

AGGREGATION RULES CONTROLLED GROUPS

Controlled groups can claim the ERC, but special rules may impact eligibility.

Aggregation rules require members of a controlled group to calculate the ERC as a "single employer."

All entities that are members of a controlled group of corporations or trades or businesses under common control (under sections 52(a) or (b) of the Code), are treated as a single employer for purposes of applying the employee retention credit. As a result, employers required to be aggregated are treated as a single employer for purposes of the following rules applicable to the employee retention credit:

1. Determining whether the employer has a trade or business operation that was fully or partially suspended

If the operations of one member of the group are suspended by a governmental order, then all members of the group may be considered partially suspended

2. Determining whether the employer experiences a significant decline in gross receipts
3. Determining whether the employer averaged more than 100/500 full-time employees (FTE) in 2019

IRS Notice 2021-20:

"Under section 52(a), corporate taxpayers that are members of a controlled group of corporations are treated as a single employer. A controlled group of corporations may be either a parent-subsidary controlled group, a brother-sister controlled group, or a combined group of corporations. The section 52(b) aggregation rules apply to partnerships, trusts, estates, corporations, or sole proprietorships in trades or businesses under common control. Under this rule, entities are treated as a single employer if they are under common control applying rules similar to the parent subsidiary or brother sister controlled group rules or the rules for a combined group of corporations."

Parent-Subsidiary Controlled Groups:

One entity owns 50% or more of all entities

A parent-subsidiary controlled group of corporations is one or more chains of corporations where the common parent corporation owns more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the value of all classes of stock of each corporation.

Brother-Sister Controlled Groups:

5 or fewer people own at least 80% of each entity in the group with at least 50% voting power

A brother-sister controlled group of corporations is two or more corporations where (1) five or fewer persons who are individuals, estates, or trusts own at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of each corporation; and (2) the same five or fewer persons, taking into account ownership only to the extent that it is identical with respect to each corporation, own more than 50 percent of the total voting power of all classes of stock entitled to vote, or total value of shares of all classes of stock of each corporation.

Combined Groups of Corporations:

A combination of brother-sister and parent-subsidiary companies

A combined group of corporations is three or more corporations, each of which is a member of either a parent-subsidiary or a brother-sister controlled group, and at least one of which is both the common parent of a parent-subsidiary controlled group and also a member of a brother-sister controlled group.