

Immediate Moratorium on Processing New ERC Claims

This News Release (IR) from the IRS has added another layer of protection!

CCi prepared this document as a service to help you make an informed decision about claiming or not claiming your refund. Any time you see content in **CCi green** then you know it came from us – otherwise, it came directly from the IRS (IRS.GOV)! Here's the link to this information so you can do your own comparison: <https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>

Our goal is to help as many people as possible file legitimate claims for their ERC Refund.

- *How?*
 - By leveraging the expertise of trusted tax professionals with whom we've strategically partnered
- We're sorry to hear that legitimate claims have been delayed
 - We agree something needs to be done to stop fraudulent claims
 - Unfortunately, this has the unintended consequence of also stopping legitimate claims
- **Many organizations still exist who have a valid claim concerning this tax refund**
 - *Why?* Many of our clients have told us "We didn't file earlier because we didn't know who we could trust to file a legitimate claim for us"
 - We share with our clients that we had to evaluate multiple suppliers before we found someone we could trust to properly process ERC claims
 - **Once they understand our process:** including the fact we will not guarantee a refund amount until we analyze the details of their situation
 - **Then, they are "all-in" for getting a complimentary 2nd Opinion concerning ERC**
- The IRS Commissioner did not place a moratorium on submitting claims; the moratorium halts the processing of new claims until they figure out how to separate legitimate claims from fraudulent claims
- From the start, our extended team has insisted on developing a detailed report specifically for each client so they know exactly why they qualify and why they can claim the refund
- And, we always warn our clients they may go through our process and find out their refund is \$0 (meaning they don't qualify for a refund) – if that happens their deposit of \$2,600 is returned
- Our suppliers collect their contingency fee *only after* you receive your refund;
- **AND, PLEASE DON'T MISS THIS NEXT STATEMENT: CCI has a way for you and your organization to offset the contingency fee you pay our supplier by providing us with trusted referrals**
 - We do not do aggressive advertising
 - We operate as a trusted advisor based on a referral from a friend or business associate
 - We call this the *Bless Others* program – helping to get this "financial lifeline" into the hands of any organization with a legitimate claim ([click here to see the full "financial lifeline" quote from IR-2023-40](#)).



IRS To protect taxpayers from scams, IRS orders immediate stop to new Employee Retention Credit processing amid surge of questionable claims; concerns from tax pros

Aggressive marketing to ineligible applicants highlights unacceptable risk to businesses and the tax system

IR-2023-169, Sept. 14, 2023

Moratorium on processing of new claims through year's end will allow IRS to add more safeguards to prevent future abuse, protect businesses from predatory tactics; IRS working with Justice Department to pursue fraud fueled by aggressive marketing

WASHINGTON — Amid rising concerns about a flood of improper Employee Retention Credit claims, the Internal Revenue Service today announced an immediate moratorium through at least the end of the year on processing new claims for the pandemic-era relief program to protect honest small business owners from scams.

IRS Commissioner Danny Werfel ordered the immediate moratorium, beginning today, to run through at least Dec. 31 following growing concerns inside the tax agency, from tax professionals as well as media reports that a substantial share of new claims from the aging program are ineligible and increasingly putting businesses at financial risk by being pressured and scammed by aggressive promoters and marketing.

We feel it's very important to remember the rules for ERC changed about every six months: from original rules back in April 2020 through all the revisions up-to-and-including the passing of the Inflation Reduction Act:

- Initially, if you took a PPP loan you could not file for an ERC refund
- Then, the rules were relaxed a bit but you still had to satisfy revenue/financial tests
- Even in 2021 it was still more advantageous to take a second PPP loan than to try to figure out how to satisfy the rules of the ERC program
- And, dare we say that the PPP program was heavily promoted by financial institutions?
- Along the way, non-revenue/non-financial tests were added that made it possible for more organizations to file legitimate ERC claims
- If an organization didn't qualify in earlier versions then they have no compelling reason to take a second look unless someone is able to explain to them that the rules have changed and it would be wise to seek a *2nd Opinion*

The IRS continues to work previously filed [Employee Retention Credit \(ERC\)](#) claims received prior to the moratorium but renewed a reminder that increased fraud concerns means processing times will be longer. On July 26, the [agency announced](#) it was increasingly shifting its focus to review these claims for compliance concerns, including intensifying audit work and criminal investigations on promoters and businesses filing dubious claims. The IRS announced today that hundreds of criminal cases are being worked, and thousands of ERC claims have been referred for audit.

