

Employee Retention Credit Moratorium

The Employee Retention Credit (ERC) is a hot topic. Even though it only existed for parts of 2020 and 2021, the opportunity to amend the Forms 941 to claim this credit is still here. IRS feels it has received many claims that are not valid because the taxpayer did not meet either of the qualifying conditions.

Now, in News Release IR-2023-169, IRS has announced a moratorium on processing new ERC claims at least through the end of the year. This moratorium is effective for claims received September 14, 2023 or after.

IRS will continue to work existing claims, although the processing will be slower, with a standard processing goal of 180 days, instead of the former 90 days. IRS may request additional documentation from a taxpayer to ensure it is a legitimate claim.

On July 26, IRS announced it was increasingly shifting its focus to review claims for compliance concerns, including intensifying audit work and criminal investigations on promoters and businesses filing dubious claims. Hundreds of criminal cases are being worked, and thousands of ERC claims have been referred for audit. As of July 31, 2023, IRS-Criminal Investigation (CI) has initiated 252 investigations involving over \$2.8 billion of potentially fraudulent ERC claims. An improper ERC can cause taxpayers to be in much worse financial position than not filing a claim. If the claim is denied, the taxpayer will have to repay the ERC, plus interest and possible penalties. And in many cases the taxpayer has paid a company 10-30% in contingency fee when the claim was prepared.

IRS encourages taxpayers who haven't filed a claim to talk to a trusted tax professional, not a tax promoters or marketing firm. For those who have already filed a claim, which IRS has not yet fully processed, and now feel the claim may be improper, IRS plans to release procedures for these taxpayers to withdraw their ERC claim.

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