



REIMAGINE

LIFE SAFETY OUTCOMES



EMPLOYEE RETENTION CREDIT

Geoff Garber

OVERVIEW

- Overview of ERC Qualification
 - Gross Receipts Reduction
 - Full or Partial Shutdown
 - Modification to Operations
- Case Study
- Recent News
- Q&A

GEOFF GARBER, PARTNER

- Education/Certifications:
 - B.S., Biochemistry, The University of Texas at Austin
 - J.D., Loyola University New Orleans College of Law
 - Licensed Patent Attorney
- Specializations
 - R&D Tax Credits
 - Cost Segregation
 - Energy Efficient Incentives



Geoff is a Partner at BRAYN Consulting LLC. He leverages 10+ years of experience in technology and tax credits to help his clients claim the maximum tax benefits possible under the law.



BRAYNiacs



R&D
Credits



Payroll
Tax
Credit



Cost
Segregation



179D
EECBD



45L
Home
Credit



Fuel
Tax
Recovery



Tax
Controversy
Support



Enterprise
Solutions



General Information

- Remote company since inception in April 2010
- 6 partners
- 50+ staff members
- 15 different states
- 25 cities

Departments

- R&D
- Engineering
- Client Engagement

The BRAYNiacs are a team of lawyers, engineers, CPAs, and tax specialists with extensive industry experience.



POLLING QUESTION #1

Which of the following do you have experience with?

- ☐ R&D Tax Credits
- ☐ Cost Segregation
- ☐ Employee Retention Credits
- ☐ None of the above

EMPLOYEE RETENTION CREDIT

	3/13/2020 – 12/31/2020	1/1/2021 – 9/30/2021***
Credit Amount	50% of qualified wages	70% of qualified wages <u>per quarter</u>
Wage Limit	Max \$5,000 per employee	Max \$21,000 per employee
Tax Credit Utilization	<u>REFUNDABLE</u> and Offsets Employer Payroll Tax	
Large Employee Threshold*	100 Employees	500 Employees
Gross Receipts Test**	>=50% drop from 2019 to 2020	>=20% drop from 2019 to 2021
Publicly-Owned Entities	Not eligible	Universities, colleges, hospitals, medical, and some financial institutions
PPP Recipient Eligibility	PPP recipients NOW ELIGIBLE but forgiven wages excluded	
30 Day Wage Lookback	Yes	No

*Threshold determines whether all wages qualify (under) or only those not working (over)

**Test compares GRs by corresponding quarters, and includes following quarter if 2021 ERC. Once a company meets the 50% test, it stays eligible in 2020 until GR is not under 80% of the corresponding 2019 quarter.

***Infrastructure Investment and Jobs Act terminated the ERC as of 9/30/2021 (no 4Q21 credit)



ELIGIBLE EMPLOYER

Either Gross Receipts Test or Full or Partial Suspension Test must be met each quarter
OR Qualify as a Recovery Startup Business

Gross Receipts Test

- 50% or 20% reduction from 2019 to 2020 or 2021, respectively
- Must be met each quarter

Full or Partial Suspension Test

- Company is eligible if it fully or partially suspended operations during any calendar quarter due to government order related to COVID-19
- Facts and circumstances analysis – review operations before and after government order to establish eligibility

Recovery Startup Business (capped at \$50,000 per quarter)

- (1) is not otherwise an eligible employer under general hardship or GR test; that
- (2) began carrying on a trade or business after Feb. 15, 2020;
- (3) with average annual gross receipts for the three tax years preceding the quarter in which it claims the credit of no more than \$1 million

ELIGIBLE WAGES

- Wages as defined in Section 3121(a) & compensation as defined in Section 3231(e) paid after March 12, 2020 & before October 1, 2021
- Includes qualified health plan expenses allocable to the wages
- Large Employer Threshold

GOVERNMENT ORDERS

- Orders, proclamations, or decrees from the federal government, or any state or local government if they limit commerce, travel, or group meetings due to COVID-19 even though operations can continue
- Statements from a government official **do not** rise to the level of a government order
- CDC recommendations **not** a government order
- Important to understand & document the relevant government orders, look to the most restrictive order if multiple orders

PARTIAL SUSPENSION OF OPERATIONS

- An employer that operates an essential business may be considered to have a partial suspension of operations if, under the facts and circumstances, more than a *nominal* portion of its business operations are suspended by government order.
- “more than nominal portion”:
 - Gross receipts from that portion of the business is not less than 10% of total gross receipts.
 - The hours of service performed by employees in that portion of the business is not less than 10% of the total number of hours of service performed by all employee.

