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TAXES

IRS Temporarily Stops Employee Retention Credit Processing

A rash of bogus ERC claims in recent months has prompted the IRS to put the program on hold through at least the end of 2023.

Jason Bramwell • Sep. 14, 2023



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A rash of bogus employee retention credit (ERC) claims in recent months has prompted the IRS to put the program on hold through at least Dec. 31.

IRS Commissioner Danny Werfel ordered the immediate moratorium today and said the agency “could no longer tolerate growing evidence of questionable claims pouring in.”



Danny Werfel

“The IRS is increasingly alarmed about honest small business owners being scammed by unscrupulous actors,” he said in a press release. “The further we get from the pandemic, the further we see the good intentions of this important program abused. The continued aggressive marketing of these schemes is harming well-meaning businesses and delaying the payment of legitimate claims, which makes it harder to run the rest of the tax system. This harms all taxpayers, not just ERC applicants.”

The refundable tax credit, which was authorized by the \$2.2 trillion coronavirus package known as the Cares Act, aimed to motivate employers to keep workers on staff during the early days of the pandemic as unemployment rates surged. The IRS has received more than 3.5 million employee retention credit claims since the program was enacted.

But a good chunk of those ERC claims have been fraudulent, forcing the IRS in May to [alert business owners about ERC scams](#) from marketing ne'er-do-wells. Calling it a “barrage of aggressive broadcast advertising, direct mail solicitations, and online promotions,” the IRS said ETC promoters are “wildly misrepresenting and exaggerating who can qualify for the credits.”

On July 26, the [agency announced](#) it was increasingly shifting its focus to review these claims for compliance concerns, including intensifying audit work and criminal investigations on promoters and businesses filing dubious claims. The IRS

said on Thursday that the agency is working on hundreds of criminal cases, and thousands of ERC claims have been referred for audit.

As part of the wider compliance effort, the IRS said it is working with the Justice Department to address fraud in the ERC program, as well as promoters who have been ignoring the rules and pushing businesses to apply for the tax credit. Promoters are able to take advantage of “There’s still time” and “See if you qualify” promotions to lure small business owners into filing ERC claims.

The IRS said it has auditors who were trained to examine ERC claims that pose the greatest risk, and the agency’s Criminal Investigation (IRS-CI) division is actively working to identify promoters of fraudulent claims for potential referral for prosecution to the Justice Department.

Former IRS Commissioner Mark Everson, currently vice chairman of tax consulting firm Alliantgroup, said he fully supports Werfel’s decision to temporarily suspend the ERC program.

“[Alliantgroup has] helped thousands of taxpayers claim this important benefit. That said, we have also screened out thousands of potential claimants who don’t qualify for the employee retention credit. In too many instances other so-called experts have then stepped in and assisted them in securing monies from the government under the flimsiest of justifications. This dynamic is damaging the tax community,” he said in a statement.

In the meantime, the IRS is still working on previously filed ERC claims received prior to the moratorium and payouts will continue—but at a slower pace due to the more in-depth compliance reviews, the agency noted.

“With the stricter compliance reviews in place during this period, existing ERC claims will go from a standard processing goal of 90 days to 180 days—and much longer if the claim faces further review or audit,” said the IRS, which added it may also seek additional documentation from businesses to ensure their claims are legit.

This enhanced compliance review of existing claims submitted before the moratorium is critical to protect against fraud but also to protect the businesses from facing penalties or interest payments stemming from bad claims pushed by promoters, Werfel said on Thursday.

“For those people being pressured by promoters to apply for the employee retention credit, I urge them to immediately pause and review their situation while we look to

add new protections and safeguards to stop bad claims from ever coming in,” he said. “Businesses should seek out a trusted tax professional who actually understands the complex ERC rules, not a promoter or marketer hustling to get a hefty contingency fee. Businesses that receive ERC payments improperly face the daunting prospect of paying those back, so we urge the utmost caution. The moratorium will help protect taxpayers by adding a new safety net onto this program to focus on fraudulent claims and scammers taking advantage of honest taxpayers.”

Plans to help victimized businesses

The IRS said it is developing new initiatives to help businesses who found themselves victims of aggressive promoters. This includes a settlement program for repayments for those that received an improper ERC payment. More information about the settlement program will be released this fall.

In addition, the IRS said it is finalizing details that will be available soon for a special withdrawal option for those businesses that have filed an ERC claim but the claim has not been processed. This option—which can be used by businesses whose claim has not yet been paid—will allow small business owners who were misled by promoters to avoid possible repayment issues and paying promoters contingency fees. Filers of these more than 600,000 claims awaiting processing will have this option available, according to the IRS. The agency also noted that those who have willfully filed fraudulent claims or conspired to do so should know that withdrawing a fraudulent claim will not exempt them from potential criminal investigation and prosecution.

To date, IRS-CI has uncovered suspected pandemic fraud totaling more than \$8 billion. As of July 31, IRS-CI has initiated 252 investigations involving more than \$2.8 billion of potentially fraudulent ERC claims. Of those, 15 of the 252 investigations have resulted in federal charges. Of the 15 federally charged cases, six have resulted in convictions and four of those cases have reached the sentencing phase with the average sentence being 21 months, according to the IRS.

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