



**Communications & Liaison
Stakeholder Liaison**

Employee Retention Credit

Richard Furlong, Jr.
Senior Stakeholder Liaison

**47th Annual Delaware Federal and State Tax Institute
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Beware of ERC Schemes

**IRS urges businesses to
beware of third parties
promoting improper
claims of the Employee
Retention Credit**





Employee Retention Credit

March 13, 2020, through December 31, 2020

A fully refundable tax credit for employers equal to 50% of qualified wages (including certain health plan expenses) that eligible employers pay their employees.

January 1, 2021, through December 31, 2021

A fully refundable tax credit for employers equal to 70% of qualified wages (including certain health plan expenses) that eligible employers pay their employees.



Eligible Employer – Part 1

March 13, 2020, through December 31, 2020

Any employer who operated a trade, business, or a tax-exempt organization, but not governments, their agencies, and instrumentalities.

January 1, 2021, through December 31, 2021

Same as 2020 and expanded to include certain tax-exempt governmental employers which are 501(c)(1) organizations, colleges, universities, or entities whose principal purpose is to provide hospital/medical care.



Eligible Employer – Part 2 Suspension Test

March 13, 2020, through December 31, 2020

Employer who experienced full or partial suspension of operations due to government order due to COVID-19 during any quarter.

January 1, 2021, through September 30, 2021

Employer who experienced full or partial suspension of operations due to government order due to COVID-19 during any quarter.



Eligible Employer – Part 2 Gross Receipts Test

March 13, 2020, through December 31, 2020

Begins when employers experienced a decline in gross receipts by more than 50% compared to gross receipts in the same quarter in 2019; ends with the quarter after the quarter in which the decline in gross receipts was less than 20% of the gross receipts in the same quarter in 2019.

January 1, 2021, through September 30, 2021

Employers who experienced a decline in gross receipts by more than 20%-compared to gross receipts in the same quarter in 2019 or allowable alternative lookback period; determined on a quarter-by-quarter basis.



Qualified Wages are wages paid to ...

March 13, 2020, through December 31, 2020

- (1) 100 or fewer average full-time employees in 2019, regardless of whether they provided services, or
- (2) More than 100 average full-time employees in 2019, who didn't provide services.

January 1, 2021, through September 30, 2021

- (1) 500 or fewer average full-time employees in 2019, regardless of whether they provided services, or
- (2) More than 500 average full-time employees in 2019, who didn't provide services.



Credit Amounts & Maximums

March 13, 2020, through December 31, 2020

50% of qualified wages
(up to \$10,000 per
employee for the year
including certain health
care expenses)

Maximum credit of
\$5,000 per employee in
2020

January 1, 2021, through September 30, 2021

70% of qualified wages
(up to \$10,000 per
employee per calendar
quarter including
certain health care
expenses)

Maximum credit of
\$7,000 per employee
per quarter in 2021



Special Rules for ...

Recovery Startup Businesses

- Eligible for 3rd and 4th quarters of 2021 only
- Business began after February 15, 2020
- Credit limited to \$50,000 per quarter

Severely Financially Distressed Employers

- Eligible for 3rd quarter of 2021 only
- Gross receipts declined by more than 90% compared to gross receipts in the same quarter in 2019 (or use prior quarter method)
- Can claim the ERC on all wages paid regardless of employer size



Claiming the ERC

- Report qualified wages and credits for each qualifying calendar quarter on an adjusted federal employment tax return.
- Tax credit may be claimed against the employer share of Social Security tax for wages paid 3/13/2020 – 6/30/2021 and against employer share of Medicare tax for wages paid 7/1/2021-12/31/2021.
- Tax credit is refundable.



Please note . . .

- For the 4th Quarter of 2021, only a Recovery Startup Business can claim the Employee Retention Credit.
- Self-employed individuals are not eligible for their own services and earnings – only for their employees' qualified wages.
- Household Employers are not eligible with respect to their household employees.
- Taxpayers must reduce the wage deductions they claimed on the business' federal income tax return by the amount of the credit.
- Wages used to claim other federal tax credits or considered payroll costs for other federal programs may not be used to calculate the credit.
 - For example, employers who received a Paycheck Protection Program (PPP) loan may be eligible to claim the ERC in 2020 as well as 2021, but not for the same wages.



ERC Schemes

Warning Signs to Watch out for ...

- Unsolicited calls or advertisements mentioning an “easy application process”
- Promoters that obtain clients through a large number of “agents” or a “referral partner network”
- Statements that the promoter can determine ERC eligibility within minutes
- Large upfront fees to claim the credit
- Fees based on a percentage of the refund amount
- Broad possibilities that a business qualifies before any discussion of details
- Suggestions to submit the claim because there is nothing to lose



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Employee Retention Credit

Latest information on the Moratorium
and Options for Withdrawing or
Correcting Previously Filed Claims

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Presentation Objectives

- Understand the moratorium on ERC claims and how it affects taxpayers
- Learn *who* can withdraw ERC claims and *how*
- Understand how promoters scam businesses into claiming false ERC claims
- Learn about ERC resources from the IRS





Beware of ERC Schemes

**IRS urges businesses to
beware of third parties
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claims of the Employee
Retention Credit**





**A moratorium on new
Employee Retention Credit
claims will allow the IRS to better
protect the public from scams.**





What to expect as IRS works to address questionable ERC claims

- Those currently awaiting an ERC claim filed before the moratorium should expect extended processing times.
- Those currently awaiting an ERC claim filed on or after September 14 moratorium: We aren't processing these new claims.
- Those who haven't filed a claim yet: Consider carefully reviewing the guidelines and waiting to file.





