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Employee Retention Credit guidelines to avoid future compliance action for improper claims.

Isaac M. O'Bannon • Mar. 15, 2024



The Internal Revenue Service has renewed its message for businesses to review the [Employee Retention Credit](#) guidelines to avoid future compliance action for improper claims.

Amid aggressive marketing that misled many businesses into filing claims for ERC,

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encountered a high-pressure push to apply for these credits. Taking action now will avoid potentially hefty penalties and interest if the IRS takes action later. The deals available now are good, and the cost and risk for bad claims will sharply escalate over time.”

Employers who improperly claimed ERC can avoid penalties and interest – and even get a discount on repayments if they apply by March 22, 2024, to the ERC Voluntary Disclosure Program. The IRS also offers a special claim withdrawal process for businesses whose claim is still pending. Taking steps now to resolve these issues can help businesses get right and avoid future IRS actions.

The IRS is urging this review because some ERC promoters shared misleading information or misrepresented eligibility rules and lured businesses to apply for the ERC when they didn't qualify. Some promoter groups may have called the credit by another name, such as a grant, business stimulus payment, government relief or other names, so even if the terms Employee Retention Credit and Employee Retention Tax Credit don't sound familiar, businesses should still review their records.

The IRS has two programs to voluntarily resolve improper claims and reduce costs and follow-up steps for businesses who fell for misinformation and aggressive marketing about the ERC.

- The ERC [Voluntary Disclosure Program](#), available through March 22, 2024, is for employers who need to repay ERC they received by December 21, 2023, either as a refund or as a credit on a tax return. This option lets a taxpayer repay the incorrect ERC, minus 20 percent, for any tax period they weren't eligible for ERC. Generally, businesses who enter this program don't have to amend other returns affected by the incorrect ERC and don't have to repay interest they received from the IRS on an ERC refund.

- Businesses should quickly pursue the [claim withdrawal process](#) if they need to ask

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received ERC. The taxpayer also may need to amend related returns. The IRS is required to use a variety of collection tools to recapture incorrect ERC payments or credits.

“We have good solutions for taxpayers to do the right thing now and avoid hassles and expenses for themselves later – but March 22 is rapidly approaching,” Werfel said. “The domino effect of an incorrect claim can cost a business valuable time, energy and money down the road. We urge businesses to talk to a trusted tax professional and review their situation.”

Under the ERC Voluntary Disclosure Program, a business that incorrectly claimed and received \$50,000 for a tax period when it wasn't entitled to ERC would need to repay only \$40,000 after the program's 20% discount – and no penalties or interest if the taxpayer pays the amount in full.

Alternatively, if the business doesn't apply to the VDP and the IRS identifies an incorrect claim, the business would owe \$50,000, and might also owe penalties and interest computed from the date the business received the ERC. For some, this was two to three years ago. Interest [compounds daily](#) and the failure-to-pay penalty accrues monthly and can build to 25%. Other [penalties](#) could apply to certain situations. So that's \$50,000 – plus possibly penalties and compounding interest, which is far more costly compared to the voluntary options available. A business in this situation may also need to amend related returns, which can add more cost.

Some promoters told taxpayers every employer qualifies for ERC. The IRS and the tax professional community emphasize that this is not true. Eligibility depends on specific facts and circumstances. The IRS has dozens of resources to help people learn about and check ERC eligibility and businesses can also consult their [trusted tax professional](#). Key IRS materials include:

- [ERC Eligibility Checklist](#) (interactive version and a [printable guide](#)PDF) includes

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Taxpayers who can't pay the full amount of ERC, minus 20%, by the time they return their signed closing agreement can still apply to the ERC Voluntary Disclosure Program and request an [Installment Agreement](#) to pay over time. Businesses who need an installment plan need to submit [Form 433-B, Collection Information Statement for Businesses](#)PDF with their VDP application by March 22 along with any required documents to support it. They also may need a signed [Form 2750, Waiver Extending Statutory Period for Assessment of Trust Fund Recovery Penalty](#)PDF. See [Payment options for accepted ERC-VDP applications](#) for details.

If a taxpayer is unable to pay the full amount of ERC, minus 20%, then an IRS collection team member will be assigned the case after the closing agreement is executed and will look to offer a resolution that fits the taxpayer's current financial condition and ability to pay.

Under an Installment Agreement, the business must make monthly payments. Interest and penalties that normally apply to a tax liability will apply starting from the ERC Voluntary Disclosure Program closing agreement date. This date, however, is better for businesses than an agreement outside of the ERC Voluntary Disclosure Program where the penalties and interest date back to when the business received the incorrect ERC.

Taxes

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