

TRONCONI SEGARRA & ASSOCIATES^{LLP}

Certified Public Accountants
Business Consultants



**SOLUTIONS BEYOND
THE OBVIOUS**

Employee Retention Credit Update

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WELCOME

Today's Presenters



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ERC Processing Moratorium

On Sep. 14, 2023, the IRS [announced an immediate moratorium](#) until at least December 31, 2023, on the processing of new ERC claims to prevent future abuse, due to the submission of a significant number of claims suspected to be fraudulent or ineligible due to the actions of aggressive promoters or solicitors.

- At this time, the IRS had received around 3.6 million claims, and its open inventory was over 600,000, nearly all of which had been received within the past 90 days.



ERC Processing Moratorium

The IRS has continued to process previously filed ERC claims received prior to the moratorium, but due to increased fraud concerns, processing times have been longer and went from a standard processing goal of 90 days to 180 days – and much longer if the claims faces further review or audit.



ERC Processing Moratorium

Additionally, the IRS has introduced two new initiatives to help businesses who found themselves victims of aggressive promoters:

- Special withdrawal option for those who have filed an ERC claim, but the claim has not been processed.
- Settlement program for repayments for those who received an improper ERC payment.



Special Withdrawal Process

On Oct. 19, 2023, the IRS [announced the details](#) of a special withdrawal process to help those who filed an ERC claim and are concerned about its accuracy.

- For more information on the special withdrawal process for ERC claims, you can watch the video of our [webinar](#) from Dec. 12, 2023, on our YouTube channel.

Special Withdrawal Process

UPDATE

- As of Dec. 9, 2023, the IRS had over 1,050,000 unprocessed 941-X tax returns.
- As of Dec. 21, 2023, the IRS received more than \$100 million in withdrawals as they continue intensifying audits and criminal investigation work in this area.
- The IRS has “no definitive timetable” for ending its moratorium on processing ERC claims received on or after Sep. 14, 2023. The IRS has also indicated that the withdrawal program will end at the same time as the moratorium.

IRS Actions

On Dec. 6, 2023, the IRS announced it is sending more than 20,000 letters (105 C, *Claim Disallowed*) rejecting questionable ERC claims as it continues to combat scammers and promoters encouraging businesses to file claims for the credit.

- Two categories of claims have been identified and are being disallowed:
 - Entity not in existence during period of eligibility
 - No paid employees during the period of eligibility
- The disallowance letter will explain that a taxpayer who disagrees with the disallowance can respond with documentation supporting their eligibility or claim amount, or they can file an administrative appeal.
- The IRS plans to send additional letters beyond the disallowance letters.

IRS Actions

On Dec. 21, 2023, the IRS announced it has started sending up to 20,000 new letters with proposed tax adjustments that will recapture erroneously claimed ERC credits.

- These mailings are currently just for tax year 2020, and work continues for tax year 2021, with additional mailings planned.

Voluntary Disclosure Program

On Dec. 21, 2023, the IRS [announced the details](#) of a new voluntary disclosure program (ERC-VDP) to help businesses who want to pay back the money they received after filing ERC claims in error.

- The ERC-VDP is open through Mar. 22, 2024. The program requires you to:
 - Voluntarily pay back the ERC, minus 20%,
 - Cooperate with any requests for the IRS for more information, and
 - Sign a closing agreement.

Voluntary Disclosure Program



- If you claimed and received ERC you're not entitled to, and you don't participate in ERC-VDP to correct it, you risk detection by the IRS, which could lead to substantial interest and penalties and increase your risk of criminal investigation and prosecution.
- If you willfully filed an employment tax return that fraudulently claimed ERC, or if you assisted or conspired in such conduct, filing for ERC-VDP will not exempt you from potential criminal investigation and prosecution.

Voluntary Disclosure Program

Advantages of the ERC-VDP include:

- You need to repay only 80% of the ERC you received as a credit on your return or as a refund.
- You don't need to repay any interest you received on your ERC refund.
- You don't have to amend income tax returns to reduce wage expense.
- The 20% reduction is not taxable as income.
- The IRS will not charge penalties or interest on the claimed ERC amount if you pay it in full (claimed ERC minus 20%) by the time you return your signed closing agreement to IRS.
- The IRS won't examine ERC on your employment tax return for tax period(s) resolved within the terms of ERC-VDP.

Voluntary Disclosure Program

Who can apply for the ERC-VDP:

Businesses, tax-exempt organizations and government entities are eligible to apply for the ERC-VDP for each tax period that meets all of the following requirements:

- Your ERC claimed on an employment tax return has been processed and paid as a refund, which you have cashed or deposited, or paid in the form of a credit applied to the tax period or another tax period.
- You now think that you were entitled to \$0 ERC.
- You're not under employment tax examination (audit) by the IRS.
- You're not under criminal investigation by the IRS.
- The IRS has not reversed or notified you of intent to reverse your ERC to \$0.

Voluntary Disclosure Program

If the business used a third-party payer to file the employment tax returns or claim the ERC, they cannot apply to the ERC-VDP themselves. They must contact the third-party payer to apply.

