

5 MISCONCEPTIONS ABOUT THE ERC



#1

WE TOOK THE PPP, SO WE ARE NOT ELIGIBLE.

FALSE. The Consolidated Appropriations Act amended the original CARES Act ERC to permit businesses that received Paycheck Protection Program (PPP) loans to be eligible for the ERC if they experienced: a full or partial suspension of business operations due to government orders enacted in response to the COVID-19 pandemic (the "Government Orders Test"), OR a significant decline in gross receipts (the "Gross Receipts Test"). However, PPP recipients who are eligible for the ERC cannot include wages that were paid with forgiven PPP loan proceeds in the ERC calculation.

#2

WE ARE AN ESSENTIAL BUSINESS, SO WE ARE NOT ELIGIBLE.

FALSE. The ERC does not make a distinction between an "essential" or "non-essential" employer. A business, whether classified in state or local orders as essential or not, may be eligible for the ERC so long as it satisfies the Government Orders Test or Gross Receipts Test. For example, a business that was classified as "essential" by a government order and was able to continue to operate may nonetheless have experienced a partial suspension or a significant decline in gross receipts and be eligible for the ERC.

#3

WE DID NOT SHUT DOWN OUR OFFICES, SO WE ARE NOT ELIGIBLE.

FALSE. An employer is eligible for the ERC if it can meet the Government Orders Test or the Gross Receipts Test. The Government Orders Test provides a business must have experienced a full or partial suspension of business operations due to government orders enacted in response to the COVID-19 pandemic. A "partial suspension" of operations does not mean a complete cessation of operations or closure of locations. Thus, a business can demonstrate a partial suspension of operations through other impacts to operations, such as the inability to perform certain services. Whether a business experienced a full or partial suspension is a facts and circumstances analysis.

#4

OUR OPERATIONS WERE SUSPENDED, BUT WE WERE PROFITABLE, SO WE ARE NOT ELIGIBLE.

FALSE. The ERC does not require a business to experience a decline in revenue to be eligible for the ERC. The intent of Congress is clear in the plain language of the legislation, which provides that an employer must satisfy the Gross Receipts Test or the government Orders Test, not both. Thus, a company does not have to experience a decline in revenue to be eligible for the ERC.

#5

WE ARE A NON-PROFIT, SO WE ARE NOT ELIGIBLE.

FALSE. The ERC has always been available to non-profits who satisfy either the Government Orders Test or Gross Receipts Test. The ERC has benefited many non-profit organizations such as non-profit schools, hospitals, churches, and day-care centers.

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