

FORBES > MONEY > TAXES

5 Top ERC Myths Businesses Need To Beware Of

Dean Zerbe Contributor *I write about tax policy and how it affects business.*[Follow](#) 2

Dec 14, 2022, 04:58pm EST

[Listen to article](#) 8 minutes

Detail of Ulysses and the Sirens floor mosaic (Photo by © Ruggero Vanni/CORBIS/Corbis via Getty ... [+] CORBIS VIA GETTY IMAGES

In 2021, I published a piece about the [top myths](#) regarding the Employee Retention Credit (ERC) that was preventing business owners, charity managers and Indian tribes from claiming this important tax incentive. Now, the misinformation has gone the other way, and businesses (as well as tax-exempt/charities and Native American tribes — but I will just use “business” going forward to avoid repetition) are being told everyone can claim this credit for the maximum amount.

If you’re a business owner, you may have recently been guaranteed \$26,000 per employee by any number of pop-up providers. But these here-today-gone-tomorrow shops are too often not providing business owners the full story about the ERC. The IRS recently cautioned businesses to be [eyes open](#) as to these too-good-to-be-true pitches. While the

ERC is certainly a robust tax benefit that small and medium businesses should be eyes-open to considering – the simple reality is that many businesses will not qualify. We at alliantgroup – while helping many businesses determine if they qualify for the ERC have also had to deliver the bad news to many businesses and charities that they don't qualify. It is important to get it right (and document it!) as to whether your business is eligible for this complex credit – the IRS has recently put forward a 72-page training [guideline](#) for its examiners on the ERC. So time to sharpen your pencil and understand the five new myths about ERC.

The New Top 5 ERC Myths

1. If you were affected by COVID you are qualified for ERC!

By now, most business owners and their CPAs know there are two paths to qualifying for the ERC; revenue decline and impact on the business. But many believe – wrongly – they can qualify for any complications their business had with their operations due to COVID.

No, no, no. Merely adjusting operations in response to COVID is not enough to qualify for the ERC. There are two things you need to show to be eligible under the business impact test; you need to show that a specific COVID-related government order or mandate (federal, state, local) caused the impact to your business and you need to show the extent and duration of that impact. In short, you must show that the order had a “more than nominal” impact on your business while the order was in full force and effect – more on that below. Best practice—you need to document the specific government order and detail and document the impact as to your business while that order was active.

MORE FROM [FORBES ADVISOR](#)

Best Travel Insurance Companies

By **Amy Danise** Editor

Best Covid-19 Travel Insurance Plans

By **Amy Danise** Editor

2. Any government guideline qualifies you for ERC!

There are varying levels of government orders and guidelines and not all of them qualify. Some folks are telling businesses that things like CDC and OSHA *guidelines* qualify a business. That's not always true. There are a lot of hoops for a business to show that a government order meets the government order test to qualify for ERC.

Investing Digest: Know what's moving the financial markets and what smart money is buying with Forbes Investing Digest.

Sign Up

By signing up, you accept and agree to our [Terms of Service](#) (including the class action waiver and arbitration provisions), and [Privacy Statement](#).

First, an order must be an actual order and not simply advice or a suggestion. There's a big difference between government orders that say a business **MUST** or **SHALL** do something versus a guideline that **RECOMMENDS** or says a business **SHOULD** do something. The latter do not qualify, so be careful what orders you or your ERC advisor are relying on for your qualifications. As the IRS guidance notes, a Mayor giving a speech encouraging residents to practice social distancing is not an order. Further, as the IRS guidance makes clear orders must limit commerce, travel or group meetings (for commercial, social, religious or other purposes) due to COVID-19 if they are to be relied upon for ERC. Finally, government orders must have jurisdiction over the employer's operations and the order must have a more than nominal impact on the business' operations (discussed next).

