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The Internal Revenue Service (IRS) recently created opportunities for voluntary withdrawal and disclosure of Employee Retention Credits (the “ERC”). Since the enactment of the ERC, the IRS has expressed concerns regarding fraud and wariness around third parties pushing employers to claim the ERC when they do not qualify. Due to those concerns, the IRS issued a moratorium ([IR-2023-169](#)) – which is still in effect – on processing new ERC claims filed on or after September 14, 2023. The Voluntary Withdrawal Program ([IR-2023-193](#)) and the Voluntary Disclosure Program ([A-2024-3](#)) are intended for organizations that filed ERC claims and now wish to withdraw the claim or return ERC funds. This article explores a CAA’s ability to take advantage of these programs, if needed.

Background

The ERC was enacted on March 27, 2020, as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the first major COVID-19 pandemic relief package. The purpose of the ERC was to help employers in both the private and nonprofit sectors maintain their workforces in the face of widespread, government-ordered shutdowns and losses in revenue.

CAPLAW’s resource, [Employee Retention Credit: What Your CAA Needs to Know](#), discusses in greater detail the ERC eligibility criteria and addresses the federal award financial management rules that apply. The section of the resource, [Should you claim the credit?](#), explains that the ERC credits related to qualified employee wages originally charged to federal grants are likely to be considered “applicable credits” under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Federal funding sources may take different approaches as to the treatment of the ERC subject to the applicable credit requirement. Some may require the grantee to repay the ERC as an offset to the salary costs originally charged to the grant, while others may allow the grantee to keep the ERC as an addition to their current-year program funding, or take another position.

Voluntary Withdrawal Program

Employers who filed an ERC claim but have not received or cashed the ERC payment may withdraw the claim via the Voluntary Withdrawal Program made available on October 19, 2023 ([IR-2023-193](#)). Because withdrawn claims are treated as if they had never been filed, employers who filed in error can avoid potential penalties or interest payments.

Employers are eligible to use the withdrawal process if they:

- Made an ERC claim on an adjusted employment return;
- Filed the adjusted return only to claim the ERC (and made no other adjustments);
- Want to withdraw the entire amount of their claim; and
- The IRS has not yet paid their claim (or the IRS has paid the claim, but the employer has not cashed or deposited the refund check).



While there is currently no end date to the withdrawal program, employers wishing to take advantage of the program should do so as soon as possible given the history of frequent changes to the ERC. Instructions are available at [IRS.gov/withdrawmyerc](https://www.irs.gov/withdrawmyerc).

The IRS created the withdrawal program to help employers who were pressured or misled by ERC marketers or promoters, but CAAs may take advantage of it for a number of reasons. The IRS does not require employers to explain why they are participating in this program so long as they meet all requirements. This means that a CAA may take advantage of this program if it was not eligible for the ERC and wants to withdraw, or if it was eligible for the ERC but its funding sources have indicated they will require repayment of the ERC as applicable credits. CAAs who need help understanding eligibility may refer to the [Are you eligible for the credit?](#) section of CAPLAW's ERC resource, or to the [IRS Employee Retention Credit Eligibility Checklist](#).

Voluntary Disclosure Program

Those who cashed or deposited ERC payments can also return the funds, if necessary. The IRS announced a voluntary disclosure program on December 21, 2023, [IRS Announcement 2024-3](#) and [IRS Voluntary Disclosure Program](#), for employers to repay ERC claims if they no longer believe they are eligible for or entitled to the ERC. Employers that wish to take advantage of this program must apply by March 22, 2024. Advantages of the program include that employers must only repay 80% of the ERC and do not have to repay any interest, allowing them to keep 20% of the claimed ERC amount. The IRS intends this percentage to help those who were pressured or misled by ERC marketers or promoters, as it generally corresponds to the portion of the ERC paid to such promoters.

To apply, employers must file [Form 15434](#), *Application for Employee Retention Credit Voluntary Disclosure Program*, and must meet certain conditions, including that the employer:

- Is not under criminal investigation and has not been notified that the IRS intends to commence a criminal investigation;
- Is not under an employment tax examination by the IRS for any tax periods for which it is applying for the Voluntary Disclosure Program;
- Has not previously received notice and demand for repayment for any part of the claimed ERC; and
- The IRS has not received or acquired information directly related to the employer's noncompliance.

The Voluntary Disclosure Program is intended for employers who were not eligible for, or not entitled to, the ERC but have received and deposited or cashed the ERC refund check. A CAA whose funding source has indicated it will require repayment of the ERC under its interpretation of the applicable credits requirements may explore its ability to take advantage of this program, however, it is not clear at this time whether the IRS will permit repayment under the Voluntary Disclosure Program by those that were eligible for the ERC but wish to return the funds for other reasons (such as potential applicable credits concerns). Since part of the IRS's motivation for the program is to offset any fees paid to aggressive credit promoters, a CAA may wish to explore the possibility of qualifying for the program if the CAA was encouraged to apply for the ERC by a third party but now wishes to return the ERC funds.





On the Radar

The ERC could end sooner than expected. A new bill has reached Congress, titled [The Tax Relief for American Families and Workers Act of 2024](#). If passed, the bill could amend the due date of ERC filings to January 31, 2024, ending the opportunity for employers to submit ERC claims. Under current law, eligible employers have until April 15, 2024, to file claims for the 2020 tax filing year, and until April 15, 2025, to file claims for the 2021 tax filing year.

The House of Representatives voted on and passed the bill on January 31, 2024, but the Senate must still consider and pass it before it becomes a reality. The status of the bill can be tracked [here](#). If adopted, it is possible that the bill makes the January 31, 2024, deadline to end the program retroactive. Even if the earlier deadline is not adopted, given the concerns of the IRS and Congress regarding fraud surrounding the ERC, the credit may come to an early end in advance of current deadlines.

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