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### IRS Is Hunting Bad ERC Tax Refund Claims Criminally, Urging Disclosure



The IRS has renewed calls for businesses to review their eligibility for the Employee Retention Credit as the agency's law enforcement arm, Criminal Investigation (CI), begins a series of educational sessions for tax professionals. As part of ongoing IRS efforts around the pandemic-era [credit](#), the IRS

continues to increase compliance activity to protect against fraud. The IRS also renewed calls for businesses and employers to review their qualifications for the Employee Retention Credit, or ERC.

If businesses do not meet the criteria, but claimed the credit, they should consider applying for the [Voluntary Disclosure Program](#) before the March 22 deadline. The IRS has also created a [special withdrawal program](#) for those with pending claims about which they have eligibility concerns. Both programs can help affected employers avoid penalties and interest on incorrect claims.

IRS Commissioner Danny Werfel said: “We saw aggressive marketing around this credit, and well-intentioned businesses were misled into filing claims. There’s a limited time window available for these businesses to voluntarily come in and avoid future issues.”

IRS criminal investigation special agents will host educational sessions geared specifically to tax professionals about ERC at its field offices across the country. The sessions will take place in February and are part of a nationwide initiative to ensure that tax professionals have the latest information about ERC claims and understand ERC eligibility criteria. The IRS has been working closely with the tax community following concerns that ERC promoters were aggressively marketing and encouraging businesses to ignore the advice of tax professionals and apply for the credit anyway.

CI special agents will walk attendees through ERC eligibility criteria, documentation requirements to receive ERC claims, and best practices for compliance and accurate reporting. These events will take place in at least 23 U.S. states and the District of Columbia and are specifically designed for tax professionals who have claimed ERCs for their clients on previous years’ tax

returns. Invitations to attend will arrive by mail through the U.S. Postal Service.

The ERC is a refundable tax credit for certain eligible businesses and tax-exempt organizations that had employees and were affected during the COVID-19 pandemic. The requirements vary depending on the time of claim, and it is not available to individuals. With the end of the pandemic, the IRS announced in July it was shifting its focus to review ERC claims for compliance concerns, including intensifying audit work and criminal investigations on promoters and businesses filing dubious claims.

Following concerns about aggressive ERC marketing from tax professionals and others, the IRS announced Sept. 14 a [moratorium on processing new ERC claims](#). During the next four months, the IRS plans to continue steps on fraud protection measures, which are necessary before the IRS anticipates resuming processing of claims submitted after the Sept. 14 moratorium. A specific resumption date has not been determined.

The IRS continues to process ERC claims submitted before the moratorium, but with additional scrutiny and at a much slower rate than before the agency's approach changed in the summer and fall. Since the IRS announced the moratorium in September, the IRS has more than \$1 billion in ERC claims in process. Enhanced compliance reviews of the claims submitted before the moratorium is critical to combat fraud and protect businesses and organizations from facing penalties or interest payments stemming from bad claims pushed by promoters. Werfel has noted the IRS continues to [make progress](#) on a variety of ERC issues.

To help businesses lured into making inappropriate claims, the IRS has several special initiatives underway to assist.

ERC Voluntary Disclosure Program open until March 22, 2024. Businesses that filed a claim in error and received a payment may be able to participate in the IRS [Voluntary Disclosure Program](#). The special program runs through March 22, 2024, and the IRS has added provisions allowing repayment of just 80% of the claim received. This reflects the share that ERC promoters took of a business' ERC payment – frequently around 20%.

Withdrawal program still available for pending ERC claims. The IRS continues to accept and process requests to [withdraw an employer's full ERC claim](#) under the special withdrawal process.

This withdrawal option allows certain employers that filed an ERC claim, but have not yet received a refund, to withdraw their submission and avoid future repayment, interest and penalties. Employers that submitted an ERC claim that has not yet been paid can withdraw their claim and avoid the possibility of getting a refund for which they're ineligible. They can also withdraw their claim if they've received a check but have not yet deposited or cashed it.

The IRS continues to see a large number of employers interested in the withdrawal program, with more than \$167 million from pending applicants withdrawn through mid-January.

ERC eligibility information for businesses with questions. For more information on ERC eligibility, the IRS has prepared special information to help businesses understand the complex guidelines about the credit, sometimes referred to as the Employee Retention Tax Credit or ERTC. The special information includes ERC [frequently asked questions](#) and the ERC Eligibility Checklist, which is available as an [interactive tool](#) or as a [printable guide](#). The interactive tool provides an easy, interactive way for businesses to check their eligibility.

Increased IRS compliance activity: Audits, criminal investigations, special letters. Last month, the IRS started sending thousands of letters to taxpayers notifying them of disallowed ERC claims. These disallowed claims involved entities that did not exist or did not actually have employees on the payroll during the period of eligibility – meaning the businesses failed to meet basic criteria for the ERC program.

In addition, the IRS plans to send a different set of letters to thousands of ERC recipients related to claiming an erroneous or excessive credit. These notices inform recipients that the IRS will recapture the erroneously claimed ERC payment through normal tax assessment and collection procedures.

These letters are for tax year 2020 where the statute of limitations is nearing in April. As we continue to ramp up our compliance work, the IRS will send more recapture letters for tax year 2021 this spring. These efforts are in addition to other IRS compliance work:

1. **Audits.** The IRS has thousands of audits in the pipeline.
2. **Civil investigations.** Promoters are not off the hook. Promoter investigations are ongoing. The IRS has nine open investigations and another 123 under review. Plus, participants in the Voluntary Disclosure Program must share the promoter names with the IRS to assist the agency in its ongoing compliance work.
3. **Criminal Investigation.** As of Dec. 31, CI has initiated 352 investigations involving more than \$2.9 billion in potentially fraudulent ERCs in tax years 2020-2023. Eighteen of the 352 investigations have

resulted in federal charges, with 11 convictions and four sentencings with an average sentence of 21 months.

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