Employee Retention Credit Eligibility Checklist

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Employee Retention Credit Eligibility Checklist: Help understanding this complex credit

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On this page

- Part A: Check your eligibility
- Part B: Claim the ERC if you're eligible
- Part C: Resolve an improper ERC claim

The [Employee Retention Credit \(ERC or ERTC\)](#) is a complex tax credit for businesses and tax-exempt organizations that kept paying employees during the COVID-19 pandemic either when they were shut down due to a government order or when they had a significant decline in gross receipts during certain eligibility periods in 2020 and 2021.

The IRS continues to see aggressive marketing that lures ineligible taxpayers to claim the ERC. While the credit is real, many promoters are aggressively misrepresenting who can qualify for the credits. In many instances, the IRS is seeing businesses and organizations being misled by promoters into thinking they're eligible when they are not.

As a reminder, anyone who improperly claims the ERC must pay it back, possibly with penalties and interest. To help taxpayers avoid this, we prepared this question-and-answer checklist to help you figure out if you may be eligible for the credit. Use this checklist if you are considering claiming the credit or have already submitted a claim to the IRS.

The IRS is committed to helping taxpayers while preventing improper ERC claims and fraud. Always check [IRS.gov](#) for the latest information, including recordkeeping requirements.

Part A: Check your eligibility

This checklist can help you quickly decide if a business or other organization may qualify for the Employee Retention Credit. This is a very technical area of the law, but this checklist includes the main eligibility factors. Answer these questions in numerical order to see if you may be eligible to claim the ERC.

ERC Eligibility Checklist

Question 1

Did you have employees and pay wages to them between March 13, 2020, and December 31, 2021?

For more info, see [IRS.gov/ercqualified](#)

Yes
No



[IRS.gov/withdrawmyERC](https://www.irs.gov/withdrawmyERC)

**See withdrawal options for
incorrect Employee
Retention Credit
claims that haven't
been processed.**





Who can ask to withdraw an ERC claim

You can use the ERC claim withdrawal process if all the following apply:

- You made the claim on an adjusted employment tax return (Forms 941-X, 943-X, 944-X, CT-1X).
- You filed your adjusted return only to claim the ERC, and you made no other adjustments.
- You want to withdraw the **entire** amount of your ERC claim.
- The IRS has not paid your claim, or the IRS has paid your claim, but you haven't cashed or deposited the refund check.





Who can't use the withdrawal process

You can't use the withdrawal process if any of the following apply:

- The credit you are trying to withdraw was filed on an original employment tax return (Form 941, 943, 944, CT-1),
- You are trying to withdraw only a portion of your ERC,
- Your adjusted return (Form 941-X, Form 943-X, Form 944-X, Form CT-1X) reports tax items not on your original return in addition to the ERC claim,
- You need to make other corrections to your return,
- You received your ERC refund and cashed or deposited the refund check, or
- You received a notice or letter from the IRS disallowing the entire amount of your ERC.





How to request an ERC claim withdrawal

You will follow different steps depending on your situation.

1. You haven't received a refund and haven't been notified your claim is under audit
2. You haven't received a refund and you have been notified your claim is under audit
3. You received a refund check but haven't cashed or deposited it
4. You received a refund check and have cashed or deposited it





You haven't received a refund and haven't been notified your claim is under audit

- Make a copy of the adjusted return with the claim you wish to withdraw.
- In the left margin of the first page, write “**Withdrawn.**”
- In the right margin of the first page:
 - Have an authorized person **sign** and **date** it.
 - Write their **name** and **title** next to their signature.
- Submit the signed copy of your return using a computer or mobile device to the IRS's ERC claim withdrawal fax line at **855-738-7609**.





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People authorized to sign a withdrawal request

Type of employer	Who can sign a claim for refund for the ERC if you filed an original employment tax return
Sole proprietorship	The individual who owns the business
Corporation, including a limited liability company (LLC) treated as a corporation	The president, vice president, or other principal officer duly authorized to sign
Partnership (including an LLC treated as a partnership) or unincorporated organization	A responsible and duly authorized member, partner, or officer having knowledge of its affairs
Single-member LLC treated as a disregarded entity for federal income tax purposes	The owner of the LLC or a principal officer duly authorized to sign
Trust or estate	The fiduciary

Your withdrawal request may also be signed by a duly authorized agent of the taxpayer (i.e., an individual with valid power of attorney via Form 2848, Power of Attorney and Declaration of Representative, or a reporting agent with Form 8655, Reporting Agent Authorization).



