

Handling the ERC Audit

What to Expect When Uncle Sam
Comes Knocking

TRN
TAX REP NETWORK

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Eric Green, Esq.

- ▶ Managing partner in Green & Sklarz LLC, a boutique tax firm with offices in Connecticut and New York.
- ▶ Focus is civil and criminal taxpayer representation before the Department of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services.
- ▶ Eric is a contributing columnist for Bloomberg Tax and has served as a columnist for CCH's Journal of Practice & Procedure.
- ▶ Attorney Green is the past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section.
- ▶ Eric is a Fellow of the American College of Tax Counsel ("ACTC").



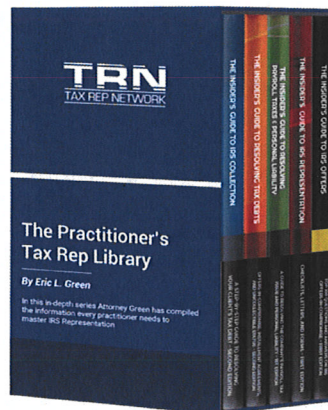
TRN
TAX REP NETWORK

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Eric Green, Esq.

- Eric is the host of the weekly Tax Rep Network Podcast
- Eric is the founder of Tax Rep Network, an online community designed to help tax professionals build their IRS Representation Practice
- He is the author of the Accountant's Guides in IRS Representation
- Partnered with UConn and creator of the IRS Representation Certificate Program
- Creator of the Tax Rep App



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Kenneth Dettman

CEO and Managing Director

Kenneth ("Kenny") Dettman, CPA, CEO and Managing Director, leads EZ-ERC with 15 years of high-level tax advisory experience. He is considered a pioneer in the Employee Retention Credit ("ERC") service industry, having facilitated the first ever "advance funding" with the leading asset-based lender specializing in ERC claims, while also successfully sourcing and underwriting one of the first ERC "tax insurance" policies in the U.S.

Kenny was previously a tax partner at a global top 25 consulting firm, Alvarez & Marsal ("A&M"), where he primarily focused on tax planning and compliance for privately held businesses. During this time, he also served as the Interim Co-Head of Global Tax for A&M in 2020, managing the internal tax function across 65 offices and 5,000+ professionals in 25 countries, all while leading A&M's task force on the ERC from March 2020 through the end of 2021.

While at A&M, Kenny established himself as the leading tax expert on both the ERC and the Paycheck Protection Program (PPP) and concentrated primarily on helping institutionally owned businesses that were "sized out" of the PPP claim the ERC. Seeing an opportunity to assist small- and medium-sized businesses and nonprofit organizations claim COVID-relief funds, he left his position as partner at A&M to assume the CEO role at EZ-ERC.

Kenny holds a Bachelor's degree in Accounting and Master's degrees in Accounting and international business from the University of Florida. He is a licensed Certified Public Accountant and a member of the American Institute of Certified Public Accountants and the Forbes Business Council. Kenny has authored articles published by media outlets such as the Business Journals, Yahoo Finance, and Market Watch, and he frequently lectures on tax topics for the Tax Executives Institute (TEI), Bloomberg BNA, and other industry and tax organizations.



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Andrew Rubin Director, Tax Insurance Practice

Andrew is an experienced attorney and tax professional, spending over 8 years advising clients engaged in M&A transactions. Prior to joining WTW, Andrew spent nearly 5 years at Alvarez & Marsal as part of their global transaction tax team, assisting private equity firms and strategic buyers with planning and executing their acquisitions.

Andrew earned his Juris Doctor from St. John's University School of Law and also holds an M.B.A. (Accounting) from St. John's University. Andrew received his bachelor's degree in Accounting from University of Maryland. He is a member of the New York State Bar.

