



# **To protect taxpayers from scams, IRS orders immediate stop to new Employee Retention Credit processing amid surge of questionable claims; concerns from tax pros**

## **Aggressive marketing to ineligible applicants highlights unacceptable risk to businesses and the tax system**

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## **Moratorium on processing of new claims through year's end will allow IRS to add more safeguards to prevent future abuse, protect businesses from predatory tactics; IRS working with Justice Department to pursue fraud fueled by aggressive marketing**

WASHINGTON — Amid rising concerns about a flood of improper Employee Retention Credit claims, the Internal Revenue Service today announced an immediate moratorium through at least the end of the year on processing new claims for the pandemic-era relief program to protect honest small business owners from scams.

IRS Commissioner Danny Werfel ordered the immediate moratorium, beginning today, to run through at least Dec. 31 following growing concerns inside the tax agency, from tax professionals as well as media reports that a substantial share of new claims from the aging program are ineligible and increasingly putting businesses at financial risk by being pressured and scammed by aggressive promoters and marketing.

The IRS continues to work previously filed Employee Retention Credit (ERC) claims received prior to the moratorium but renewed a reminder that increased fraud concerns means processing times will be longer. On July 26, the agency announced it was increasingly shifting its focus to review these claims for compliance

concerns, including intensifying audit work and criminal investigations on promoters and businesses filing dubious claims. The IRS announced today that hundreds of criminal cases are being worked, and thousands of ERC claims have been referred for audit.

The IRS emphasizes that payouts for these claims will continue during the moratorium period but at a slower pace due to the detailed compliance reviews. With the stricter compliance reviews in place during this period, existing ERC claims will go from a standard processing goal of 90 days to 180 days – and much longer if the claim faces further review or audit. The IRS may also seek additional documentation from the taxpayer to ensure it is a legitimate claim.

This enhanced compliance review of existing claims submitted before the moratorium is critical to protect against fraud but also to protect the businesses from facing penalties or interest payments stemming from bad claims pushed by promoters, Werfel said.

"The IRS is increasingly alarmed about honest small business owners being scammed by unscrupulous actors, and we could no longer tolerate growing evidence of questionable claims pouring in," Werfel said. "The further we get from the pandemic, the further we see the good intentions of this important program abused. The continued aggressive marketing of these schemes is harming well-meaning businesses and delaying the payment of legitimate claims, which makes it harder to run the rest of the tax system. This harms all taxpayers, not just ERC applicants."

"For those people being pressured by promoters to apply for the Employee Retention Credit, I urge them to immediately pause and review their situation while we look to add new protections and safeguards to stop bad claims from ever coming in," Werfel said. "In the meantime, businesses should seek out a trusted tax professional who actually understands the complex ERC rules, not a promoter or marketer hustling to get a hefty contingency fee. Businesses that receive ERC payments improperly face the daunting prospect of paying those back, so we urge the utmost caution. The moratorium will help protect taxpayers by adding a new safety net onto this program to focus on fraudulent claims and scammers taking advantage of honest taxpayers."

Taxpayers are encouraged to review IRS guidance and tools for helping determine ERC eligibility, including frequently asked questions and a new question and answer guide released today to help businesses understand if they are actually eligible for the credit.

The IRS is developing new initiatives to help businesses who found themselves victims of aggressive promoters. This includes a settlement program for repayments for those who received an improper ERC payment; more details will be available this fall.

In addition, the IRS is finalizing details that will be available soon for a special withdrawal option for those who have filed an ERC claim but the claim has not been processed. This option – which can be used by taxpayers whose claim hasn't yet been paid – will allow the taxpayers, many of them small businesses who were misled by promoters, to avoid possible repayment issues and paying promoters contingency fees. Filers of these more than

600,000 claims awaiting processing will have this option available. Those who have willfully filed fraudulent claims or conspired to do so should be aware, however, that withdrawing a fraudulent claim will not exempt them from potential criminal investigation and prosecution.

As part of the wider compliance effort, the IRS is working with the Justice Department to address fraud in the ERC program as well as promoters who have been ignoring the rules and pushing businesses to apply.

The IRS has trained auditors examining ERC claims posing the greatest risk, and the IRS Criminal Investigation division is actively working to identify fraud and promoters of fraudulent claims for potential referral for prosecution to the Justice Department.

IRS Criminal Investigation (IRS-CI) investigates a variety of COVID fraud allegations ranging from fraudulently obtained employee refund tax credits to falsified Paycheck Protection Program loans. To date, IRS-CI has uncovered suspected pandemic fraud totaling more than \$8 billion. As of July 31, 2023, IRS-CI has initiated 252 investigations involving over \$2.8 billion of potentially fraudulent Employee Retention Credit claims. Of those, fifteen of the 252 investigations have resulted in federal charges. Of the 15 federally charged cases, so far six matters have resulted in convictions, four of those cases have reached the sentencing phase with the average sentence being 21 months.