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Sample claim withdrawal request

Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**
(Rev. April 2023) Department of the Treasury — Internal Revenue Service OMB No. 1545-0029

Employer identification number (EIN) -

Name (not your trade name)

Trade name (if any)

Address
Number Street Suite or room number City State ZIP code

Foreign country name Foreign province/county Foreign postal code

Return You're Correcting...
Check the type of return you're correcting.
 941
 941-SS
Check the ONE quarter you're correcting.
 1: January, February, March
 2: April, May, June
 3: July, August, September
 4: October, November, December
Enter the calendar year of the quarter you're correcting.
 (YYYY)

Enter the date you discovered errors.
 (MM / DD / YYYY)

Part 1: Select ONLY one box.
 1. Adjustment. Check this box if you are using the adjustment process to correct the errors. You must check this box if you're correcting both underreported and overreported tax amounts on this form. The amount shown on line 27, if less than zero, may only be applied as a credit to your Form 941, Form 941-SS, or Form 944 for the tax period in which you're filing this form.
 2. Claim. Check this box if you overreported tax and are using the claim process to ask for a refund or abatement. Don't check this box if you're correcting ANY underreported tax amounts.

Part 2: Complete the certifications.
 3. I certify that I've filed or will file Forms W-2 as required.

Note: If you're correcting underreported tax amounts only, go to Part 3 on page 2 and skip lines 4 and 5. If you're correcting overreported tax amounts, for purposes of the certifications on lines 4 and 5, Medicare tax doesn't include Additional Medicare Tax. Form 941-X can't be used to correct overreported amounts of Additional Medicare Tax unless the amounts weren't withheld from employee wages or an adjustment is being made for the current year.

4. If you checked line 1 because you're adjusting overreported federal income tax, social security tax, Medicare tax, or Additional Medicare Tax, check all that apply. You must check at least one box.
I certify that:

Withdrawn (written vertically in purple)

Write "Withdrawn" in left margin of form (purple callout box)

Write your name, position in the company or organization, signature and date in the right margin of form (purple callout box)

John Doe, President, John Doe, Date (MM/DD/YYYY) (written vertically in purple)



What happens next

- Acknowledgement letter
- Income tax return amendment





You haven't received a refund and you've been notified your claim is under audit

- **Examiner assigned:** Ask your examiner about how to submit your withdrawal request directly to them.
- **Examiner not assigned:** Respond to your audit notice with your withdrawal request, using the instructions in the notice for responding.





You received a refund check but haven't cashed or deposited it

- Prepare the claim withdrawal request using the steps in previously described, but don't fax the request.
- Write "Void" in the endorsement section on the back of the refund check.
- Include a note that says, "ERC Withdrawal" and briefly explain the reason for returning the refund check.
- Make copies for your tax records of the front and back of the voided check, the explanation notes and the signed and dated withdrawal request page.





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- Don't staple, bend or paper clip the voided check; include it with your claim withdrawal request and mail it to the **IRS Cincinnati Refund Inquiry Unit** (the address is on the IRS.gov ERC Withdrawal site page):
 - PO Box 145500
Mail Stop 536G
Cincinnati, OH 45250





**You received a refund check and have
cashed or deposited it**

➤ **Additional guidance coming soon**





Warning signs to watch out for from promoters

- Unsolicited ads, calls, emails or texts from someone you don't know.
- Statements that the promoter or company can determine your ERC eligibility within minutes.
- Large upfront fees to claim the credit.
- Pressure to accept a promoter's offer of a refund anticipation loan.
- Fees based on a percentage of the refund amount of Employee Retention Credit claimed – you should always avoid a tax preparer basing their fee on the amount of the refund.
- Statements from the promoter that you qualify for the credit before any discussion about your tax situation.
- Statements from the promoter urging you submit the claim because there is nothing to lose.





What the IRS is doing to combat ERC fraud

- **Criminal**
- **Civil**

How to report ERC abuse

- **Form 14242, Report Suspected Abusive Tax Promotions or Preparers**
- **Mail/Fax: IRS Lead Development Center**





ERC Resources on IRS.gov

- **IRS.gov/ERC** – includes scam warning signs, eligibility highlights, links to resources below.
- **IRS.gov/withdrawmyERC** – Withdraw an Employee Retention Credit claim
- **ERC Eligibility Checklist electronic tool**
 - Printable PDF version available to help clients, constituents or others see if they may be eligible.
- **The latest frequently asked questions (FAQs) for ERC**





Key Points

- Processing of *new* ERC claims (on or after Sept. 14) is paused until further notice.
- The IRS is processing ERC claims filed before Sept. 14, however processing can take up to 180 days or longer.
- ERC claims not processed and paid can be withdrawn if employer is ineligible for ERC.





Upcoming Webinars

- **For information on future webinars, visit IRS.gov and use keyword search “webinars”.**
- **Visit the IRS Video Portal for a variety of video and audio topics.**
- **www.irsvideos.gov**





Richard Furlong, Jr.

Senior Stakeholder Liaison

267-941-6343

richard.g.furlong@irs.gov