

New IRS Option to Withdraw ERC Claims

BY ALICIA HOLLOWAY, CPA



In the wake of unprecedented economic challenges posed by the COVID-19 pandemic, the Employee Retention Credit (ERC) emerged as a vital lifeline for businesses, offering a much-needed financial boost to retain employees during uncertain times. However, as the Internal Revenue Service (IRS) announces a new withdrawal process for ERC claims, it is evident that not all businesses navigated the program correctly.

As discussed in our previous article, the IRS paused processing new claims for the employee retention credit in September following a surge of questionable filings. This latest agency initiative has been introduced to assist businesses concerned about having made an ineligible claim because of aggressive marketing and potential scams. This article will discuss the intricacies of the IRS's withdrawal process for ERC claims.

The IRS Withdrawal Program

The recent IRS announcement introduces a withdrawal program designed specifically for certain employers who have previously claimed the ERC. Claims that are withdrawn will be treated by the IRS as if they were never filed. The IRS noted that withdrawing a willfully fraudulent ERC claim does not shield a business from possible criminal investigation though.

IRS Commissioner Danny Werfel stated, "The IRS is committed to helping small businesses and others caught up in this onslaught of Employee Retention Credit marketing. The aggressive marketing of these schemes has harmed well-meaning businesses and organizations, and some are having second thoughts about their claims. We want to give these taxpayers a way out. The withdrawal option allows employers with pending claims to avoid future problems, and we encourage them to review

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the withdrawal option and the requirements closely. We continue to urge taxpayers to consult with a trusted tax professional rather than a marketing company about this complex tax credit.”

Eligibility Criteria for Withdrawal

Under the ERC claim withdrawal process, certain employers who submitted an ERC claim that have not yet been processed by the IRS or who received a refund check but have not yet cashed or deposited it may withdraw their submission or return the refund check and avoid penalties and interest on repayment of the ERC.

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

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

* Note the IRS has clarified that a taxpayer does not need to withdraw ALL of the ERC quarters to qualify. For example, if a taxpayer filed for 2020 Q2-Q4 under a governmental shutdown but later learned the shutdown only went through Q3, it could withdraw its Q4 claim only.

How to Request to Withdraw an ERC Claim?

The specific procedures for withdrawing an ERC claim depend on an employer's situation (see additional instructions for various scenarios on the IRS website).

- Taxpayers who haven't received a refund check and have not been notified they are under audit will fax the withdrawal to the IRS.
- Taxpayers who have received a refund check but have not cashed or deposited it will mail the voided check with their withdrawal request to the IRS.
- Taxpayers who have been notified they are under audit can send the withdrawal request to the assigned examiner or respond to the audit notice.
- If a taxpayer used a PEO company to file for the ERC, it should consult with the PEO to determine how to withdraw the claim.

What is the Deadline for Withdrawal?

The IRS has not issued any official dates the withdrawal needs to be received by but on a webinar the IRS hosted on November 2nd, an IRS representative stated the due date may be December 31, 2023.

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Are there Options for Taxpayers who have Cashed a Refund Check?

The IRS is still working on a program for taxpayers who have already received and cashed their refund checks. They expect to have an update on this in the next 60 days.

For more information about the IRS ERC withdrawal and how our office can help you through this uncertain time, visit our website or contact us at 813-875-7774.



About the Author

Alicia Holloway joined Rivero, Gordimer & Company in 2021 with over 10 years of experience in tax preparation. Her areas of concentration include income tax preparation, planning and consulting for individuals, closely-held businesses, and tax-exempt organizations. Ms. Holloway earned her Bachelor of Science in Accounting and her Master of Science in Accounting from the University of Tampa. She is a graduate of Tampa Connections Class of 2017.



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