

IRS Announces Voluntary Disclosure Program for Erroneously Received Employee Retention Credits

December 28, 2023

Key takeaways

- The IRS has announced a voluntary disclosure program for businesses to return money received after filing erroneous Employee Retention Credit (ERC) claims.
- The program may allow employers to avoid civil litigation, penalties and interest with respect to improper ERC claims.
- To participate in the ERC voluntary disclosure program, an employer must meet several eligibility requirements and apply by March 22, 2024.

On December 21, 2023, the [IRS announced](#) (IR-2023-247) a [voluntary disclosure program](#) for employers to return payments received in respect of erroneously submitted ERC claims. The IRS also provided a list of [frequently asked questions](#) to help employers understand the program.

To be eligible for the ERC voluntary disclosure program, an employer must meet **all** the following requirements:

- The employer is not under criminal investigation and has not been notified that the IRS intends to commence a criminal investigation.
- The IRS has not received information from a third party alerting the IRS to the employer's noncompliance, nor has the IRS acquired information directly related to the employer's noncompliance from an enforcement action.
- The employer is not under an employment tax examination by the IRS for any tax period(s) for which the employer is applying to the ERC voluntary disclosure program.
- The employer has not previously received notice and demand for repayment of any part of the erroneously received ERC.

To apply for the ERC voluntary disclosure program, an eligible employer must complete and submit [IRS Form 15434](#), under penalties of perjury, on or before March 22, 2024. If accepted into the program, the employer must, among other things, enter into a closing agreement with the IRS, repay 80% of the erroneously received ERC and, if a tax return preparer or adviser was involved in the ERC claim, disclose the name, address, and phone number of the preparer or adviser, as well as describe the services provided by such preparer or adviser. An employer that fully repays 80% of the ERC before entering into the closing agreement will not be subject to penalties or interest. Additional rules apply if the ERC was claimed through a third-party payer, such as a professional employer organization, using the third-party payer's employer identification number.

The ERC voluntary disclosure program is the latest in a series of IRS initiatives to combat improper ERC claims submitted by ineligible businesses that were misled by aggressive promoters. Previously, the IRS [imposed a moratorium](#) on processing new ERC claims, then [announced a process for withdrawing](#) pending ERC claims that have not yet been paid. The moratorium and withdrawal process are described in further detail in [our September 2023 client alert](#) and [our October 2023 client alert](#), respectively. **Note:** Acceptance into the ERC voluntary disclosure program and/or withdrawal of pending ERC claims does not shield an employer from potential criminal investigation and prosecution for willfully filed fraudulent ERC claims.

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