

## ERC 2<sup>nd</sup> Voluntary Disclosure Program

During the fall of 2023, IRS Announcement 2024-3 announced a Voluntary Disclosure Program for employers to resolve erroneous claims for credit or refund involving the Employee Retention Credit (ERC). It had a deadline of March 22, 2024.

Now IRS, in Announcement 2024-30 has announced a second ERC Voluntary Disclosure Program. It has a deadline of November 22, 2024.

This 2<sup>nd</sup> ERC VDP is for taxpayers who filed for and erroneously received the ERC for the 2021 Tax Period(s). In other words, this 2<sup>nd</sup> ERC VDP is not available for any of the 2020 tax periods.

Eligible taxpayers for this program are those that meet the following conditions:

- 1) The taxpayer is not under criminal investigation AND has not been notified that IRS intends to commence a criminal investigation.
- 2) IRS has not received information from a third-party alerting IRS to the taxpayer's noncompliance, nor has IRS acquired information directly related to the noncompliance from an enforcement action.
- 3) The taxpayer is not under an employment tax examination by IRS for any tax period for which the taxpayer is applying for this Voluntary Disclosure Program.
- 4) The taxpayer has not been notified by the IRS that the ERC they received is being recaptured (letter 6577-C, *Employee Retention Credit Recapture*) for any tax period for which the taxpayer is applying for this second ERC VDP.
- 5) The taxpayer has not previously received notice and demand for repayment of all or part of the claimed ERC.

Terms of the agreement include:

- 1) The taxpayer is not eligible for, or entitled to, any ERC for the particular tax periods at issue.
- 2) The taxpayer will pay back to the Department of Treasury 85% of the claimed ERC (including both the refundable and nonrefundable portions); this payment must be made through EFTPS (this is an increase from the 80% used in the first ERC VDP).
- 3) The taxpayer will not be required to repay any overpayment interest the taxpayer previously received, nor will the taxpayer be charged any underpayment interest as long as the full payment of the 85% is made prior to executing the closing agreement.
- 4) The taxpayer is not required to reduce the wage/health expense with respect to any of the previously claimed credit that falls under this Voluntary Disclosure Program. Thus, no amended return is required. (If an amended return was already filed in connection with a claimed ERC, it may need to be reamended to reinstate the costs.) The taxpayer is also not required to show any income because of only having to repay 85% of the credit amount.

- 5) The taxpayer must disclose the name, address, and phone number of any return preparer or advisor who assisted or advised the taxpayer with any portion of the claim for credit or refund, and must provide a description of the services provided by the preparer/advisor.
- 6) IRS will not assert civil penalties related to the underpayment of employment tax attributable to the claimed ERC that falls under this Voluntary Disclosure Program, if the full payment of 85% is made prior to executing the closing agreement (see #7 below).
- 7) The taxpayer will execute a closing agreement within 10 days of the date of its mailing to the taxpayer by the IRS.

The agreement is applied for by filing a Form 15434, Application for Employee Retention Credit Voluntary Disclosure Program, on or before 11:59 pm local time on November 22, 2024. The Form 15434 and any required attachments must be filed electronically via the Document Upload Tool at [irs.gov/DUT](https://irs.gov/DUT). If the ERC was claimed for the first or second quarter of 2024, the taxpayer also needs to include a completed, signed ERC Voluntary Disclosure Program Form SS-10, *Consent to Extend the Time to Assess Employment Taxes*.

IRS Commission Werfel stated this program represents a FINAL WINDOW of opportunity for misled businesses to make adjustments and avoid future compliance action. This program and comments are made in the wake of 30,000 new letters sent to reverse or recapture potentially more than \$1 Billion in improper ERC claims.

More information on the documents and completion of Form 15434 can be found in Announcement 2024-30.

This text has been shared courtesy of: David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065, fax 920-496-9111, [ataxprof.com](http://ataxprof.com).

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