

IRS Considerations for Claiming the Employee Retention Credit

By Christopher Migliaccio, JD, Principal and Elisha M. Brestovansky, CPA, MBA, Senior Manager

The Employee Retention Credit (ERC) is still a hot topic among businesses and accountants. The ERC has been around for over two years now and is still a potentially huge benefit for businesses that struggled through the pandemic and for those businesses that are currently experiencing challenges because of rising rates of inflation.

But, with the incentive high to claim the ERC, confusion around IRS guidance about qualification for the credit and very little documentation needed to claim a refund, the IRS has begun taking action. Recently, the IRS has implemented a few safeguards and procedures as a result of the American Institute of Certified Public Accountants (AICPA) advocacy to ensure that only eligible businesses may claim the ERC. Read on for the details.

Notification and Reporting for ERC Credit Mills

While the ERC provides benefits to businesses, there is also a great benefit (and money-making potential) for credit mills to prey on businesses that have been challenged by the pandemic and current economic environment. Businesses may have heard ploys by these credit mills via emails and advertisements that may include phrases such as “Your business may be entitled to payroll credits of \$26,000 per employee – contact us to find out how.”

The issue with these companies is that determinations of eligibility frequently do not conform to IRS guidance on qualification for the credit. Further, the calculations of the ERC lack coordination with other federal benefits that cannot be used in conjunction with the ERC (i.e., PPP Loan Forgiveness Wages, FFCRA Wages, etc.). A previously published article discusses [ERC qualification](#). We've seen the IRS in review stand by the requirements of their guidance and ask to show details of how an ERC claim does not double dip with other federal pandemic era benefits.

In addition, these companies may also be charging upfront fees or fees charged based on a percentage of the ERC refund and not informing the taxpayer of their tax reporting requirements – that income tax returns for the year to which the ERC wages relate must be amended to reflect the credit taken.

The IRS has acknowledged the existence of these predatory credit mills and has created forms for reporting illegal activities relating to the ERC and also for IRS-related phishing attempts. More information on fraudulent reporting can be found under the IRS News Release [IR-2022-183](#).

Additional Claim Processing

ERC claims that were processed early on did not appear to be subject to additional scrutiny from the IRS, although the IRS was still very slow to provide refunds – especially once the number of claims began to accelerate. However, as a result of fraudulent claims relating to ERC credit mills, the IRS has implemented additional processes for ERC refund claims that are over a certain dollar amount. While the IRS has not publicly confirmed these amounts, our team members have been told by numerous IRS representatives that the dollar threshold for additional processing is \$100,000. So, if a business has an ERC refund claim over \$100,000 and the claim is still processing, the claim has most likely entered an additional processing queue – which may take upwards of six months (at minimum) to be released.

ERC Audits

Now that shutdowns are behind us, the IRS has started to audit businesses once again – and ERC audits have also begun. It is extremely important that businesses maintain proper records showing eligibility for the credit and substantiation for the calculation of the ERC including:

- A copy of the ERC calculation and paid sick and family leave for eligible quarters;
- A listing of employees, dates and amounts for those who were paid sick and family leave and were eligible for the ERC;
- Copies of paid sick and family leave required statements provided by employees for the requested leave, written support and statement that the employees are unable to work for the COVID-19 related reason;
- Copies of documentation to show how qualified health plan expenses were allocated to wages;
- Copies of PPP Loan Forgiveness Applications and Forgiveness Letters;
- Documentation that operations were fully or partially suspended due to governmental orders;
- Copies of income tax returns, employment tax returns and W-2s for related entities if the taxpayer is part of an aggregated group; and
- Copies of W-2s, Form 941s and Form 941-X filings.

As mentioned previously, the above list is just a sampling of documents needed to substantiate ERC claims. Additional items may be required. Ultimately, the onus is on the business to provide adequate documentation in support of the ERC.

Contact Us

PKF O'Connor Davies has helped hundreds of companies across a number of industries determine their ERC qualification, calculate their credit and help them file amended payroll tax returns.

If you have questions about the employee retention credit, contact your client service partner or:

[Christopher Migliaccio](#)

Principal

ERC Services Leader

cmigliaccio@pkfod.com

[Elisha M Brestovansky](#), CPA, MBA

Senior Tax Manager

ebrestovansky@pkfod.com

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