

PUBLICATION

IRS Increases ERC Enforcement and Prepares to Launch New Voluntary Disclosure Program

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In an ongoing effort to combat suspect Employee Retention Credit (ERC) claims, on December 6 the IRS announced that it will issue an initial round of more than 20,000 letters disallowing some ERC claims, filed by "fictitious" entities that either:

- Did not exist for periods between March 13, 2020, and December 31, 2021; or
- Did not have paid employees during the period for which the ERC credit was claimed.

In addition, IRS Commissioner Danny Werfel announced that later this month or by the beginning of January 2024, the IRS will launch a new **Voluntary Disclosure Program** for taxpayers who received questionable payments and wish to avoid future enforcement action.

This follows the IRS' October 19 announcement of a limited "withdrawal" process for certain taxpayers thereby avoiding future repayment, interest, and penalties.

Criteria for Withdrawal

Taxpayers seeking to withdraw their ERC claim must meet the following criteria:

- The claim was made on an adjusted employment tax return (Forms 941-X, 943-X, 944-X, CT-1X);
- The adjusted return was filed only to claim the ERC, and no other adjustments were made;
- Withdrawal must be for the entire amount of the ERC claim; and
- The IRS has not paid the claim, or if the IRS has paid the claim, the taxpayer has not cashed or deposited the refund check.

Process for Requesting Withdrawal

To request withdrawal of an ERC claim, taxpayers who filed their ERC claim through a professional payroll company need to contact the payroll company that filed the amended return.

For taxpayers who filed an adjusted return on their own behalf, the process for withdrawal differs depending on whether the taxpayer received the refund and if the claim is under audit. Detailed instructions can be found [here](#).

The IRS will respond to withdrawal requests by letter either confirming or rejecting the request. Approved requests are not effective until the taxpayer has received the acceptance letter from the IRS.

IRS' Moratorium on ERC Processing and Expanded IRS Criminal Investigations and Expanded ERC Tax Audits

In addition, the IRS has continued the moratorium on processing ERC claims through at least the end of December 2023 while it reviews its ERC procedures.

In the meantime, the IRS has already initiated ERC criminal investigations in this area, including against promoters while also initiating large amounts of civil tax audits of the ERC refund claims that were filed.

Baker Donelson's Tax Group has extensive experience with ERC matters, including handling a large number of IRS ERC tax audits, and is available to be consulted on these matters. For more information on this important and evolving area, please contact: [Stuart M. Schabes](#) or [Seth Kossman](#) of Baker Donelson's [Tax Group](#).