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Catch the Podcast with Ken and Andrew



with Eric L. Green
taxrepnetwork.com

Podcast Episode

141. ERC Enforcement by Tax Rep Network

Tax Rep Network with Eric Green

Jun 8 · 1 hr 2 min

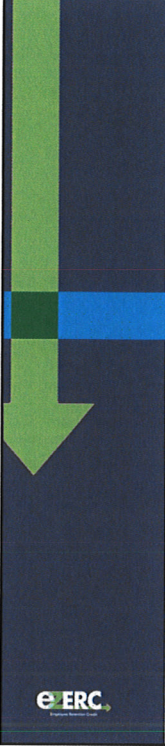


Episode Description

In this week's podcast Eric is joined by Kenny Dettman, CPA, Managing Director with EZ-ERC, and Andrew Rubin, JD, Director of Tax Insurance at WTW, to discuss the latest developments on ERC audits and related tax controversy issues surrounding COVID-19 related tax measures including the FFCRA, ERC, and Section 1202 deferrals. Additionally, Kenny and Andrew will discuss the role of "tax insurance" in mitigating the risks associated with filing and claiming the ERC, as well as explain how a tax insurance policy differs from a typical ERC providers' E&O policy.

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A QUICK "ERC 101"

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Eligibility

<p>TEST #1 Substantial Decline in Gross Receipts Test</p>	<p>Did your gross receipts decline by:</p>	<p>▶ 50%</p>	<p><i>Per quarter</i> comparing each quarter in 2020 to the same quarter in 2019?</p>
		<p>▶ 20%</p>	<p><i>Per quarter</i> comparing Q1, Q2 and Q3 of 2021 to the same quarter in 2019?</p>
<p>TEST #2 Partial Suspension of Operations Test</p>	<p>Was your company's ability to provide goods or services restricted or modified by a COVID executive order?</p>	<p>▶</p>	<p>If so, would your company have been able to provide 10% <i>in additional goods or services</i> if such COVID executive orders were never enacted?</p>

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How much can a company *claim*?

The maximum amount an employer can receive for any W2 employee is \$26,000.

Funds available per W2 employee are as follows:

TIME PERIOD	CREDITS AVAILABLE
March 13, 2020 – December 31, 2020	\$5,000 (50% of the first \$10,000 earned in the period)
Q1 2021	\$7,000 (70% of the first \$10,000 earned in the period)
Q2 2021	\$7,000 (70% of the first \$10,000 earned in the period)
Q3 2021	\$7,000 (70% of the first \$10,000 earned in the period)

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**IRS
SUBSTANTIATION**

e-ERC

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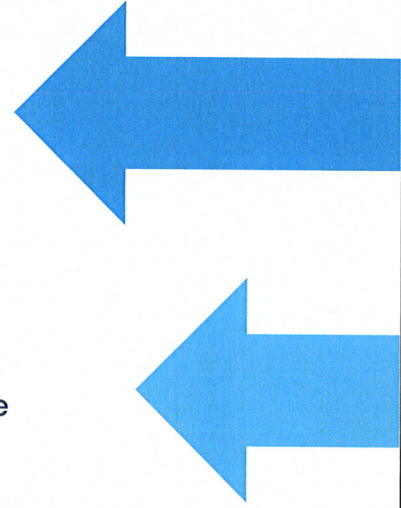
To Substantiate or Not to Substantiate? *That is the question...*

IRS Notice 2021-20:

“An eligible employer will adequately substantiate eligibility for the employee retention credit if the employer creates and maintains records...”

IRS Form 4564, Information Document Request:

“The following are items necessary to determine if you are eligible for the employee retention credit requested on Form 941-X and if it was computed correctly.”



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The “IDR”

Form 4564 (Rev. September 2008)	Department of the Treasury - Internal Revenue Service	Request Number 01
Information Document Request		
To:	Subject Form 941 - June 30, 2020	
	SAIN number	Submitted to Organization
	Date of Previous Request	None

Description of documents requested
We received your Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for refund*, for the quarter ended June 30, 2020, on November 2, 2020.

The following are items necessary to determine if you are eligible for the employee retention credit requested on Form 941-X and if it was computed correctly. The due date is listed at the bottom of the page. You may provide the records as documents or electronically on a flash drive. Do not send original documents, only legible copies. Questions that may arise from the information you provide will be addressed in a subsequent letter.