CONTINUATION OF BUSINESS OPERATIONS

- Not partial suspension if employer can continue comparable operations
- Factors to consider:
 - Employer's telework capabilities – consider IT infrastructure
 - Portability of employees' work – can they be remote?
 - Need for presence in physical workspace – special equipment and materials?
 - Transitioning to telework – more than 2 weeks to implement is standard

SUPPLY CHAIN DISRUPTION

- Multiple criteria required
 - US government order requires supplier to suspend operations
 - Supplier unable to make deliveries of critical goods or materials
 - Must have no (reasonable) alternative supplier
- Facts and circumstances → did business experience partial shutdown or interruption
- Examples with building equipment?

MODIFICATIONS TO BUSINESS OPERATIONS

- Modification due to GO must have more than a *nominal* effect on the employer's business operations.
- Whether a modification has “more than a nominal effect” on the business operations is based on the facts and circumstances.
- A governmental order that results in at least a 10% reduction in an employer's ability to provide goods or services in the normal course of business will be deemed to have more than a nominal effect on the employer's business operations.
- Subtle differences compared to partial suspension
- Restaurant example: in-person dining vs. carryout/delivery

POLLING QUESTION #2

Did anyone experience full or partial shutdowns or modifications to operations?

- ☐ Full shutdown
- ☐ Partial shutdown
- ☐ Modification to operations
- ☐ Supply chain disruptions
- ☐ None of the above

AGGREGATION

- Related entities (controlled group) → single employer
- Affects ERC considerations
 - Whether the employer has a trade or business that was fully or partially suspended
 - Whether the employer has a significant decline in gross receipts
 - Whether the employer has more than 100 full-time employees
- Credit allocated based on pro rata expenses

ERC EXAMPLE

Gross Receipts

Qtr	2021	2020	2019	19-20 % Change	19-21 % Change
1	\$1,550,000	\$2,000,000	\$2,000,000	100%	78%
2	\$2,400,000	\$1,200,000	\$2,500,000	48%	96%
3	\$2,800,000	\$1,300,000	\$2,750,000	47%	102%
4	\$3,000,000	\$1,700,000	\$2,750,000	62%	109%

ERTC Calculations

Item	Amounts
Total Wages 2Q20-4Q20	\$1,000,000
Qualifying Wages 2020	\$300,000
2020 Employee Retention Credit	\$150,000
Qualifying Wages 1Q21	\$200,000
Advance Payments and Deposit Withholding for 1Q21	\$140,000
TOTAL ERTC	\$290,000

- Civil engineering firm
- 40 FTE
- Received R&D Credit
- Received PPP loan forgiveness

Review backlog is at least 6-9 months for Form 941-X

CLAIMING ERC

- Requires amending Form 941 (filing a Form 941-X)
- Offsets Social Security tax through 2Q21 and Medicare for 3Q/4Q21 (4Q for Recovery Startup only)
- Can amend and elect to apply to a timely filed return to potentially speed up processing
- Effects on income tax
 - Must reduce wage deductions in the amount of the credit (280C)
 - Must amend prior income tax returns to reflect change

RECENT DEVELOPMENTS

- “ERC Mills”
- IRS to target abusive ERC claims – estimate well over \$2 trillion in fraud – 10-year exam SOL
- Example promoter email:

----- Forwarded message -----

From: [REDACTED]
Subject: [REDACTED]
To: <geoff@brayn.com>

Hi Geoff,

Did you know that hundreds of billions of dollars are still available to businesses through the Employee Retention Credits (ERC) portion of the CARES Act? In fact, you can qualify for up to \$26,000 per employee.

I'm [REDACTED]. As a leader in Cloud-based payment solutions, we work with tens of thousands of small and medium sized businesses daily. We've helped a great deal of them receive their due for paying employees during COVID. We can help you too.

