

Part IV - Items of General Interest

Employee Retention Credit Voluntary Disclosure Program

Announcement 2024-3

Section 1. Purpose and Scope

The Internal Revenue Service (IRS) announces a Voluntary Disclosure Program for employers (participants) to resolve erroneous claims for credit or refund involving the Employee Retention Credit (ERC). The ERC is a refundable tax credit intended for businesses and tax-exempt organizations that continued paying employees during the COVID-19 pandemic if their operations were fully or partially suspended due to a government order, they experienced the required decline in gross receipts, or they were a recovery startup business during the relevant eligibility periods.

The IRS has concerns about scams and potential fraud regarding ERC claims given false and misleading public advertisements and scams taking advantage of taxpayers. Those that filed for and erroneously received the ERC face enforcement action from the IRS and are subject to assessment and collection procedures. The IRS believes that it would prevail in any litigation to recover credits or refunds of erroneous ERC claims and that the imposition of appropriate penalties and interest would be upheld by a court. For efficient tax administration reasons, however, the IRS is offering employers an opportunity to resolve their civil tax liabilities under this Voluntary Disclosure Program and avoid potential civil litigation, penalties, and interest.

This Voluntary Disclosure Program includes the settlement of the ERC for purposes of a participant's employment tax obligations by eliminating their eligibility for the ERC while allowing a participant to retain 20% of the claimed ERC amount. Additionally, because the ERC reduces the income tax expense for qualified wages under rules similar to section 280C of the Internal Revenue Code (Code), this Voluntary Disclosure Program also resolves the issue of the corresponding adjustment to income tax expense for participants, which include common law employers who used a third-party payer to claim the ERC on their behalf.

Section 2. Eligibility

Any participant that has claimed the ERC and has received a credit or refund is eligible to participate in this Voluntary Disclosure Program, provided that:

- (1) The participant is not under criminal investigation and they have not been notified that the IRS intends to commence a criminal investigation;
- (2) The IRS has not received information from a third party alerting the IRS to the participant's noncompliance, nor has the IRS acquired information directly related to the noncompliance from an enforcement action;
- (3) The participant is not under an employment tax examination by the IRS for any tax period(s) for which the taxpayer is applying for this Voluntary Disclosure Program; and
- (4) The participant has not previously received notice and demand for repayment of all or part of the claimed ERC.

A participant that claimed the ERC using a third-party payer (such as an agent under section 3504 of the Code, a professional employer organization, or a certified professional employer organization) that claimed the ERC for the participant on an employment tax return filed under the third-party payer's own employer identification number (EIN) rather than the EIN of the participant, may participate in this Voluntary Disclosure Program, but the third-party payer must submit the application described in Section 4 of this announcement on the participant's behalf.

Section 3. Terms of ERC Voluntary Disclosure Program

The terms of this ERC Voluntary Disclosure Program are as follows:

- (1) Employment Tax Adjustments – The participant is not eligible for, or entitled to, any ERC, including both the refundable and non-refundable portions, for the tax period(s) at issue.
- (2) The participant will remit back to the Department of the Treasury 80% of the claimed ERC, including both the refundable and non-refundable portions.
- (3) The participant will not be required to repay any overpayment interest received. If the participant makes full payment of 80% of the claimed ERC prior to executing the closing agreement, no underpayment interest will apply. If the IRS approves a request for an installment agreement, interest may apply from the agreement date.

- (4) **Income Tax Effects** -- Because the settlement eliminates a participant's eligibility for and/or entitlement to all of the claimed ERC, participants are not required to reduce wage expense with respect to any of the previously claimed ERC. Consequently, if they had not previously reduced wage expense by any of the claimed ERC, participants need not file amended returns or Administrative Adjustment Requests (AARs) to reduce wage expense. Correspondingly, if they had previously reduced wage expense by any of the claimed ERC, participants should not reduce wage expense by any of the claimed ERC if they file an amended return or AAR adjusting the previous reduction to wage expense. Pursuant to the settlement, a participant has no income with respect to the resolution of the employment tax obligation by remittance of payment of only 80% of the claimed ERC, including both the refundable and non-refundable portions.
- (5) **Preparer/Advisor Information** – If a return preparer or advisor assisted or advised the participant with any portion of the claim for credit or refund, the participant will provide the name, address, and phone number of the preparer(s) or advisor(s) who assisted with the claim for credit or refund and a description of services provided by the preparer or advisor.
- (6) **Application of Penalties** – The IRS will not assert civil penalties related to the underpayment of employment tax attributable to the claimed ERC against a participant of this Voluntary Disclosure Program under Announcement 2024-3 that remits full payment of 80% of the claimed ERC prior to executing the closing agreement.
- (7) The participant will execute a closing agreement, as more fully described in Section 4(3).