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We've strategically partnered with our suppliers whose complete and thorough process collects all of the details needed to support each claim for a refund using an amended return (such as a 941-X). The process ensures compliance with the law and is filed by a paid preparer (either a CPA or Enrolled Agent).

The IRS emphasizes that payouts for these claims will continue during the moratorium period but at a slower pace due to the detailed compliance reviews. With the stricter compliance reviews in place during this period, existing ERC claims will go from a standard processing goal of 90 days to 180 days – and much longer if the claim faces further review or audit. The IRS may also seek additional documentation from the taxpayer to ensure it is a legitimate claim.

This enhanced compliance review of existing claims submitted before the moratorium is critical to protect against fraud but also to protect the businesses from facing penalties or interest payments stemming from bad claims pushed by promoters, Werfel said.

"The IRS is increasingly alarmed about honest small business owners being scammed by unscrupulous actors, and we could no longer tolerate growing evidence of questionable claims pouring in," Werfel said. "The further we get from the pandemic, the further we see the good intentions of this important program abused. The continued aggressive marketing of these schemes is harming well-meaning businesses and delaying the payment of legitimate claims, which makes it harder to run the rest of the tax system. This harms all taxpayers, not just ERC applicants."

We, too, are alarmed by the amount of fraud associated with the ERC program but are just as alarmed that the good intentions of this important program will not provide the intended "financial lifeline" to organizations with a legitimate claim because they are too scared to file for their refund.

"For those people being pressured by promoters to apply for the Employee Retention Credit, I urge them to immediately pause and review their situation while we look to add new protections and safeguards to stop bad claims from ever coming in," Werfel said. "In the meantime, businesses should seek out a [trusted tax professional](#) who actually understands the complex ERC rules, not a promoter or marketer hustling to get a hefty contingency fee. Businesses that receive ERC payments improperly face the daunting prospect of paying those back, so we urge the utmost caution. The moratorium will help protect taxpayers by adding a new safety net onto this program to focus on fraudulent claims and scammers taking advantage of honest taxpayers."

Our suppliers are listed in the "IRS trusted tax professional" database so you don't have to worry about "a promoter or marketer hustling to get a hefty contingency fee."

Our clients cannot pay us (CCI) for our services. Let me repeat this statement – **our clients cannot pay us for our services.** When our clients pay our supplier, then our supplier will turn around and pay us for our services.

Taxpayers are encouraged to review IRS guidance and tools for helping determine [ERC eligibility](#), including [frequently asked questions](#) [[see our response here](#)] and a new [question and answer guide](#) released today to help businesses understand if they are actually eligible for the credit.

The IRS is developing new initiatives to help businesses who found themselves victims of aggressive promoters. This includes a settlement program for repayments for those who received an improper ERC payment; more details will be available this fall.

In addition, the IRS is finalizing details that will be available soon for a special withdrawal option for those who have filed an ERC claim but the claim has not been processed. This option – which can be used by taxpayers whose claim hasn't yet been paid– will allow the taxpayers, many of them small businesses who were misled by promoters, to avoid possible repayment issues and paying promoters contingency fees. Filers of these more than 600,000 claims awaiting processing will have this option available. Those who have willfully filed fraudulent claims or conspired to do so should be aware, however, that withdrawing a fraudulent claim will not exempt them from potential criminal investigation and prosecution.