Criminal Investigation's work is in addition to ERC audits that have started. The IRS has already referred thousands of ERC cases for audit.

## **ERC: A complex credit designed to help during the pandemic; taxpayer risk growing amid aggressive marketing and potential to have to repay improper claims**

When properly claimed, the ERC – also referred to as the Employee Retention Tax Credit or ERTC -- is a refundable tax credit designed for businesses that continued paying employees during the COVID-19 pandemic while their business operations were fully or partially suspended due to a government order or they had a significant decline in gross receipts during the eligibility periods. The credit is not available to individuals.

The ERC is a complex claim with precise requirements to help businesses during the pandemic, and the IRS has received approximately 3.6 million of these claims over the course of the program.

"As we move nearly two years beyond the 2021 eligibility date for the program and beyond the end of the pandemic, the reality that we're seeing and hearing from tax professionals and others is that many of the affected businesses have already come in," Werfel said. "This means we must increase our safeguards to protect against fraud and revenue loss."

Although promoters advertise that ERC submissions are "risk free," there are significant risks facing businesses as the IRS increases its audit and criminal investigation work.

The IRS reminds anyone who improperly claims the ERC that they must pay it back, possibly with penalties and interest. A business or tax-exempt group could find itself in a much worse financial position if it has to pay back the credit than if the credit was never claimed in the first place. This underscores the importance of taxpayers

taking precautionary steps to independently verify their eligibility to receive the credit before applying through a promoter. Taxpayers should take particular precautions because a promoter can collect a contingency fee of up to 25% of the ERC refund.

## **Advice for taxpayers: What to do as IRS works to help businesses facing questionable ERC claims**

As the IRS continues working additional details on ERC, there are several steps that the agency recommends for businesses, depending on where they are in the process:

- **For those currently awaiting an ERC claim.** For those who currently have an ERC claim on file, the IRS will continue processing these claims during the moratorium period but at a greatly reduced speed due to the complex nature of these filings and the need to protect businesses from being improperly paid. Normal processing times could easily stretch to 180 days or longer. The IRS cautions that many applications will be facing additional compliance scrutiny, which means the payments could take even longer to be processed. While the IRS works on compliance measures during this period, the agency cautions businesses to expect extended wait times due to the large volume of claims and the complexity of the applications.

Due to the large volumes and the need for compliance checks to protect against fraud, the IRS is unable to expedite individual claims. The IRS believes many of the applications currently filed are likely ineligible, and tax professionals note anecdotally that they are seeing instances where 95 percent or more of claims coming in recent months are ineligible as promoters continue to aggressively push people to apply regardless of the rules.

For those currently with a pending application at the IRS, they should review the options below to see if any of those could help with their current situation.

- **For those who haven't filed a claim yet, consider reviewing the guidelines and waiting to file:** For those considering filing a claim, the IRS urges businesses to carefully review the ERC guidelines during the processing moratorium period. The IRS urges businesses to talk to a trusted tax professional – not a tax promoter or marketing firm looking to make money generating applications that takes a big chunk out of the ERC claim. The new question and answer guide can also help. A careful review of the rules will show that many of these businesses do not qualify for the ERC, and avoiding a bad claim will avoid complications with the IRS.
- **Withdraw an existing claim for businesses that have already filed:** For those who have filed and have a pending claim, they should carefully review the program guidelines with a trusted tax professional and check the new question and answer guide. For example, the IRS is seeing repeated instances of people improperly citing supply chain issues as a basis for an ERC claim when a business with those issues will very rarely meet the eligibility criteria. Under any scenario, if a business claimed the ERC earlier and the claim has not been processed or paid by the IRS, they can withdraw the claim if they now believe it was submitted improperly – even if their case is already under audit or awaiting audit. More details will be available shortly.
- **Wait for the IRS ERC settlement program to be finalized:** If a business has already received an ERC that they now believe is in error, the IRS will be providing additional details on the settlement program in the fall

that will allow businesses to repay ERC claims. The settlement program will allow the businesses to avoid penalties and future compliance action. The IRS is continuing to assess options on how to deal with businesses that had a promoter contingency fee paid for out of the ERC payment.

## **Warning flags to watch out for; help for properly claiming the ERC**

The IRS has a list of red flags to watch out for aggressive marketing and questionable ERC claims.

The ERC is an incredibly complex credit, and there are very specific eligibility requirements for claiming the ERC. Employers can claim the ERC on an original or amended employment tax return for qualified wages paid between March 13, 2020, and Dec. 31, 2021. However, 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 because of 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.

More information is available on [IRS.gov/erc](https://www.irs.gov/erc).