3. A qualifying mandate that caused an impact to your business means you qualify!

Not so fast. Even if a qualifying order affected your business, you still may not qualify. IRS Notice 21-20 requires that there be a "more than nominal" impact on the business to be eligible. Unfortunately, the "more than nominal" test too often goes unmentioned — but it is a critical part of the ERC calculation analysis.

If you otherwise qualify, but the effect of an order on your business was mostly minor inconveniences, then you may not be eligible. A suspension of a more than nominal portion of a business' operations is a very technical calculation — it needs to be well documented. If you are unsure, you need to check with experienced tax professionals that can calculate nominal impact based on the IRS' guidance.

4. You get \$26,000 for every employee!

Calculating your ERC credit can be quite complicated - and business owners should exercise extreme caution. If you hear that you can simply multiply how many employees you have times \$26,000 and then place that number on your 941-X, you should be very skeptical of the advice that you are getting. There are 3 major factors that impact your refund: wages paid, duration of impact, and other incentives already claimed (discussed next).

The credit is calculated as 70% of qualified wages paid to an employee in a given quarter, up to \$10,000. So, for some simple math, if you pay an employee \$7.25 an hour, their wages would be about \$3480 a quarter, taking 70% of that gives a maximum credit of \$2436.

This assumes the qualifying government mandate lasted for the whole quarter. Not only do wages paid matter but also the length of time the mandate was in place. For instance, let's say those same workers qualified due to a social distancing order but that order was only in effect for half of the quarter. You would then only get half of the maximum credit.

5. If you claimed PPP you can still qualify for \$26,000 per employee!

Interplay with other incentives is where most ERC providers are miscalculating the ERC. While you can claim PPP and ERC together, they will have interplay between themselves and any other incentives your business may have taken – such as the restaurant revitalization grant or the Work Opportunity Tax Credit.

As the IRS guidance notes: “the law now allows employers who received PPP loans to claim the Employee Retention Credit for qualified wages that are not treated as payroll costs in obtaining **forgiveness** of the PPP loan.” To state another way – the ERC cannot be calculated as to payroll costs that are taken into account for purposes of PPP loan **forgiveness** (no double dipping).

And One Truth – Must Reduce Wage Deductions By Amount Of ERC

The IRS is clearly concerned (raised in their press release) – and we see in our own work when asked to review work from accountants other tax providers supporting ERC calculations – that the taxpayer is not told that wage deductions claimed on the business' federal income tax return must be reduced by the amount of the employee retention credit.

Porridge Just Right

Like most tax incentives and credits provided by Congress – the ERC is a keep-your-feet-on-the-floor exercise. Not being so blinkered that you don't look hard as to whether your business can qualify for this good incentive that Congress provided to help businesses keep their doors open and employees on payroll. But not so happy-clappy that you believe without question the voices telling you it's a “whiskers-on-kittens” give away by Santa.

The IRS – not Santa – is in charge of reviewing requests for the ERC – and you need to look closely at the requirements of the law and relevant government orders – and then document and detail how your business qualifies and meets the necessary tests as outlined by the IRS.

Check out my [website](#).



Dean Zerbe

Follow

After I wake up, kiss my daughters and check the internet for updates on Nebraska football, I do two things: 1) help small and medium business owners (especially manufacturers, architects,... **Read More**

Editorial Standards

Reprints & Permissions

Join Our Conversation 2 Comments


One Community. Many Voices. Create a free account to share your thoughts. Read our community guidelines [here](#)


Commenting as **Guest**

 [Log in](#) [Sign up](#)

What do you think?

Sort by **Best** ▾

JG **Joe Gerela** ...
15 December, 2022
Most of this article centers on government mandates. I like to focus on the revenue decline, its a whole lot easier to prove.
Reply ▫  3 ▫ [Share](#)

KA **Kim A.** ...
19 December, 2022
Great article with a lot of useful information about the ERC. Thanks, Dean, for the insight.
Reply ▫  ▫ [Share](#)