1. Workpapers that were used to prepare the Form 941-X.
2. Documentation that you are an eligible employer for purposes of the employee retention credit based on either significant decline in gross receipts or full or partial suspension of operations.
 - Significant decline in gross receipts
 - Records you used to determine that the organization experienced a significant decline in gross receipts from the same quarter in 2019.
 - Full or Partial Suspension of Operations
 - A copy of the governmental order which caused a full or partial suspension of your operations.
 - Records relied upon to determine whether more than a nominal portion of operations were suspended due to a governmental order or whether a governmental order had more than a nominal effect on business operations.
3. Documentation of the average number of full-time employees employed during 2020.

Form 4564 (Rev. September 2008)	Department of the Treasury - Internal Revenue Service	Request Number 01
Information Document Request		
To:	Subject Form 941 - June 30, 2020	
	SAIN number	Submitted to Organization
	Date of Previous Request	None

Description of documents requested
4. Documentation of the calculation of the employee retention credit.

- Records of which employees received qualified wages and in what amounts; and in the case of a larger employer, work records and documentation showing that wages were paid for time and employee was not providing services.
- Documentation to show how you determined the amount of allocable qualified health plan expenses.

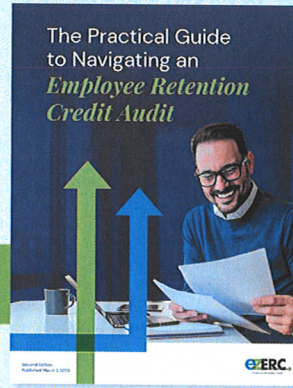
5. Are you a member of an aggregated group? If so, how did you determine you were a member of an aggregated group? How did the aggregation affect the determination and allocation of the credit?
6. Did you receive a PPP loan? If so, was any portion of the loan forgiven? Provide a copy of the documentation that shows PPP loan forgiveness that included payroll costs, such as the forgiveness application.

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The *Unofficial* Audit Guide

The Practical Guide to Navigating an *Employee Retention Credit Audit*

Key insights for ERC substantiation
and audit protection



<https://www.ez-erc.com/practical-guide/>

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“Partial Suspension” Substantiation

- 1 Establishing a well-defined and logical “more than nominal portion”
- 2 Identifying the COVID executive order(s) that effected the “more than nominal portion”
- 3 Evidencing a 10% quarter-over-quarter decrease in such KPI
- 4 Documenting the changes to the operations of the “more than nominal portion” that were required to adhere to the COVID executive order(s)
- 5 Establishing a logical and objectively-measurable KPI to measure the “more than nominal portion’s” ability to provide goods and/or services;

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ERC TAX INSURANCE



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What is *Tax Insurance* ?

"Tax liability insurance is designed to transfer a known, but uncertain tax risk arising in your transaction, fund or business to an insurers' balance sheet. The insurance indemnifies the policyholder for financial loss arising from a successful challenge from a tax authority, removing uncertainty around potential tax liabilities."

- WTW



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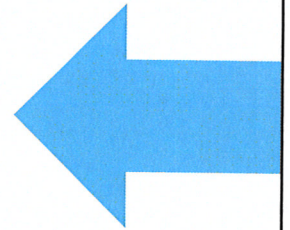
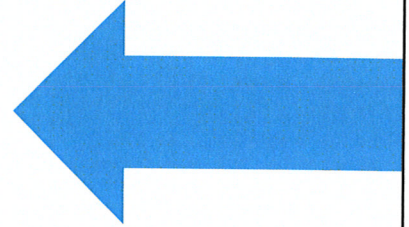
Why Tax Insurance ?

