

## IRS Pauses Processing New ERC Claims, Plans Program for Businesses to Address Improper Claims

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On Thursday, September 14<sup>th</sup>, 2023, the IRS indicated major changes to its processing of the Employee Retention Credit (ERC) effective immediately. In [IR-2023-169](#), the IRS announced that it will stop processing new amended payroll tax returns with ERC claims until “at least” the beginning of 2024 and slow the processing of claims currently in process.

The IRS also promised new programs for taxpayers to withdraw unprocessed claims or settle previously processed claims that the taxpayer now believes were made in error. It also reiterated prior stern warnings about the use of ERC “mills” promoting qualification for businesses at odds with IRS eligibility guidance. Read on for more details of this significant ERC news.

### ERC Background and History

The ERC is a payroll tax credit created as part of the CARES Act in 2020, but still in application because it's available by means of amended payroll tax returns. Wages in time periods in both 2020 and 2021 are potentially eligible; amended payroll tax returns can be filed until April 15, 2024 for 2020 quarters and April 15, 2025 for 2021 quarters.

We've written about the value ERC can provide for businesses that [qualify](#), but also about [common misconceptions](#) about who qualifies. The IRS describes the ERC as an “incredibly complex” credit. Many ERC service businesses have sprung up telling taxpayers that it's actually not complex and nearly all businesses qualify; and offering to do the filing in exchange for a percentage of the total credit. This has caused many improper claims to be filed. Further, many ERC service businesses do not inform clients that income tax returns also need to be amended to reflect the credit, which could result in additional income tax liabilities.

*“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.” – IRS Commissioner Danny Werfel*

The IRS release explains their action is based on the trend it is seeing in recent ERC claims made. As a result of unscrupulous promoters, the IRS believes that up to 95% of recent ERC claims may be ineligible. The IRS has made [prior statements](#) about aggressive ERC practices, particularly as it relates to claims based on [supply chain disruptions](#).

There is also IRS concern about small businesses being charged contingent fees that they will not be able to recover after unsuccessful audits. The IRS also noted in their recent release that hundreds of criminal cases are being pursued. The IRS announced other steps, including a more proactive attempt to combat the ERC mills.

### Moratorium on New Claims

IRS Commissioner Werfel's announcement indicated that beginning September 14, 2023, a moratorium would be placed on processing new claims until “at least the end of the year.”

**PKFOD Observation:** Note that this does not change the deadline for filing claims for ERC refunds, based on the statute of limitations for amending payroll tax returns. It simply means that the IRS will **delay** processing any returns received between now and the end of 2023. For ERC claims relating to

2020 quarters, the April 15, 2024 deadline continues approaching. Further, the deadline to amend 2020 income tax returns to reflect the ERC – which will generally be sometime in 2024 based on when the return was filed – should also be considered.

For those claims currently in process, the IRS indicates that it will continue to work through those returns, with additional review being implemented before credits are processed. This will include, for some, a request for additional documentation before the ERC is processed – a change from the prior IRS procedures in which the credit was processed and questions came only on audit.

The IRS said expected refund time will increase from 90 days to 180 days. While this announced increase in processing time is notable, we have already seen processing frequently take longer than six months – sometimes over a year.

### **Withdrawal and Settlement Programs**

The IRS also indicated that it would soon be opening two separate programs for taxpayers who believe they may have filed incorrect claims.

- First, for taxpayers whose claims have not yet been processed, the IRS will announce a program allowing the taxpayer to withdraw the claim.
- For taxpayers who have already received their ERC refund, the IRS will implement a program allowing repayment of improper claims. No further details were provided regarding whether the program would allow the abatement of penalties and/or interest related to the amounts received.

**PKFOD Observation:** By providing a process for taxpayers to get back into compliance, these programs likely will be welcome updates for taxpayers who believe they may have been scammed by ERC mills.

### **What Should I Do Now?**

If you have an ERC claim in process and have worked with a provider you trust, who has documented your organization's qualification, sit tight – the only concern here is longer wait times.

On the other hand, if you worked with a company that has not provided detailed information – for example, claiming you qualify based on a government shutdown but unable to point to the government order that specifically suspended your operations – you should review your eligibility and credit calculation with a trusted tax advisor. The IRS also provided a helpful [checklist](#) for ERC eligibility.

If you have not yet applied for the ERC but believe you may be eligible, there is still time to claim the ERC. Determinations of qualification should not necessarily wait for the lifting of the moratorium, which, at the earliest, will be only three and one-half months before the deadline for filing 2020 claims. But it's important to understand how and why you qualify, particularly if you are relying on qualification via a government order.

### **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:

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