



IRS issues renewed warning on Employee Retention Credit claims; false claims generate compliance risk for people and businesses claiming credit improperly

IR-2023-40, March 7, 2023

WASHINGTON — The Internal Revenue Service today issued a renewed warning urging people to carefully review the Employee Retention Credit (ERC) guidelines before trying to claim the credit as promoters continue pushing ineligible people to file.

The IRS and tax professionals continue to see third parties aggressively promoting these ERC schemes on radio and online. These promoters charge large upfront fees or a fee that is contingent on the amount of the refund. And the promoters may not inform taxpayers 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 there continue to be attempts to claim the ERC during the 2023 tax filing season. Tax professionals note they continue to be pressured by people wanting to claim credits improperly. The IRS Office of Professional Responsibility is working on additional guidance for the tax professional community that will be available in the near future.

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.

What is the ERC?

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 for the ERC, employers must have:

- sustained a full or partial suspension of operations due to orders from an appropriate governmental authority [PDF](#) 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 [PDF](#) or a decline in gross receipts during the first three quarters of 2021 [PDF](#), or
- qualified as a recovery startup business [PDF](#) 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.

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 [PDF](#) 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.

Go to [IRS.gov](https://www.irs.gov) to learn 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 [PDF](#), Notice 2021-49 [PDF](#), and Revenue Procedure 2021-33 [PDF](#)
- For qualified wages paid after Dec. 31, 2020, and before July 1, 2021 – Notice 2021-23 [PDF](#), Notice 2021-49 [PDF](#) and Revenue Procedure 2021-33 [PDF](#)
- For qualified wages paid after June 30, 2021, and before Oct. 1, 2021 – Notice 2021-49 [PDF](#) and Revenue Procedure 2021-33 [PDF](#)
- For qualified wages paid after Sept. 30, 2021, and before Jan. 1, 2022 – Notice 2021-49 [PDF](#) and Notice 2021-65 [PDF](#)

Additional Information

- Employee Retention Credit - 2020 vs 2021 Comparison Chart

- Form 941-X Instructions (April 2022 Revision) [PDF](#) – for use in conjunction with Form 941 Instructions from relevant calendar quarter
- 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](#)

Page Last Reviewed or Updated: 08-Mar-2023