Employee Retention Credit (ERC) Eligibility Tree

Start

Was the entity operational in 2020? — No → **No Credit**

Yes ↓

Is the entity part of an affiliated group?

Yes → Consider Affiliated Group Rules for:
- Test #1 and #2 below **AND**
- Total # of employees for determination of large/small Employer (see below)

No ↓

Tests for Eligibility
-ONLY ONE NEEDS TO APPLY TO QUALIFY

Test #1
Full or partial suspension of operations due to gov't order? — No → **No Credit for evaluation period**

Test #2
Gross receipts decline compared to same quarter in 2019?
>50% for 2020
>20% for 2021 — No → **No Credit for evaluation period**

Test #1 → Yes:
Applies only to time period Gov't order was in place (limits commerce, travel or group meetings due to COVID-19.)

Test #2 → Yes:
Credit for quarter and subsequent quarters until the quarter **after** a less than 20% gross receipts decline occurs

Wages and health plan (HP) expenses; Use cash basis wages/HP paid during that period.
2020: Wages after 3/12/2020
2021: Through 9/30/2021

Does entity have related individual (RI) employees of owner(s)?

Yes → Rules similar to section 51(i)(1) apply to RI. RI's are children, siblings, parents, in-laws, aunts, uncles, nieces, nephews, etc. and would not be eligible for ERC.
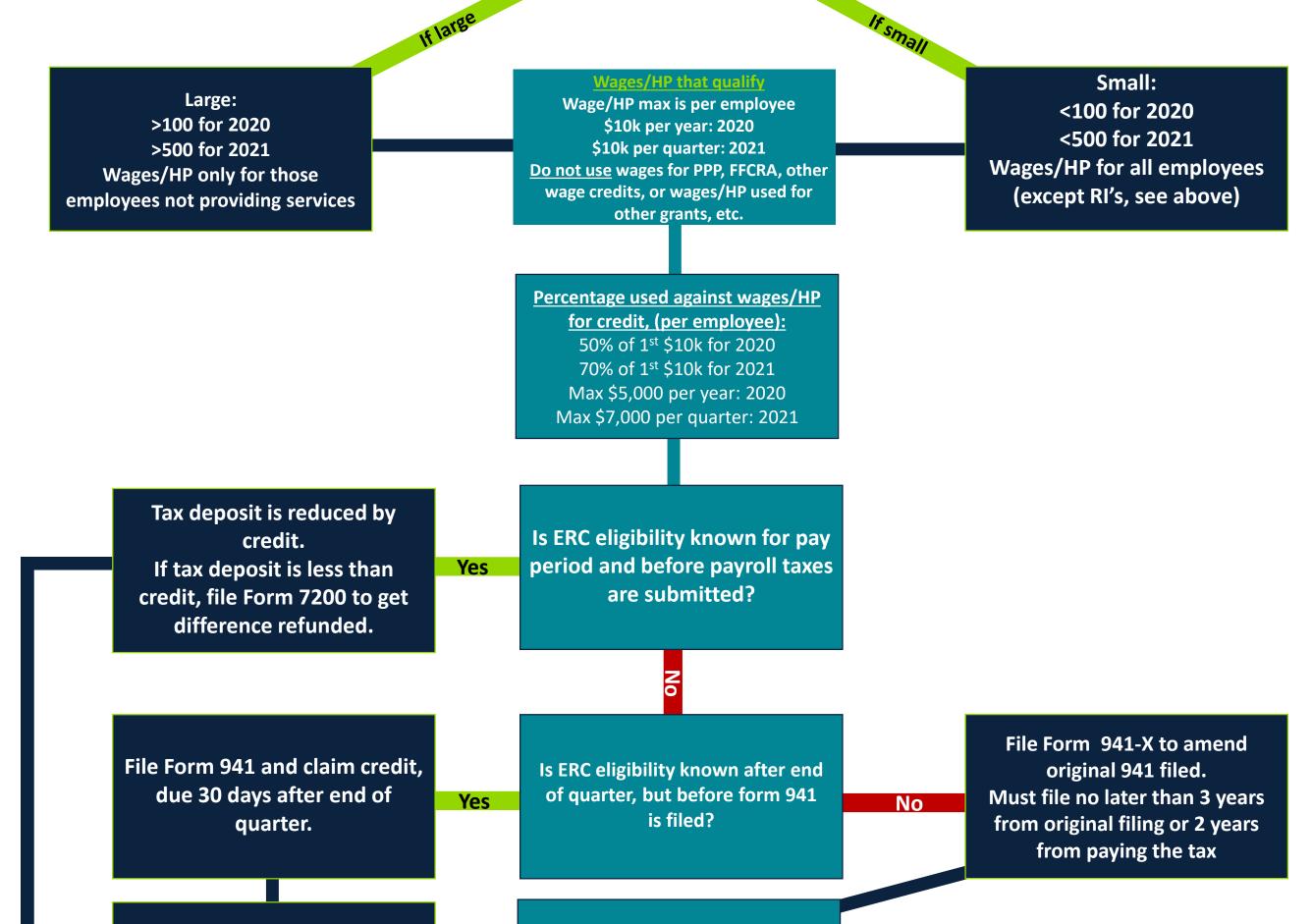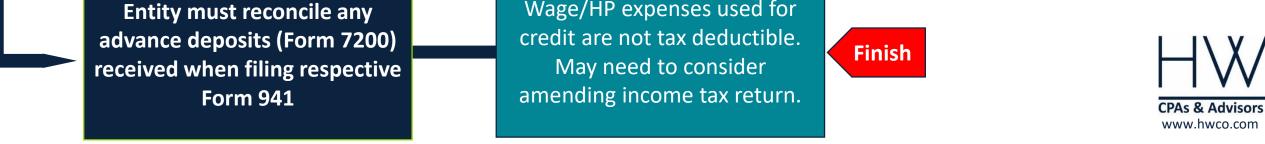
No ↓

Is entity large or small?
Entity needs to determine using 2019 average _full-time employees_ (30 hrs or more per wk or 130 hrs per month)

If large → **Large:**
>100 for 2020
>500 for 2021
Wages/HP only for those employees not providing services

If small → **Small:**
<100 for 2020
<500 for 2021
Wages/HP for all employees (except RI's, see above)

Wages/HP that qualify
Wage/HP max is per employee
$10k per year: 2020
$10k per quarter: 2021
Do not use wages for PPP, FFCRA, other wage credits, or wages/HP used for other grants, etc.

Percentage used against wages/HP for credit, (per employee):
50% of 1st $10k for 2020
70% of 1st $10k for 2021
Max $5,000 per year: 2020
Max $7,000 per quarter: 2021

Is ERC eligibility known for pay period and before payroll taxes are submitted?

Yes → Tax deposit is reduced by credit. If tax deposit is less than credit, file Form 7200 to get difference refunded.

No ↓

Is ERC eligibility known after end of quarter, but before form 941 is filed?

Yes → File Form 941 and claim credit, due 30 days after end of quarter.

No → File Form 941-X to amend original 941 filed. Must file no later than 3 years from original filing or 2 years from paying the tax

Entity must reconcile any advance deposits (Form 7200) received when filing respective Form 941

Wage/HP expenses used for credit are not tax deductible. May need to consider amending income tax return.

Finish

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