Forbes – “IRS Warns Of Employee Retention Credit Claim Fraud”

The Street – “Yet Another Tax Scam Is Making The Rounds, Warns IRS”

Bloomberg Tax – “IRS Warns Taxpayers on False Employee Retention Credit Claims”

Going Concern – “Utah Accounting Firm and Dudes Who Work There Busted For ERC Fraud”



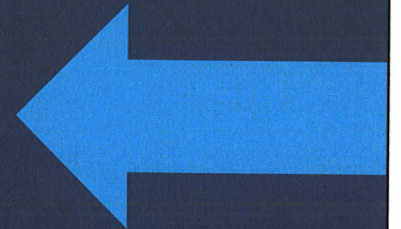
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TYPICAL PRICING

Premium: 3 to 10% of ERC

Underwriting Fee: \$25k – \$60k¹

Retention/Deductible: 5 to 6%¹

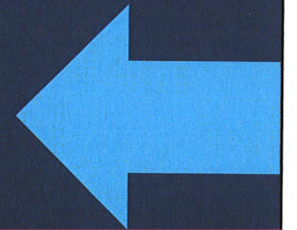


TYPICAL TIMING

Underwriting: 1 to 2 weeks

Binding: 1 to 2 weeks

Policy Period Coverage: 7 years



¹Potentially eliminated under “streamlined” tax insurance program offered through EZ-ERC / WTW

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Risks covered by a typical ERC tax insurance policy:

Covered Tax Position: "The insured is entitled to Employee Retention Credits"

<p>Partial Suspension</p> <p>Did the taxpayer meet and properly substantiate the existence of a "more than nominal portion" of their business?</p> <p>Did the taxpayer meet and properly substantiate "more than nominal effect"?</p>	<p>Aggregation/FTE Position</p> <p>Did the employer properly apply the controlled group rules under Sections 52(a), 52(b), 414(o), and 414(m)?</p>	<p>M&A Considerations</p> <p>How should the various ERC eligibility tests be applied when there is M&A over the life of the ERC (e.g., March 2020 – September 2021)</p>
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Who may be a good candidate for ERC Tax Insurance?

Employers with of larger credits (\$5M+)

Employers with untested Partial Suspension or Aggregation Positions

Employers seeking "advance funding"

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Who may *NOT* be a good candidate for ERC Tax Insurance?

Employer with smaller credits (<\$500k)

Employers with "Supply Chain Disruptions"

Employers that "self-claimed" or used ERC Mills

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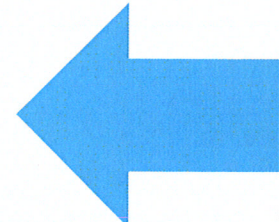
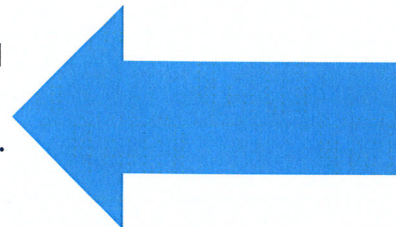
EZ-ERC & WTW "Tax Refund Guarantee"



EZ-ERC has partnered with WTW to develop a streamlined program to provide employer access to A+ rated tax liability with lower minimum coverage amounts/premiums.

Key Features:

- Available on total ERC between \$500k - \$5MM
- EZ-ERC "Eligibility Report" + tax opinion/analysis
- Customized pricing based on industry / eligible employer test used
- Possible to obtain with zero retention or underwriting fee (subject to industry)



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Case Studies

<p>Community Health Network (Various Counties, FL)</p> <ul style="list-style-type: none"> • \$7.3 million ERC • 300 FTEs (1,000 W2s) • Premium: \$390k • Retention: \$500k • Q1 2021 – Q2 2021 • Key Risks: PEO, MTNE testing in Aggregated Group, FTE County 	<p>In-Person Salon Services (Nationwide)</p> <ul style="list-style-type: none"> • \$50 million ERC • 7,500 FTEs • Premium: \$1.25MM • Retention: \$200k (contest only) • Q2 2020 – Q1 2021 • Key Risks: Large employer and wage base 	<p>Cabinet Refacing / Remodeling Company (Various, CA)</p> <ul style="list-style-type: none"> • \$7.0 million ERC • 370 FTEs • Premium: \$290k • Retention: \$100k (contest only) • Q1 2021 – Q2 2021 • Key Risks: Partial suspension and M&A post ERC claim
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<https://www.ez-erc.com/practical-guide/>

The Practical Guide to Navigating an **Employee Retention Credit Audit**

Key insights for ERC substantiation and audit protection

The Practical Guide to Navigating an *Employee Retention Credit Audit*

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Questions?

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