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As part of the wider compliance effort, the IRS is working with the Justice Department to address fraud in the ERC program as well as promoters who have been ignoring the rules and pushing businesses to apply.

The IRS has trained auditors examining ERC claims posing the greatest risk, and the IRS Criminal Investigation division is actively working to identify fraud and promoters of fraudulent claims for potential referral for prosecution to the Justice Department.

*We learned early on in 2020 and 2021 that one of the greatest risks to our clients was having a preparer who would not sign and file their amended return. We do not use this type of supplier. **We strategically partner with someone who has the credentials capable of signing and filing your amended return.***

IRS Criminal Investigation (IRS-CI) investigates a variety of COVID fraud allegations ranging from fraudulently obtained employee refund tax credits to falsified Paycheck Protection Program loans. To date, IRS-CI has uncovered suspected pandemic fraud totaling more than \$8 billion. As of July 31, 2023, IRS-CI has initiated 252 investigations involving over \$2.8 billion of potentially fraudulent Employee Retention Credit claims. Of those, fifteen of the 252 investigations have resulted in federal charges. Of the 15 federally charged cases, so far six matters have resulted in convictions, four of those cases have reached the sentencing phase with the average sentence being 21 months.

Criminal Investigation's work is in addition to ERC audits that have started. The IRS has already referred thousands of ERC cases for audit.

ERC: A complex credit designed to help during the pandemic; taxpayer risk growing amid aggressive marketing and potential to have to repay improper claims

When properly claimed, the ERC – also referred to as the Employee Retention Tax Credit or ERTC -- is a refundable tax credit designed for businesses that continued paying employees during the COVID-19 pandemic while their business operations were fully or partially suspended due to a government order or they had a significant decline in gross receipts during the eligibility periods. The credit is not available to individuals.

The ERC is a complex claim with precise requirements to help businesses during the pandemic, and the IRS has received approximately 3.6 million of these claims over the course of the program.

"As we move nearly two years beyond the 2021 eligibility date for the program and beyond the end of the pandemic, the reality that we're seeing and hearing from tax professionals and others is that many of the affected businesses have already come in," Werfel said. "This means we must increase our safeguards to protect against fraud and revenue loss."

*As we already shared on Page 2, the law was changed yet again in August 2021 which means it might have taken your organization 12-to-18-months to realize you should seek out a second opinion because you might actually qualify for an ERC refund. Based on the current law – if you satisfied the existing requirements in 2021 then you will still satisfy the requirements today. *When you file for your refund has no basis in determining your eligibility status.**

We believe you need a specialist who has kept up with all of the changes to evaluate your organization's specific situation and then tell you whether or not you satisfy the law in order to confidently file a legitimate ERC claim.

Although promoters advertise that ERC submissions are "risk free," there are significant risks facing businesses as the IRS increases its audit and criminal investigation work.

The IRS reminds anyone who improperly claims the ERC that they must pay it back, possibly with penalties and interest. A business or tax-exempt group could find itself in a much worse financial position if it has to pay back the credit than if the credit was never claimed in the first place. This underscores the importance of taxpayers taking precautionary steps to independently verify their eligibility to receive the credit before applying through a

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promoter. Taxpayers should take particular precautions because a promoter can collect a contingency fee of up to 25% of the ERC refund.

Someone who files an improper ERC claim should have to pay it back; as should anyone who claims the child tax credit on their personal taxes when their “child” was a dog or a cat.

We never say “free” – we say *complimentary*. Our client is going to invest time in collecting all of the details needed to complete the analysis (payroll data by quarter, revenue data by quarter and by sector, original tax filings (such as a quarterly 941), etc.). We’re going to invest time in analyzing all of the details, asking more questions, and compiling a detailed qualification report ([see example](#)). Then, our client will understand the reasons why they qualify before they sign the amended return – then, our CPA or Enrolled Agent will sign and file the return. By the way – and for what it’s worth – we have run into other ERC processing organizations charging more than 25% of the ERC refund.

