

New IRS Employee Retention Credit Voluntary Disclosure Program

BY ALICIA HOLLOWAY, CPA



At the end of 2023, the IRS announced a voluntary disclosure program for employers who want to pay back the refunds they received after filing Employee Retention Credit (ERC) claims that they later determined they were not eligible for. The program will run through March 22, 2024.

As discussed in our November 13th article titled [New IRS Option to Withdraw ERC Claims](#), the IRS had previously announced a withdrawal program for certain employers who had claimed the ERC but had not received the refund (or who had received but not cashed it). At that time, the IRS was still working on the voluntary disclosure program for employers who had already received and cashed the refunds but later determined they were not eligible for the credit; details on this new program are discussed below.

What are the details of the voluntary disclosure program?

For a limited time, eligible employers can apply to the voluntary disclosure program. They must apply by March 22, 2024. The terms of the program are very taxpayer-friendly.

If the IRS accepts an employer's voluntary disclosure application:

- Employers will only need to repay 80% of the credits they received.
- The IRS will not charge interest or penalties on the repayments.

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- Any interest the employer received with the ERC refund is not required to be repaid.
- The employer is no longer required to amend its tax return to reduce wage expense by the amount of the credit. If an amended return was already filed, an additional amendment may be filed to correct the previous amendment.

What employers are eligible participants?

To be eligible for the voluntary disclosure program, all of the following must be true:

- The employer is not under criminal investigation and has not been notified that they are under criminal investigation.
- The IRS has not received information from a third party that the employer is not in compliance or had not acquired information directly related to the noncompliance from an enforcement action.
- The employer is not under an IRS employment tax examination for the tax period for which they are applying to the voluntary disclosure program.
- The employer has not received an IRS notice and demand for repayment of part or all of the ERC.

What if the funds have already been spent?

If employers no longer have the funds available and cannot repay the required 80% of the credit amount in full, they may be eligible for an installment agreement at the IRS's discretion. The installment agreement would require payments of interest.

What does the IRS ask for in return?

As part of the application process, employers must provide the IRS with the names, addresses, and telephone numbers of any advisors or tax preparers who advised or assisted with the ineligible ERC claim. The employer must describe the services provided by the advisors or tax preparers.

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How do eligible employers apply?

To apply, employers should gather the required information and complete Form 15434, Application for Employee Retention Credit Voluntary Disclosure Program. Form 15434 must be submitted using the IRS Document Upload Tool. Employers are required to report details about the employer and the quarters being claimed. The employer must also agree to extend the 2020 statute of limitations, if applicable.

The IRS has noted that employers that use a third-party payroll provider to file their employment tax returns must have the third-party provider file Form 15434 on their behalf.

What happens after applying?

The IRS will review the application and contact the employer with any questions or additional information needed. If the application is approved, a closing agreement will be mailed to the employer, which must be signed and returned to the IRS within 10 days. The required payment(s) must immediately be paid via the electronic federal tax payment system (EFTPS). The IRS notes that separate payments must be made for each quarter being returned instead of a lump sum payment.

More ERC Changes on the Horizon

On January 19, 2024, the House Ways and Means Committee approved the Tax Relief for American Families and Workers Act of 2024. While there is still uncertainty about whether this Act will become law, as it currently stands, the Act is putting an end to ERC filings as of January 31, 2024. If employers have outstanding ERC filings, they should ensure they are filed prior to January 31, 2024.

For more information about the IRS ERC withdrawal and how our office can help you through this process, visit our [website](#) or contact us at 813-875-7774.

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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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