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IRS Warns Of Employee Retention Credit Claim Fraud



The IRS has issued a new warning urging people to carefully review the Employee Retention Credit (ERC) guidelines before claiming the credit. Radio, TV and the internet are full of aggressive and alluring claims of free money, \$26,000 per employee, with no money down. The IRS warns that the fees charge may be large and that promoters may not tell you that wage

deductions claimed on the business' federal income tax return must be reduced by the amount of the credit.

“While this is a legitimate credit that has provided a financial lifeline to millions of businesses, there continue to be promoters who aggressively mislead people and businesses into thinking they can claim these credits,” said Acting IRS Commissioner Doug O’Donnell. “Anyone who is considering claiming this credit needs to carefully review the guidelines. If the tax professional they’re using raises questions about the accuracy of the Employee Retention Credit claim, people should listen to their advice. The IRS is actively auditing and conducting criminal investigations related to these false claims. People need to think twice before claiming this.”

The IRS has been [warning about this scheme](#) since [last fall](#), but the credit claims continue to pour in. The IRS says tax professionals are being pressured to claim credits improperly. People and businesses can avoid this scheme, and by not filing improper claims in the first place. If the business filed an income tax return deducting qualified wages before it filed an employment tax return claiming the credit, the business should file an amended income tax return to correct any overstated wage deduction.

Businesses should be cautious of advertised schemes and direct solicitations promising tax savings that are too good to be true. Taxpayers are always responsible for the information reported on their tax returns. Improperly claiming the ERC could result in taxpayers being required to repay the credit along with penalties and interest.

The ERC is a refundable tax credit designed for businesses who continued paying employees while shut down due to the COVID-19 pandemic or who had significant declines in gross receipts from March 13, 2020, to Dec. 31, 2021.

Eligible taxpayers can claim the ERC on an original or amended employment tax return for a period within those dates. To be eligible, employers must have:

- sustained a full or partial suspension of operations due to [orders from an appropriate governmental authority](#) limiting commerce, travel or group meetings due to COVID-19 during 2020 or the first three quarters of 2021,
- experienced a [significant decline in gross receipts during 2020](#) or a [decline in gross receipts during the first three quarters of 2021](#), or
- qualified as a [recovery startup business](#) for the third or fourth quarters of 2021.

As a reminder, only recovery startup businesses are eligible for the ERC in the fourth quarter of 2021. Additionally, for any quarter, eligible employers cannot claim the ERC on wages that were reported as payroll costs in obtaining PPP loan forgiveness or that were used to claim certain other tax credits.

The IRS is even asking for tips on bad actors. To report tax-related illegal activities relating to ERC claims, submit by fax or mail a completed [Form 14242, Report Suspected Abusive Tax Promotions or Preparers](#) and any supporting materials to the IRS Lead Development Center in the Office of Promoter Investigations; Mail: Internal Revenue Service Lead Development Center; Stop MS5040; 24000 Avila Road; Laguna Niguel, California 92677-3405; Fax: 877-477-9135

Employers should also report instances of fraud and IRS-related phishing attempts to the [IRS](#) at phishing@irs.gov and [Treasury Inspector General for Tax Administration](#) at 800-366-4484.

For more about eligibility requirements and how to claim the Employee Retention Credit:

- For qualified wages paid after March 12, 2020, and before Jan. 1, 2021
– [Notice 2021-20](#), [Notice 2021-49](#), and [Revenue Procedure 2021-33](#)
- For qualified wages paid after Dec. 31, 2020, and before July 1, 2021
– [Notice 2021-23](#), [Notice 2021-49](#) and [Revenue Procedure 2021-33](#)
- For qualified wages paid after June 30, 2021, and before Oct. 1, 2021
– [Notice 2021-49](#) and [Revenue Procedure 2021-33](#)
- For qualified wages paid after Sept. 30, 2021, and before Jan. 1, 2022
– [Notice 2021-49](#) and [Notice 2021-65](#)
- [Employee Retention Credit - 2020 vs 2021 Comparison Chart | Internal Revenue Service \(irs.gov\)](#)

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