Section 4. Procedures for Participants in the ERC Voluntary Disclosure Program

- (1) Form 15434, *Application for Employee Retention Credit Voluntary Disclosure Program*

Participants in this Voluntary Disclosure Program must notify the IRS of their election by completing and submitting Form 15434, *Application for Employee Retention Credit Voluntary Disclosure Program*, on or before 11:59 pm local time on March 22, 2024. Participants must submit Form 15434 and any required attachments electronically via the Document Upload Tool at irs.gov/DUT.

Form 15434 must be prepared under penalties of perjury and:

- (a) Include the taxpayer's name, taxpayer identification number, current address, and daytime telephone number. If a practitioner will represent the taxpayer, the practitioner must provide a completed Form 2848, *Power of Attorney and Declaration of Representative*;
- (b) Identify the tax period(s) for which the ERC was claimed, the form on which the ERC was claimed, and the full amount of the ERC claimed, including both the amounts that were refundable and non-refundable;
- (c) If the tax period(s) for which the ERC was claimed include any tax period ending in 2020, a completed, signed ERC Voluntary Disclosure Program Form SS-10, *Consent to Extend the Time to Assess Employment Taxes*, for the 2020 Tax Period(s), is required to be submitted with Form 15434. The ERC Voluntary Disclosure Program Form SS-10 is available at <https://www.irs.gov/pub/irs-utl/form-ss10-2020-ercvd.pdf>;
- (d) If the ERC was claimed by a third-party payer on behalf of the participant, as described in Section 2, the third-party payer must attach a copy of the relevant pages of the Schedule R (Form 941), *Allocation Schedule for Aggregate Form 941 Filers*, that was attached to each Form 941, *Employer's Quarterly Federal Tax Return*, on which the third-party payer claimed the ERC for the participant; and
- (e) If a return preparer or advisor assisted with the claim for credit or refund, include the name, address, and phone number of the preparer(s) and advisor(s) who assisted with the claim for credit or refund and a description of services provided by the preparer or advisor.

(2) Payment

Form 15434 will help a participant calculate how much they will be required to pay to the Department of the Treasury under the terms of the ERC Voluntary Disclosure Program.

A participant must use the Electronic Federal Tax Payment System (EFTPS) to submit an online payment(s). Payment should be made separately for each tax period upon submission of Form 15434. For each EFTPS payment, select the category "Advanced Payment." Participants should not make a single, lump-sum payment for multiple tax periods to ensure such payments are accurately credited to the correct tax period. Full payment of the liabilities under this Voluntary Disclosure Program should be made by the date the closing agreement described in subsection (3) is executed by the participant. Participants who are unable to remit full payment of the 80% of claimed

ERC may be considered for an installment agreement, pending approval.

(3) Closing Agreement

After receiving the requested information, the IRS will prepare a closing agreement under section 7121 of the Code in accordance with the terms of the settlement.

The IRS will mail the closing agreement to the participant who must sign and return it to the IRS within 10 days of the date of mailing by the IRS. The IRS may grant an extension for good cause to participants who request additional time within the 10-day period. Full payment of the liabilities under this Voluntary Disclosure Program should be made by the date the closing agreement is executed by the participant.

As discussed in Section 4(2), participants who are unable to remit full payment of the liabilities under this Voluntary Disclosure Program may be considered for an installment agreement, pending approval.

(4) Other Matters

- (a) Denial of a participant's request to participate in this Voluntary Disclosure Program is not subject to judicial review or administrative appeal.
- (b) Execution of a closing agreement under this Voluntary Disclosure Program does not preclude the IRS from investigating any associated criminal conduct or recommending prosecution for violation of any criminal statute, and does not provide any immunity from prosecution.

CONTACT INFORMATION

The principal author of this announcement is Michael Franklin of the Office of the Associate Chief Counsel (Procedure & Administration). If you need help completing Form 15434, have questions on the status of your ERC Voluntary Disclosure Program application, or have other ERC Voluntary Disclosure Program related questions, contact the ERC Voluntary Disclosure hotline at 414-231-2222 (not a toll-free number).