

IRS ANNOUNCES NEW VOLUNTARY DISCLOSURE PROGRAM FOR EMPLOYERS WHO RECEIVED EMPLOYEE RETENTION CREDIT PAYMENTS FOR WHICH THEY DID NOT QUALIFY

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IRS Announces New Voluntary Disclosure Program for Employers Who Received Employee Retention Credit Payments for Which They Did Not Qualify

By Kaylyn Varnum, CPA & Mike Batts, CPA

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On Thursday, December 21, 2023, the IRS announced the availability of a new Voluntary Disclosure Program (the Program) to encourage employers to return Employee Retention Credit (ERC) payments for which they did not qualify.¹ This announcement is the latest in a series of communications and related actions taken by the IRS to combat aggressive ERC marketing schemes and fraudulent or erroneous ERC claims. BMWL has previously published numerous articles regarding the ERC and related IRS developments, which are available on the News and Resources page of our website.²

In a related Information Release regarding the Program, IRS Commissioner Danny Werfel stated, “The disclosure program provides a much-needed option for employers who were pulled into these claims and now realize they shouldn’t have applied.”³

Many ERC promoters and service providers charged very substantial percentage-based fees for their services. One of the concerns that the IRS has attempted to address in the Program is whether employers would be required to pay back the portion of the ERC claims that were previously paid to their service providers.

Under the Program, eligible employers are only required to pay back 80 percent of the credit they received.

If the IRS previously paid interest on the employer’s ERC claim, the employer is not required to repay that interest. Additionally, no penalties or interest will be assessed against participants in the Program, provided that the employer repays the required 80 percent of the credit at the time it submits the signed Program closing agreement to the IRS.

Employers must apply by March 22, 2024, to participate in the Program by filing Form 15434,⁴ Application for Employee Retention Credit Voluntary Disclosure Program.

As a condition of participating in the Program, employers must provide the IRS with the names, addresses, and telephone numbers of any advisors or tax preparers who advised or assisted them with their claim, together with details about the services they provided.

In order to qualify, **all** of the following criteria must be true:

- The employer is not under criminal investigation and has not been notified that it is under criminal investigation;
- The employer is not under an IRS employment tax examination for the applicable tax period;
- The employer has not received an IRS notice and demand for repayment of all or part of the ERC; and
- The IRS has not received information from a third party that the taxpayer is not in compliance or has not acquired information directly related to the noncompliance from an enforcement action.

Additional information regarding the Program is available on the IRS website.⁵

¹ Source: <https://www.irs.gov/pub/irs-drop/a-24-03.pdf>

² Source: <https://nonprofitcpa.com/news-resources/>

³ Source: <https://www.irs.gov/newsroom/irs-new-voluntary-disclosure-program-lets-employers-who-received-questionable-employee-retention-credits-pay-them-back-at-discounted-rate-interested-taxpayers-must-apply-by-march-22>

⁴ Source: <https://www.irs.gov/forms-pubs/about-form-15434>

⁵ Source: <https://www.irs.gov/coronavirus/employee-retention-credit-voluntary-disclosure-program>

This Voluntary Disclosure Program provides an **extremely unique opportunity** for employers to avoid penalties and even keep a portion of ERC funds for which they did not qualify. The IRS previously created a program for withdrawal of ERC claims that had not yet been processed or for which the funds were not yet deposited by the employer. BMWL's article regarding the ERC withdrawal process is available on our website.⁶

BMWL Can Help

BMWL has helped numerous nonprofit organizations (churches, private schools, charities, etc.) claim significant Employee Retention Credits based on careful analysis of the facts and available guidance. In many cases, our analysis includes consideration of input from legal counsel regarding certain key criteria. We also help our clients document the basis for any ERC claims that we help them make. We have a highly knowledgeable and experienced task force dedicated to assisting clients in addressing the ERC and certain other pandemic-related matters. If you would like to discuss your organization's ERC eligibility or the validity of your ERC claim, please reach out to our team directly at C19TaskForce@NonprofitCPA.com.

Additionally, BMWL has formed a team to represent nonprofits in IRS Employee Retention Credit Audits. Nonprofit organizations that have been notified of an IRS inquiry or examination in connection with an ERC claim can reach the BMWL IRS ERC Audit Representation Team at ERCAuditTeam@NonprofitCPA.com.

⁶ Source: <https://nonprofitcpa.com/irs-announces-withdrawal-process-for-employee-retention-credit-claims/>