

Employee Retention Credit – Voluntary Disclosure Program

As of December 28, 2023

As part of our commitment to keeping you informed about crucial developments in taxation, we wanted to bring your attention to an important announcement from the Internal Revenue Service (IRS) regarding the Employee Retention Credit (ERC).

Overview:

The IRS has initiated a Voluntary Disclosure Program to address and rectify erroneous or excessive ERC claims as a part of the IRS's broader efforts to combat ERC fraud. Criminal investigations and audits are intensifying, and the IRS continues to encourage businesses to use caution when applying for the ERC.

This program is designed to assist businesses that may have inadvertently claimed ERC funds and now wish to repay the amounts received in error. **The program runs through March 22, 2024, and offers a unique opportunity for eligible employers to repay 80% of the claimed amount.**

Key Points of the Voluntary Disclosure Program:

The newly launched program provides a path for businesses to correct ERC claims filed in error. Interested employers must apply by March 22, 2024, and those accepted into the program will be eligible to repay only 80% of the claimed amount.

Application Process: To participate in the Voluntary Disclosure Program, employers must apply by filing IRS Form 15434, available here at IRS website: [Form 15434](#).. The application must be submitted using the IRS Document Upload Tool.

Repayment Details: Employers accepted into the program are required to repay 80% of the claimed amount. If interest was paid on the ERC refund, it does not need to be repaid. Installment agreements may be considered on a case-by-case basis for those unable to repay the full amount.

Qualifications for Voluntary Disclosure Program:

To be eligible for the program, employers must meet certain criteria, including:

- Not under criminal investigation or notified of such.
- Not under an IRS employment tax examination for the relevant tax period.
- Not received an IRS notice and demand for repayment of part or all of the ERC.
- No information received from a third-party indicating noncompliance.

For detailed qualifications and program information, please refer to [Announcement 2024-3 on IRS.gov](#).

Next Steps to Apply:

- Employers interested in participating in the Voluntary Disclosure Program must apply by March 22, 2024.
- Applications are submitted using Form 15434 through the IRS Document Upload Tool.
- The IRS will review applications and contact employers to discuss the application and answer any questions.
- If approved, employers will receive a closing agreement and must repay 80% of the ERC claimed using the Electronic Federal Tax Payment System (EFTPS).

For more info, check out these links:

- [ERC Voluntary Disclosure Program](#)
- [Voluntary Disclosure Program Printable Guide](#)

Alternative Separate Withdrawal Option:

Employers with pending ERC claims are encouraged to consider a separate withdrawal program, allowing them to remove a pending claim with no interest or penalty. The IRS urges businesses to review their claims carefully, considering the eligibility criteria and consulting with tax professionals. The IRS has already received over \$100 million in withdrawals, and this option remains available **until at least the end of the year**.

Who can ask to withdraw an ERC claim:

You can use the ERC claim withdrawal process if all of the following apply:

- You made the claim on an adjusted employment tax return (Forms 941-X, 943-X, 944-X, CT-1X).
- You filed your adjusted return only to claim the ERC, and you made no other adjustments.
- You want to withdraw the entire amount of your ERC claim.
- The IRS has not paid your claim, or the IRS has paid your claim, but you haven't cashed or deposited the refund check.

Please note that if you willfully filed a fraudulent ERC claim, or if you assisted or conspired in such conduct, withdrawing a fraudulent claim will not exempt you from potential criminal investigation and prosecution.

How to request an ERC claim withdrawal:

You will follow different steps depending on your situation.

- You haven't received a refund and haven't been notified your claim is under audit
- You haven't received a refund and you've been notified your claim is under audit
- You received a refund check but haven't cashed or deposited it

If a professional payroll company filed your ERC claim, consult with them if you want to withdraw it. These companies may include certified professional employer organizations (CPEO), professional employer organizations (PEO) and IRC section 3504 agents. They handle clients' payroll and tax reporting duties, and often combine multiple employers' payroll in their IRS filings. If they batched your ERC claim with other clients, the payroll company must withdraw your claim.

For more info, check out the IRS website: [Separate Withdrawal Option](#)

We understand the complexity of navigating ERC claims, and we are here to assist you in ensuring compliance with the latest IRS initiatives. If you have any questions or concerns regarding the Voluntary Disclosure Program or other ERC-related matters, please do not hesitate to reach out to us.

Thank you for your attention, and we remain committed to providing you with the highest level of service.

Hickman and Leckrone, PLLC