



Employers warned to beware of third parties promoting improper Employee Retention Credit claims

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WASHINGTON — The Internal Revenue Service today warned employers to be wary of third parties who are advising them to claim the Employee Retention Credit (ERC) when they may not qualify. Some third parties are taking improper positions related to taxpayer eligibility for and computation of the credit.

These third parties often charge large upfront fees or a fee that is contingent on the amount of the refund and may not inform taxpayers that wage deductions claimed on the business' federal income tax return must be reduced by the amount of the credit.

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 are encouraged to 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 shutdown due to the COVID-19 pandemic or had significant declines in gross receipts from March 13, 2020 to December 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 Form 3949-A, Information Referral [PDF](#). You should also report instances of fraud and IRS-related phishing attempts to the 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 January 1, 2021 – Notice 2021-20, Notice 2021-49, and Revenue Procedure 2021-33
- For qualified wages paid after December 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 October 1, 2021 – Notice 2021-49 and Revenue Procedure 2021-33
- For qualified wages paid after September 30, 2021, and before January 1, 2022 – Notice 2021-49 and Notice 2021-65

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](#)