



Employers: Watch out for Employee Retention Credit schemes

IRS Tax Tip 2023-44, April 4, 2023

The IRS and tax professionals continue to see third parties aggressively promoting Employee Retention Credit schemes on radio and online.

Filers should carefully review the ERC guidelines before trying to claim the credit and be wary of offers promising tax savings that are too good to be true. Tax professionals are also reporting receiving undue pressure from clients to claim the ERC as a result of these scams.

These promoters push ineligible people to file a claim for the credit while charging the filer either large upfront fees or a fee that is contingent on the amount of their refund. Plus, the promoters may not inform taxpayers that they must reduce the wage deductions they claimed on the business' federal income tax return by the amount of the credit.

The IRS has been warning about this scheme since last fall, but there continue to be attempts to claim the ERC made by ineligible filers during the 2023 tax filing season. This is a valuable credit for those who qualify but claiming it improperly could result in taxpayers having to repay the credit along with potential penalties and interest.

Qualifying for ERC

The ERC is a refundable tax credit for businesses who continued paying employees while shut down due to the pandemic or who had significant declines in gross receipts.

Eligible taxpayers can claim the ERC on an original or amended employment tax return during a qualifying period.

To be eligible for the ERC, employers must have:

- sustained a full or partial suspension of operations due to orders from an appropriate governmental authority 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.

Eligible employers can't claim the ERC on wages that they reported as payroll costs in obtaining Paycheck Protection Program [loan forgiveness](#) or that they used to claim certain other tax credits.

Reporting ERC fraud

Employers can report illegal tax-related ERC claims and activities by submitting a completed Form 14242, Report Suspected Abusive Tax Promotions or Preparers [PDF](#) and any supporting materials to the IRS Lead Development Center in the Office of Promoter Investigations. The fax telephone number and mailing address are on the form.

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.

More information:

- Employee Retention Credit - 2020 vs 2021 Comparison Chart
- Form 941-X Instructions (April 2022 Revision) [PDF](#)
- Form 941 Instructions (December 2021 Revision) [PDF](#)
- Form 941 Instructions (2020 Revisions) [PDF](#)
- Form 943 [PDF](#), 943-X [PDF](#), 944 [PDF](#), 944-X [PDF](#), CT-1 [PDF](#) and CT-1 X Instructions [PDF](#)

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