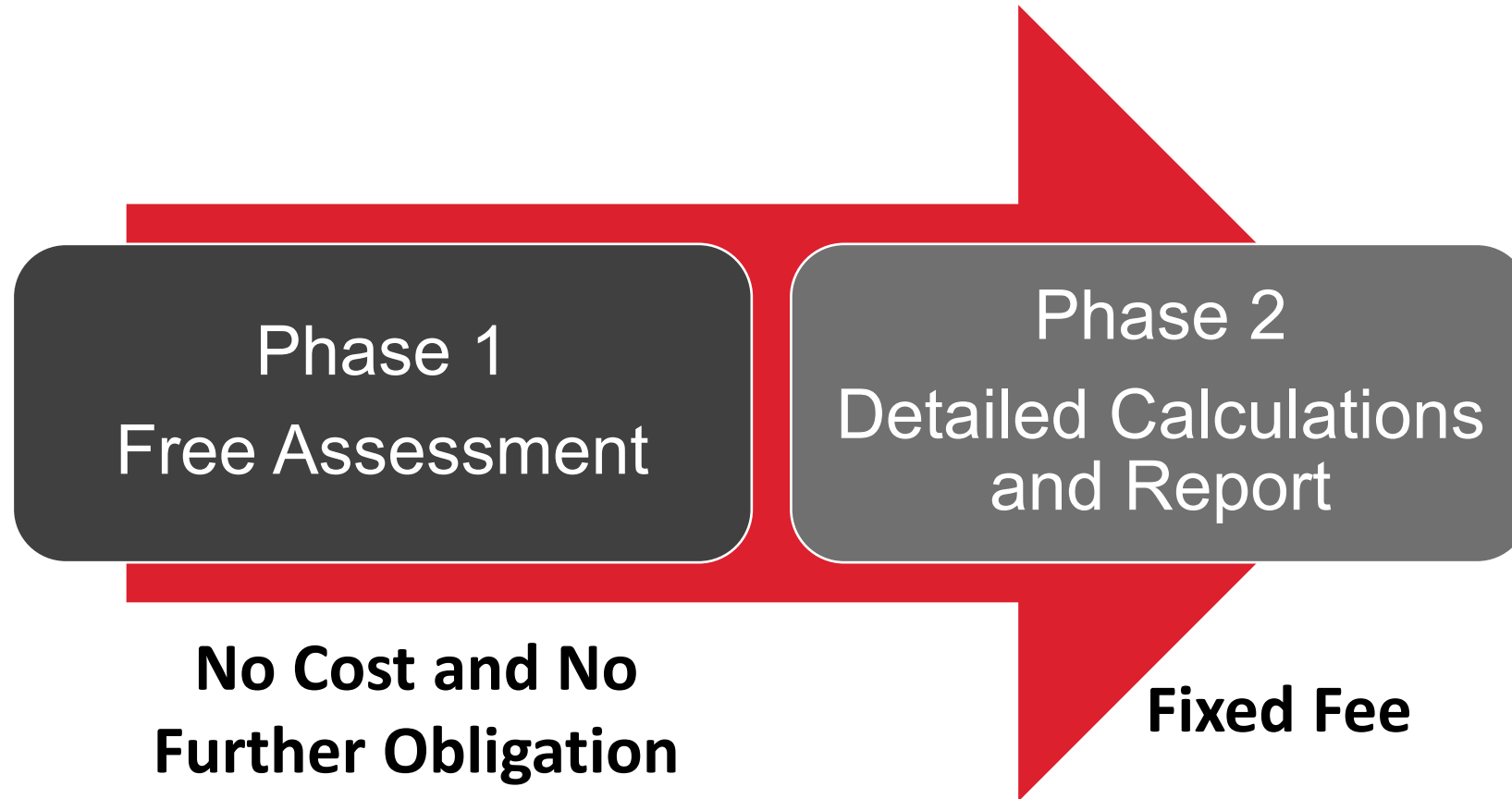
Take a quick second to see how much you are eligible to receive by [clicking here](#). If you'd rather, let me know when your calendar permits just ten minutes, and I'll schedule a brief 'discovery' call to outline your available options.

Tradeshift has also arranged immediate payment options for all companies it qualifies for ERC. In other words, we'll not only get you approved for the program, we'll get you paid on approval, rather than leave you waiting for months on the IRS.

Geoff, 80% of companies qualify for ERC, but only a fraction have so far applied. Don't leave money on the table.



TWO PHASE PROCESS





THANK YOU

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