Our process, with checks and balances built-in to the software and trained-in to the team, minimizes errors and maximizes refunds because they know for sure they have properly allocated PPP dollars and kept them separate from ERC dollars (eliminates “double-dipping”).

Advice for taxpayers: What to do as IRS works to help businesses facing questionable ERC claims

As the IRS continues working additional details on ERC, there are several steps that the agency recommends for businesses, depending on where they are in the process:

- **For those currently awaiting an ERC claim.** For those who currently have an ERC claim on file, the IRS will continue processing these claims during the moratorium period but at a greatly reduced speed due to the complex nature of these filings and the need to protect businesses from being improperly paid. Normal processing times could easily stretch to 180 days or longer. The IRS cautions that many applications will be facing additional compliance scrutiny, which means the payments could take even longer to be processed. While the IRS works on compliance measures during this period, the agency cautions businesses to expect extended wait times due to the large volume of claims and the complexity of the applications.

Due to the large volumes and the need for compliance checks to protect against fraud, the IRS is unable to expedite individual claims. The IRS believes many of the applications currently filed are likely ineligible, and tax professionals note anecdotally that they are seeing instances where 95 percent or more of claims coming in recent months are ineligible as promoters continue to aggressively push people to apply regardless of the rules.

The [Baldrige Performance Excellence](#) program teaches that “facts” are different from “anecdotal” statements. Facts can be measured; anecdotal statements are stories. But let’s go with the anecdotal statement of 95% of current claims are ineligible. There are 600,000 active claims in the IRS system ... this would mean at least 30,000 are legitimate claims.

We believe every legitimate claim should be processed; [our suppliers only file legitimate claims](#).

For those currently with a pending application at the IRS, they should review the options below to see if any of those could help with their current situation.

- **For those who haven't filed a claim yet, consider reviewing the guidelines and waiting to file:** For those considering filing a claim, the IRS urges businesses to carefully review the ERC guidelines during the processing moratorium period. The IRS urges businesses to talk to a trusted tax professional – not a tax promoter or marketing firm looking to make money generating applications that takes a big chunk out of the ERC claim. The new question and answer guide can also help. A careful review of the rules will show that many of these businesses do not qualify for the ERC, and avoiding a bad claim will avoid complications with the IRS.

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For those who haven't filed a claim – we recommend they do what Ronald Reagan was fond of saying “**trust but verify**” with a specialist because not everyone will qualify.

In fact, 10-to-12% don't qualify but at least they know for sure because they went forward with our complimentary 2nd Opinion.

Our clients stay in control throughout the whole process, they can get all the way through the process to the actual creation of an amended tax return and can still stop the process and get their \$2,600 deposit back.

- **Withdraw an existing claim for businesses that have already filed:** For those who have filed and have a pending claim, they should carefully review the program guidelines with a trusted tax professional and check the new question and answer guide. For example, the IRS is seeing repeated instances of people improperly citing supply chain issues as a basis for an ERC claim when a business with those issues will very rarely meet the eligibility criteria. Under any scenario, if a business claimed the ERC earlier and the claim has not been processed or paid by the IRS, they can withdraw the claim if they now believe it was submitted improperly – even if their case is already under audit or awaiting audit. More details will be available shortly.
- **Wait for the IRS ERC settlement program to be finalized:** If a business has already received an ERC that they now believe is in error, the IRS will be providing additional details on the settlement program in the fall that will allow businesses to repay ERC claims. The settlement program will allow the businesses to avoid penalties and future compliance action. The IRS is continuing to assess options on how to deal with businesses that had a promoter contingency fee paid for out of the ERC payment.

Warning flags to watch out for; help for properly claiming the ERC

The IRS has a list of [red flags to watch out for aggressive marketing and questionable ERC claims](#).

