



# Current Federal Tax Developments

August 26, 2024

Kaplan Financial Education

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## This Week We Look At:

IRS announces the reopening of the ERC Voluntary Disclosure Program on somewhat less generous terms than the first program provided

National Taxpayer Adviser discusses issues related to ERC Notices of Disallowance issued by the IRS

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<https://www.currentfederaltaxdevelopments.com>



## IRS Reopens ERC Voluntary Disclosure Program, Though Not Quite as Generous



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- IR-2024-213, IRS Announcement 2024-30, Aug. 15, 2024
  - The IRS has decided to reopen the ERC Voluntary Disclosure Program through November 22, 2024
  - Only applies to claims for the 2021 credits (can no longer do voluntary disclosure for 2020 credits under this program)
  - This time the employer will have to repay 85% of the credit they received (up from 80% in the original program)

<https://www.irs.gov/newsroom/irs-provides-details-of-second-employee-retention-credit-voluntary-disclosure-program-program-for-improper-claims-open-through-nov-22> News Release

<https://www.irs.gov/pub/irs-drop/a-24-30.pdf> Announcement

<https://www.irs.gov/newsroom/withdraw-an-employee-retention-credit-erc-claim> IRS ERC Claim Withdrawal Program

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- IR-2024-213, IRS Announcement 2024-30, Aug. 15, 2024
  - Again the employer
    - Will not be charged interest or penalties if balance due is paid at the time of signing the closing agreement
    - Will not have to repay any interest paid to the employer with the ERC refund they received
    - Will have to provide the names, addresses, telephone numbers and details about the services provided by any advisors or tax preparers who advised or assisted them with their claims.

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- IR-2024-213, IRS Announcement 2024-30, Aug. 15, 2024
  - Must have already received an ERC for a period in 2021 and:
    - The employer hasn't already applied to the first ERC VDP for the same tax periods. (IRS is still processing those at this time.)
    - The employer isn't under criminal investigation.
    - The employer isn't under an IRS employment tax examination for the tax period for which they're applying to the VDP.

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- IR-2024-213, IRS Announcement 2024-30, Aug. 15, 2024
  - Must have already received an ERC for a period in 2021 and:
    - The employer hasn't received a Letter 6577-C, Employee Retention Credit (ERC) Recapture, or an IRS notice and demand for repayment of part or all of its ERC claim.
    - The employer hasn't already filed an amended return to eliminate their ERC.

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- IR-2024-213, IRS Announcement 2024-30, Aug. 15, 2024
  - Must have already received an ERC for a period in 2021 and:
    - The IRS hasn't received information from a third party or directly from an enforcement action that the taxpayer is not in compliance.
  - Will again use Form 15434, *Application for Employee Retention Credit Voluntary Disclosure Program* submitted electronically to apply to enter the program

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  - An employer that outsources its payroll to a third party that reports, collects and pays employment taxes on the employer's behalf using the third party's Employer Identification Number must have the third party file the Form 15434
  - Again the program does *not* provide protection from criminal prosecution so employers should seek legal counsel before going this route - the employer may need to instead use CID's voluntary disclosure program (which is not nearly as generous, but does take criminal prosecution off the table)

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## National Taxpayer Advocate's Blog Post Deals with ERC Disallowance Issues



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<https://www.currentfederaltaxdevelopments.com>

- “Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?,” NTA Blog, August 21, 2024
  - Begins by noting recent IRS actions NTA approves of, including
    - Beginning to process claims to issue 50,000 ERC refunds
    - Extend processing claims through those filed by January 31, 2024

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<https://www.currentfederaltaxdevelopments.com/blog/2024/8/22/taxpayer-advocate-publishes-blog-page-outlining-options-for-taxpayers-who-received-notice-of-disallowance-on-erc-claims> Article

<https://www.taxpayeradvocate.irs.gov/news/nta-blog/did-you-receive-a-notice-of-claim-disallowance-for-your-employee-retention-credit-refund-claim-if-so-now-what/2024/08/> NTA’s blog post on disallowance

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- “Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?,” NTA Blog, August 21, 2024
- However notes that tax professionals have raised questions about issues with the denial letters recently issued
  - Claims that should have been allowed have been rejected with no IRS contact nor a complete explanation for the denial
  - Many of the notices failed to provide information about employer’s appeal rights

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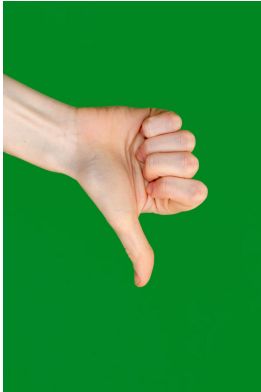


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- "Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?," NTA Blog, August 21, 2024
  - Describes unusual process the IRS used on these claims
    - Claims are being denied based solely on a risk-scoring analytic process
    - No examination is conducted nor is any opportunity given to taxpayers to submit information in support of their claims

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- “Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?,” NTA Blog, August 21, 2024
  - Describes unusual process the IRS used on these claims
    - Also modifies how Appeals will be processed
      - Will first be sent to a Revenue Agent for consideration
      - Agent will now review the claim and may ask for additional information

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- “Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?,” NTA Blog, August 21, 2024
  - Describes unusual process the IRS used on these claims
    - Also modifies how Appeals will be processed
      - If the Revenue Agent decides that the claim should not be paid, only then will the claim be sent on to the Office of Appeals

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*If it looks like  
a duck and  
walks like a  
duck...*

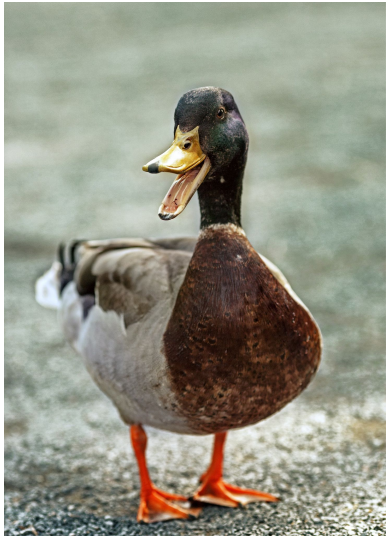


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- “Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?,” NTA Blog, August 21, 2024
  - Notes this may create a “ping-pong” possibility
    - Appeals does not generally consider information the IRS did not review first
    - Thus if the IRS provides the taxpayer with no opportunity to respond to the disallowance, the taxpayer would first be able to do so in Appeals
    - And that then that would go back to exam...
    - And this is going to be an even longer process

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- "Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?," NTA Blog, August 21, 2024
- NTA suggests that taxpayer might be able to speed up the process by considering entering the Appeals Fast Track program - but the IRS needs to clarify if these claims would qualify for this program

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- “Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?,” NTA Blog, August 21, 2024
  - Also notes that filing an Appeal does *not* suspend the statute of limitations for filing suit in court to challenge the IRS findings
  - Could finally win at Appeals only to find that the process took so long that no refund can be now be paid
  - Taxpayer will need to request an extension of the statute (Form 907) but the IRS must agree

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- “Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?,” NTA Blog, August 21, 2024
  - NTA points out that going to court may be far too expensive to make challenging the IRS in court economical
  - Reminds taxpayers to do due diligence in selecting an adviser to advise the client if they should continue to pursue the claim if they receive a disallowance



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