Voluntary Disclosure Program

How to apply for the ERC-VDP:

If you meet the eligibility rules for the ERC-VDP, complete an application package by:

- Preparing [Form 15434, Application for Employee Retention Credit Voluntary Disclosure Program](#),
- Preparing [ERC-VDP Form SS-10PDF](#), if your application includes tax periods ending in 2020,
- Ensuring that an authorized person signs your ERC-VDP application and, if applicable, ERC-VDP Form SS-10, and
- Following the steps in the ERC-VDP FAQ question entitled [How do I submit my ERC-VDP application package?](#)

Form 15434, Application for ERC-VDP

Part I, II, III

Part I – Taxpayer Information

1. Taxpayer's name		2. Employer identification number (EIN)	
3. Number and street (or P.O. box number if mail is not delivered to a street address)		4. Room/Suite	
5. City, town or post office		6. State	7. ZIP code
8. Telephone number	9. Fax number (optional)	10. Email address (optional)	

Part II – Third-Party Payer Client Information *(Third-party payers only. See Instructions)*

11a. Are you a third-party payer filing this form on behalf of a client? *(See instructions)*

Yes *(complete 11b-11d)* No *(skip to Part III)*

11b. Third-party payer client's name	11c. Third-party payer client's EIN
11d. Tax period(s) for which you filed an employment tax return claiming ERC on your client's behalf	

Part III – Are you authorizing another individual to represent you before the IRS?

12. Attach a properly completed Form 2848, Power of Attorney and Declaration of Representative, if applicable. Check this box if you have a 2848 on file or are attaching a 2848

Form 15434, Application for ERC-VDP

Part V

Part V – Preparers/Advisors

16. Did an individual, business, and/or organization(s) advise you (or your client) to claim the ERC

Yes (complete lines 17-24 for each preparer/advisor)

No (move to next section)

Identify each preparer/advisor who assisted you in filing your ERC claim(s) for refund.

Preparers/Advisors 1.

17. Name

18. Company/Firm name

19. Telephone number

20. Number and street

21. City

22. State

23. ZIP code

24. Describe the services provided by the preparer/advisor

Add Additional Preparer/Advisor

Delete Additional Preparer/Advisor

Form 15434, Application for ERC-VDP

Sign Here

Sign Here - Taxpayer

Under penalties of perjury, I declare that I have examined this submission, including any accompanying documents, and to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete.

Your signature

Date

Your name *(print/type)*

Your title *(print/type)*

Best daytime telephone number

Sign Here - Representative

Under penalties of perjury, I declare that I have examined this submission, including any accompanying documents, and to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete. Declaration of representative is based on all information of which representative has any knowledge.

Representative's signature

Date

Representative's name *(print/type)*

Representative's title *(print/type)*

Representative's telephone number

Voluntary Disclosure Program

The IRS will review your application package and verify your eligibility for the ERC-VDP. They will mail the business a letter letting them know that they received the application and whether they can proceed with the application or if it was rejected.

If they can proceed:

- The IRS will mail a closing agreement.
- The business will need to pay your full ERC-VDP amount by using the IRS Electronic Federal Tax Payment System.
- An authorized person must sign the closing agreement.
- Return the form(s) to the IRS.

Voluntary Disclosure Program

After the IRS receives your signed closing agreement, they will adjust your account to reflect the eliminated ERC amount. Do not submit amended returns correcting your ERC.

- The terms of the ERC-VDP closing agreement can't be appealed.
- If your application is rejected, the letter will explain why and offer potential solutions. You may be able to correct the error and resubmit your ERC-VDP application package, or you may file an amended employment tax return.

Voluntary Disclosure Program

If you are unable to pay your full ERC-VDP amount, you can request the IRS to consider you for an installment agreement to pay over time.

- If you need to use this option, include Form 433-B, Collection Information Statement for Businesses, in your ERC-VDP application package along with all required documents to support your Form 433-B.
- If you are unable to repay the required 80% of the credit at time of signing your closing agreement, then you will be required to pay penalties and interest in connection with entering the installment agreement.
- You cannot submit an offer in compromise for your amount due in ERC-VDP.

Voluntary Disclosure Program

Other Notes:

- If you previously filed amended employment tax returns to eliminate all your ERC, you generally are not eligible for ERC-VDP for the period(s) you amended. However, if you filed amended returns before Dec. 21, 2023, the IRS will review ERC-VDP applications on a case-by-case basis for eligibility into the program.
- The IRS has also provided a set of [frequently asked questions](#) (FAQs) to help businesses and their tax advisors understand the terms of the ERC-VDP program.

Employee Retention Credit

UPDATE

- On Jan. 17, 2024, Congress introduced the [*Tax Relief for American Families and Workers Act of 2024*](#) which would expand the child tax credit and several business tax credits. To pay for these credit expansions, a deal has been reached that would end the ERC program on Jan. 31, 2024.
- The legislation also includes extending the statute of limitations on ERC claims to 6 years and increasing promoter penalties and compliance requirements.
- If the deal is not enacted, employers still have until Apr. 15, 2024, to file ERC claims for 2020 and until Apr. 15, 2025, to file ERC claims for 2021.

Employee Retention Credit

UPDATE

- The proposal is significant because it is endorsed by the Chairs of both Congressional tax-writing committees, but its passage is far from certain. There are many more hurdles to clear before it becomes law, and the earliest the House could hold a floor vote on the proposal would be the week of Jan. 29, 2024, though some believe it may have to wait until a government funding bill is enacted in March 2024 or later.
- On Jan. 19, 2024, the House Ways & Means Committee approved the measure in a 40-3 vote; it remains unclear whether the bill will move to the House floor as a stand-alone measure or attached to other “must-pass” fiscal legislation.

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Questions

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