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IRS Announces Withdrawal Process for Employee Retention Credit Claims

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On October 19, 2023, the IRS announced (IR-2023-193) a withdrawal process for Employee Retention Credit (ERC) claims. The ERC withdrawal procedure follows an earlier IRS announcement (2023-169) on September 14, 2023, of an immediate moratorium on processing new ERC claims and increased scrutiny of pending ERC claims. These recent developments stem from IRS concerns about a flood of improper ERC claims being submitted by ineligible businesses that have been misled by aggressive promoters. The IRS moratorium is described in further detail in this September 2023 client alert.

Under the ERC claim withdrawal process, certain employers that submitted an ERC claim – but have not yet had the claim processed or received a refund (including where the IRS has paid the claim, but the refund check has not been cashed or deposited) – may withdraw their submission and avoid penalties, interest, and issues with repayment of the ERC. The claim withdrawal process is intended to help businesses that were misled by aggressive promoters into submitting invalid ERC claims. Withdrawing a willfully filed fraudulent ERC claim, however, will not insulate a business from potential criminal investigation and prosecution.

To be eligible for the ERC claim withdrawal process, an employer must meet **all** of the following requirements:

- The employer submitted the ERC claim on an adjusted employment return (IRS Forms 941-X, 943-X, 944-X and CT-1X).
- The employer filed the adjusted employment return only to claim the ERC and made no other adjustments.
- The employer withdraws the entire amount of the ERC claim.
- The IRS has not paid the ERC claim or, if the IRS has paid the ERC claim, the employer has not cashed or deposited the refund check.

The specific procedure for withdrawing an ERC claim depends on an employer's situation, including whether the employer's claim is under audit. If an employer used a professional payroll company to file an ERC claim, the payroll company may need to withdraw the claim, depending on whether the claim was submitted individually or batched with others.

Employers that are not eligible for the ERC claim withdrawal process may amend their adjusted employment return in accordance with the guidance issued by the IRS on its ERC frequently asked questions page.

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