



Regulatory Update

IRS Halts Processing of New Employee Retention Credit Claims



On September 14, 2023, the Internal Revenue Service (IRS) announced ([IR-2023-169](#)) an immediate moratorium on new Employee Retention Credit (ERC) claim processing until at least December 31, 2023. Existing ERC claims filed prior to September 14, 2023, will remain in process; however, the processing time will be significantly delayed. This delay may affect all amended employment tax returns, even if no ERC amount is claimed. The IRS news release announced new compliance measures and new options to be introduced in the coming months to withdraw or repay ERC claims.

Background

The ERC is a refundable tax credit originally enacted to mitigate the COVID-19 pandemic as part of the 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The credit was intended to enable employers to continue to pay employee wages despite government-ordered business shutdowns and travel restrictions or a significant decline in gross receipts during the eligibility periods. The ERC has specific eligibility requirements and may apply to qualified wages paid between March 13, 2020, through December 31, 2021, for some businesses. To be eligible, employers must have:

- Sustained a full or partial suspension of operations due to [orders from an appropriate governmental authority limiting commerce](#), travel or group meetings because of COVID-19 during 2020 or the first three quarters of 2021;
- Experienced a [significant decline in gross receipts during 2020](#) or a [decline in gross receipts during the first three quarters of 2021](#); or
- Qualified as a [recovery startup business](#) for the third or fourth quarters of 2021.

How the Processing Moratorium May Apply

- New ERC claims will be accepted, but will be held and processed in first-in, first-out order once processing resumes, which will not be before 2024.
- For existing ERC claims received prior to September 14, 2023, the standard processing goal of 90 days is extended to 180 days. Claims may take longer if further review or additional documentation is determined to be necessary.
- The IRS is adding resources to carefully review all ERC claims, including audits and potential criminal investigations, if claims are determined to be invalid.

Most unprocessed ERC claims were filed via amended paper Forms 941-X (there is no electronic version of Form 941-X). Because IRS systems cannot distinguish whether an amended Form 941-X includes an ERC claim, all amended Forms 941-X may be subject to delay during the moratorium, even if no ERC amount is claimed. The delay will not cause already filed claims to become invalid due to the statute of limitations for amending returns. The statute of limitations defines the time within which amendments must be filed (generally three years from the due date of a return). For example, the filing deadline for credit claims for 2020 would be 4/15/24 and the deadline for 2021 claims would be 4/15/25. This limitation will be based on the postmark or filed date of any claim.

IRS Commissioner Werfel emphasized that the IRS is concerned about harm to businesses that may be persuaded to file questionable claims by aggressive ERC promoters. The IRS release advises that the full amount of any improper claims must be repaid, even if a promoter collected a contingency fee of up to 25 percent of the ERC amount. Penalties and interest may also apply.

The IRS release also announced that a **settlement program** will be established in the future to facilitate repayment of improper ERC amounts received. If a business has already received an ERC amount that they believe is in error, the business will be able to repay the invalid ERC amounts, and the program will minimize any penalties or other compliance action.

In addition, the IRS will establish a **withdrawal option** for those who have filed an ERC claim, but the claim has not yet been processed and paid. The IRS will publish more details on the withdrawal option shortly.

Those considering filing a new ERC claim, returning a potentially improper claim or withdrawing an existing claim should review the program guidelines with a trusted tax professional. The IRS Notice included links to IRS guidance and tools to assist in determining eligibility for the ERC, as well as [frequently asked questions](#) and an eligibility [guide](#).

For more information, including warning signs of aggressive promoters and questionable ERC claims, please see www.irs.gov/erc and the IRS news release [IR-2023-169](#).

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP *Eye on Washington* Web page located at www.adp.com/regulatorynews.

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