

IRS Launches New Employee Retention Credit Voluntary Disclosure Program

By Chris Purnell, Partner and Tax Counsel

The IRS has [announced](#) a voluntary disclosure program for organizations that want to pay back the funds they received after filing Employee Retention Credit (ERC) claims in error, thereby avoiding potential interest, penalties, and litigation.

Organizations must apply by March 22, 2024, and those that the IRS accepts into the program will be required to repay only 80% of the credit they received, with no interest or penalties.

The IRS said it selected the 80% repayment amount because many ERC promoters charged a percentage fee and organizations that used these promoters did not receive the full amount of the credit.

“Our compliance activities involving these payments continue to accelerate, and the disclosure program’s 80% repayment figure is much more generous than later IRS action, which includes steeper costs and greater risk,” IRS Commissioner Danny Werfel said in the announcement.

Program Qualifications

Any organization that has claimed the ERC and received a credit or refund for it can apply for the ERC Voluntary Disclosure program if:

- The organization is not under criminal investigation and has not been notified that it is under criminal investigation by the IRS;
- The organization is not under an IRS employment tax examination for any tax period(s) for which it is applying to the ERC Voluntary Disclosure Program;

- The organization has not previously received an IRS notice and demand for repayment of part or all of the claimed ERC; and
- The IRS has not received information from a third party that the organization is in noncompliance, nor has the IRS acquired information directly related to the noncompliance from an enforcement action.

How to Apply

To apply for the ERC Voluntary Disclosure Program:

- File [Form 15434, Application for Employee Retention Credit Voluntary Disclosure Program](#), by March 22, 2024. This form and any required attachments must be submitted using the [IRS Document Upload Tool](#).
- If the tax periods for which you claimed the ERC include any tax periods ending in 2020, you must also submit a completed, signed ERC Voluntary Disclosure Program [Form SS-10, Consent to Extend the Time to Assess Employment Taxes](#), for the 2020 tax periods.
- 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.

Organizations must apply by March 22, 2024, and those that the IRS accepts into the program will be required to repay only 80% of the credit they received.

After the application is submitted, an IRS employee will contact your organization to review the application and answer any questions you may have about the process.

If the IRS approves the application, they will mail you a closing agreement, which you must sign and return within 10 days. (An extension may be available.) You will then be required to repay 80% of the ERC you received by using the IRS's [Electronic Federal Tax Payment System \(EFTPS\)](#) and selecting the "Advanced Payment" category. You should make separate payments for each tax period to ensure the payments are credited correctly.

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.

Also note that:

- If the IRS paid interest on your ERC refund claim, you will not be required to repay the interest.
- Organizations that are unable to repay 80% of the funds they received may be eligible for an installment agreement after submission and 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.
- 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 80% of the claimed ERC, including both the refundable and non-refundable portions.

Additional information about the program qualifications, terms, and other details are available in [IRS Announcement 2024-3](#) and these [Frequently Asked Questions](#).

Additional ERC Updates

In October 2023, the IRS announced a different "withdrawal" process for organizations that have applied for the ERC but have not yet received the funds, or have received a check but have not deposited or cashed it. The agency has not yet announced an end date for this withdrawal process, which it originally said would be in place through at least the end of 2023. More than \$100 million in ERC claims had been withdrawn from pending applicants by early December 2023.

The IRS also reported that it is sending up to 20,000 letters with proposed tax adjustments to recapture ERC funds claimed in error. These letters are currently for tax year 2020, and the IRS said that work continues for tax year 2021, with additional mailings planned. This latest batch of 20,000 letters is in addition to the 20,000 ERC disallowance letters the IRS [announced in December 2023](#).

In addition, the IRS said it would provide an update "in the new year" on the status of the [ERC processing moratorium](#) that began in September 2023. At that time, the IRS said the moratorium would be in place through at least December 31, 2023.

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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