), July 4, 2025, 139 Stat. 288 .)

Editorial Notes

References in Text

Section 7 of the Small Business Act, referred to in subsec. (h)(1)(A), (2), is classified to section 636 of Title 15, Commerce and Trade.

Section 7A of the Small Business Act, referred to in subsec. (h)(1)(A), (2), is classified to section 636m of Title 15, Commerce and Trade.

Section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-Profits, and Venues Act, referred to in subsec. (h)(1)(B), is classified to section 9009a of Title 15, Commerce and Trade.

Section 5003 of the American Rescue Plan Act of 2021, referred to in subsec. (h)(1)(C), is classified to section 9009c of Title 15, Commerce and Trade.

Amendments

2025-Subsec. (l). Pub. L. 119–21 amended subsec. (l) generally. Prior to amendment, text read as follows: "Notwithstanding section 6501, the limitation on the time period for the assessment of any amount attributable to a credit claimed under this section shall not expire before the date that is 5 years after the later of-

"(1) the date on which the original return which includes the calendar quarter with respect to which such credit is determined is filed, or

"(2) the date on which such return is treated as filed under section 6501(b)(2)."

2021-Subsec. (c)(5)(C). Pub. L. 117–58, §80604(a)(1), struck out subpar. (C) which read as follows: "which, with respect to such calendar quarter, is not described in subclause (I) or (II) of paragraph (2)(A)(ii)."

Subsec. (n). Pub. L. 117–58, §80604(a)(2), substituted "October 1, 2021 (or, in the case of wages paid by an eligible employer which is a recovery startup business, January 1, 2022)" for "January 1, 2022".

Statutory Notes and Related Subsidiaries

Effective Date of 2025 Amendment

Amendment by Pub. L. 119–21 applicable to assessments made after July 4, 2025, see section 70605(g)(3) of Pub. L. 119–21, set out as an Enforcement Provisions With Respect to COVID-Related Employee Retention Credits note below.

Effective Date of 2021 Amendment

Pub. L. 117–58, div. H, title VI, §80604(b), Nov. 15, 2021, 135 Stat. 1341 , provided that: "The amendments made by this section [amending this section] shall apply to calendar quarters beginning after September 30, 2021."

Effective Date

Pub. L. 117–2, title IX, §9651(d), Mar. 11, 2021, 135 Stat. 182 , provided that: "The amendments made by this section [enacting this section and amending section 1324 of Title 31, Money and Finance] shall apply to calendar quarters beginning after June 30, 2021."

Enforcement Provisions With Respect to COVID-Related Employee Retention Credits

Pub. L. 119–21, title VII, §70605, July 4, 2025, 139 Stat. 286 , provided that:

"(a) Assessable Penalty for Failure to Comply With Due Diligence Requirements.-

"(1) In general.-Any COVID–ERTC promoter which provides aid, assistance, or advice with respect to any COVID–ERTC document and which fails to comply with due diligence requirements imposed by the Secretary with respect to determining eligibility for, or the amount of, any credit or advance payment of a credit under section 3134 of the Internal Revenue Code of 1986, shall pay a penalty of \$1,000 for each such failure.

"(2) Due diligence requirements.-The due diligence requirements referred to in paragraph (1) shall be similar to the due diligence requirements imposed under section 6695(g) of the Internal Revenue Code of 1986.

"(3) Restriction to documents used in connection with returns or claims for refund.-Paragraph (1) shall not apply with respect to any COVID–ERTC document unless such document constitutes, or relates to, a return or claim for refund.

"(4) Treatment as assessable penalty, etc.-For purposes of the Internal Revenue Code of 1986, the penalty imposed under paragraph (1) shall be treated as a penalty which is imposed under section 6695(g) of such Code and assessed under section 6201 of such Code.

"(5) Secretary.-For purposes of this subsection, the term 'Secretary' means the Secretary of the Treasury or the Secretary's delegate.

"(b) COVID–ERTC Promoter.-For purposes of this section-

"(1) In general.-The term 'COVID–ERTC promoter' means, with respect to any COVID–ERTC document, any person which provides aid, assistance, or advice with respect to such document if-

"(A) such person charges or receives a fee for such aid, assistance, or advice which is based on the amount of the refund or credit with respect to such document and, with respect to such person's taxable year in which such person provided such assistance or the preceding taxable year, the aggregate of the gross receipts of such person for aid, assistance, and advice with respect to all COVID-ERTC documents exceeds 20 percent of the gross receipts of such person for such taxable year, or

"(B) with respect to such person's taxable year in which such person provided such assistance or the preceding taxable year-

"(i) the aggregate of the gross receipts of such person for aid, assistance, and advice with respect to all COVID-ERTC documents exceeds 50 percent of the gross receipts of such person for such taxable year, or

"(ii) both-

"(I) such aggregate gross receipts exceed 20 percent of the gross receipts of such person for such taxable year, and

"(II) the aggregate of the gross receipts of such person for aid, assistance, and advice with respect to all COVID-ERTC documents (determined after application of paragraph (3)) exceeds \$500,000.

"(2) Exception for certified professional employer organizations.-The term 'COVID-ERTC promoter' shall not include a certified professional employer organization (as defined in section 7705 of the Internal Revenue Code of 1986).

"(3) Aggregation rule.-For purposes of paragraph (1), all persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986, or subsection (m) or (o) of section 414 of such Code, shall be treated as 1 person.

"(4) Short taxable years.-In the case of any taxable year of less than 12 months, a person shall be treated as a COVID-ERTC promoter if such person is described in paragraph (1) either with respect to such taxable year or by treating any reference to such taxable year as a reference to the calendar year in which such taxable year begins.

"(c) COVID-ERTC Document.-For purposes of this section, the term 'COVID-ERTC document' means any return, affidavit, claim, or other document related to any credit or advance payment of a credit under section 3134 of the Internal Revenue Code of 1986, including any document related to eligibility for, or the calculation or determination of any amount directly related to, any such credit or advance payment.

"(d) Limitation on Credits and Refunds.-Notwithstanding section 6511 of the Internal Revenue Code of 1986, no credit under section 3134 of the Internal Revenue Code of 1986 shall be allowed, and no refund with respect to any such credit shall be made, after the date of the enactment of this Act [July 4, 2025], unless a claim for such credit or refund was filed by the taxpayer on or before January 31, 2024.

"(e) Extension of Limitation on Assessment.-[Amended this section]

"(f) Amendment to Penalty for Erroneous Claim for Refund or Credit.-[Amended section 6676 of this title]

"(g) Effective Dates.-

"(1) In general.-The provisions of this section shall apply to aid, assistance, and advice provided after the date of the enactment of this Act [July 4, 2025].

"(2) Limitation on credits and refunds.-Subsection (d) shall apply to credits and refunds allowed or made after the date of the enactment of this Act.

"(3) Extension of limitation on assessment.-The amendment made by subsection (e) shall apply to assessments made after the date of the enactment of this Act.

"(4) Amendment to penalty for erroneous claim for refund or credit.-The amendment made by subsection (f) shall apply to claims for credit or refund after the date of the enactment of this Act.

"(h) Regulations.-The Secretary (as defined in subsection (a)(5)) shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section (and the amendments made by this section)."

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