The ERC is an incredibly complex credit, and there are very specific eligibility requirements for claiming the ERC. Employers can claim the ERC on an original or amended employment tax return for qualified wages paid between March 13, 2020, and Dec. 31, 2021. However, to be eligible, employers must have:

- Sustained a full or partial suspension of operations due to [orders from an appropriate governmental authority](#) limiting commerce, travel or group meetings because of COVID-19 during 2020 or the first three quarters of 2021,
- Experienced a [significant decline in gross receipts during 2020](#) or a [decline in gross receipts during the first three quarters of 2021](#), or
- Qualified as a [recovery startup business](#) for the third or fourth quarters of 2021.

We agree that “The ERC is an incredibly complex credit” and also point out it is difficult to summarize all of the eligibility tests into three bullet points when the law is hundreds of pages long.

We rely upon our clients to provide accurate data in order for our suppliers to give them their opinion as a “trusted tax professional” regarding their eligibility to file a legitimate ERC claim.

More information is available on [IRS.gov/erc](https://irs.gov/erc).

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*** this is the official end of the 9/14/2023 IRS document ***

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In a separate update, [IR-2023-135, July 26, 2023](#), IRS Commissioner Danny Wefel is quoted as having said “the agency has entered a new phase of increasing scrutiny on dubious submissions while renewing consumer warnings against aggressive marketing.”

Most of the points raised in the 7/26 news release were also covered in the 7/31 FAQ document. **We fully support this effort to reduce fraud but respectfully point out that someone else committing fraud should not keep organizations from filing legitimate claims for their ERC refund.**

We affectionately call this the Ronald Reagan *Trust-but-Verify* 2nd Opinion!

Some have projected there should be at least 20-to-22 million legitimate claims for ERC refunds. IR-2023-135 states there have been more than 2.5 million claims filed. 2.5M is 12.5% of 20M and 50% of 5M – regardless of the remaining amount of legitimate claims to be filed, don't you want to know for sure if you have a legitimate claim?

In order to address fraud and error, Werfel is also quoted as having said “We will work with Treasury to explore legislative solutions ... including potentially putting an earlier ending date for businesses to claim the credit...”

Don't Wait! Reach out to us for a 2nd Opinion! (savings@costcuttersi.com • 313.880.1224 • 616.330.1224)

While we've referenced on our website the full IRS update from March (IR-2023-40), we included here the paragraph containing the most relevant quote of then Acting Commissioner, Doug O'Donnell – because it pertains to the “conversation” we've been having so far in this document!

"While this is a legitimate credit that has provided a financial lifeline to millions of businesses, there continue to be promoters who aggressively mislead people and businesses into thinking they can claim these credits," said Acting IRS Commissioner Doug O'Donnell. "Anyone who is considering claiming this credit needs to carefully review the guidelines. If the tax professional they're using raises questions about the accuracy of the Employee Retention Credit claim, people should listen to their advice. The IRS is actively auditing and conducting criminal investigations related to these false claims. People need to think twice before claiming this."

- We agree this is a legitimate credit & has provided a financial lifeline to millions of organizations
- We agree there are some who mislead people to claim a refund for which they do not qualify
- We disagree that “if the tax professional ... raises questions ... people should listen ...”
 - Why? **Implied in this statement is that you will listen to their advice & not apply**
 - many times, the tax professional is just quoting this type of warning
 - many times, they have not analyzed the facts to determine if you have a legitimate claim
 - **Just as you cannot identify in minutes that you qualify for a refund – you cannot in just a few minutes determine that you do not qualify for a refund**
 - Unless your tax professional goes through the effort to compare your situation to the law then they are just stating an opinion about your situation
 - **We analyze your data & give you the facts so you can make an informed decision**

This is truly a limited time opportunity to claim your legitimate, ERC refund. **Don't Wait! Reach out to us to secure your complimentary, “Trust but Verify” 2nd Opinion!** (savings@costcuttersi.com • 313.880.1224 • 616.330.1224)