

IRS Reopens Employee Retention Credit Voluntary Disclosure Program

By Chris Purnell, Partner and Tax Counsel

On August 15, 2024, the IRS [announced](#) that it has reopened its Employee Retention Credit (ERC) Voluntary Disclosure Program for organizations that want to repay the funds they received after filing ERC claims in error.

Organizations must apply by November 22, 2024. Those that the IRS accepts into the program will be able to repay ERC funds received for tax periods in 2021 at a 15% discount and avoid future audits, penalties, and interest. The program cannot be used to disclose and repay ERC funds from tax periods in 2020.

Note that the terms of the new program are different from the first Voluntary Disclosure Program, which was open from December 22, 2023, to March 22, 2024. That program provided a 20% discount on repayment of erroneous claims.

The IRS also said it plans to send up to 30,000 new letters to reverse or recapture potentially \$1 billion or more in erroneous ERC claims. If your organization filed an ERC claim and you are now wondering if it was accurate, we recommend working with a trusted tax professional to determine or confirm eligibility so you can decide whether to apply for the new disclosure program. **CapinCrouse can assist you with this process.**

Voluntary Disclosure Program Qualifications

Any organization that has already received ERC funds for a tax period in 2021 can apply for this second Voluntary Disclosure program if:

- The organization did not already apply to the first ERC Voluntary Disclosure Program for the same tax periods. (The IRS is still processing applications from the first program);
- The organization is not under criminal investigation;
- The organization is not under an IRS employment tax examination for the tax period for which it is applying to the Voluntary Disclosure Program;

- The organization has not received a Letter 6577-C, Employee Retention Credit (ERC) Recapture, or an IRS notice and demand for repayment of part or all of the claimed ERC;
- The organization has not already filed an amended return to eliminate its ERC; and
- The IRS has not received information from a third party or directly from an enforcement action that the taxpayer is not in compliance

How to Apply

To apply for the second ERC Voluntary Disclosure Program:

- File [Form 15434, Application for Employee Retention Credit Voluntary Disclosure Program](#), by November 22, 2024. The form must be submitted through the [IRS Document Upload Tool](#).
- If any advisors or tax preparers advised or assisted you with your ERC claim, you will be required to provide the IRS with their names, addresses, and phone numbers, along with details about the services provided.
- If your organization outsources your payroll to a third party that reports, collects, and pays employment taxes on your behalf using its Employer Identification Number rather than yours, the third party must file Form 15434. See the form and instructions for details.

After you submit your application, an IRS employee will contact your organization or your authorized representative to review it and answer any questions about the process.

If the IRS approves the application, it will mail you or your authorized representative a closing agreement, which you must sign and return within 10 days. (An extension may be available.) You will then be required to repay 85% of the ERC funds you received by using the IRS's [Electronic Federal Tax Payment System \(EFTPS\)](#).

Full payment should be made by the date provided in your closing agreement. After making the full payment, you must return the signed closing agreement to the IRS. Organizations that are unable to repay 85% of the ERC funds they received may be eligible for an installment agreement after submission and IRS review of [Form 433-B, Collection Information Statement for Businesses](#), and all required supporting documentation. However, these organizations will be required to pay penalties and interest as part of the installment agreement.

Also note that:

- If the IRS paid interest on your ERC refund claim, you will not be required to repay the interest.
- Because the settlement eliminates the organization's eligibility for or entitlement to all of the claimed ERC, or both, program participants are not required to reduce wage expense with respect to any of the ERC previously claimed.
 - Organizations that did not previously reduce wage expense by any of the claimed ERC do not need to file amended returns or Administrative Adjustment Requests (AARs) to reduce wage expense.
 - Organizations that did previously reduce wage expense by any of the claimed ERC should not reduce wage expense by any of the claimed ERC if they file an amended return or AAR adjusting the previous wage expense reduction.
- Pursuant to the settlement, organizations that participate in the program have no income with respect to the resolution of the employment tax obligation by remittance of payment of only 85% of the claimed ERC, including both the refundable and non-refundable portions.

The IRS provides additional details on the [Employee Retention Credit – Voluntary Disclosure Program](#) page of its website and in [these FAQs](#).

In addition, the IRS's [claim withdrawal program](#) is still available to organizations whose ERC claims haven't been paid yet. We provide more information about the withdrawal program [here](#).

Please [contact us](#) with questions about the ERC Voluntary Disclosure Program or the withdrawal process, or to learn [how we can assist you with the ERC](#). Our experienced nonprofit tax professionals understand the complexities of ERC claims and IRS audits, and we are here to help.

About the Author

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A licensed attorney, Chris advises exempt organizations of all sizes on a wide range of issues, including tax and employee benefit related matters, representation before state and federal tax authorities, and assistance with firm audit or advisory engagements to formulate advice and counsel on important operating and tax issues. Chris also assists clients with general tax issues, unrelated business income, charitable solicitation, and missionary employment structures. Prior to joining CapinCrouse in 2019, Chris served as the Executive Director of the Neighborhood Christian Legal Clinic, one of the nation's largest Christian legal aid organizations.

Note: Although licensed to practice law in Indiana, Chris's services through CapinCrouse do not involve the practice of law and consequently do not result in the creation of an attorney-client relationship.

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