

Employee Retention Credit – Withdrawal Process

On September 14, 2023, IRS announced a moratorium on the processing of all new ERC claims starting with claims received September 14, 2023. This moratorium will last until AT LEAST the end of the year. In that news release, IRS said it would issue a process to be followed for any taxpayers who wished to withdraw their claims.

Now IRS has issued News Release IR-2023-193 with this withdrawal process. This process is for taxpayers who now believe their claims may not be accurate in either qualification or calculation. The News Release states “Claims that are withdrawn will be treated as if they were never filed. IRS will not impose penalties or interest.” It further states “Those who willfully filed a fraudulent claim, or those who assisted or conspired in such conduct, should be aware that withdrawing a fraudulent claim will not exempt them from potential criminal investigation and prosecution.” This last sentence matches IRS procedures regarding anyone who deliberately files a claim to defraud the government.

Here is a summary of the process. Employers who can take advantage of this withdrawal process are those who meet the following four conditions:

- 1) They made the claim on an ADJUSTED EMPLOYMENT RETURN (Forms 941-X, 943-X, 944-X, CT-1X).
- 2) They filed the adjusted return only to claim the ERC, and they made NO OTHER ADJUSTMENTS.
- 3) They want to withdraw THE ENTIRE AMOUNT of their ERC claim.
- 4) The IRS HAS NOT PAID their claim or the IRS has paid the claim, but they haven't cashed or deposited the refund check.

If these conditions are met, the special instructions for withdrawing the ERC claim should be followed. These can be found at irs.gov/withdrawmyERC. Briefly these instructions say:

1) Taxpayers whose professional payroll company filed their ERC claim should consult with the payroll company. If the claim was batch filed with other taxpayers' claims, the payroll company may need to submit the withdrawal request.

2) Taxpayers who filed their ERC claims themselves, haven't received, cash, or deposited a refund check and have not been notified their claim is under audit should fax withdrawal requests to the IRS using a computer or mobile device to the special fax line IRS has set up. Mailing the request is acceptable, but it will take longer for IRS to receive. To request a withdrawal:

a) Make a copy of the adjusted return with the claim the taxpayer wishes to withdraw.

b) In the left margin of the first page, write "Withdrawn".

c) In the right margin of the first page:

i) Have an authorized person sign and date it.

ii) Write their name and title next to their signature.

4) Fax the signed copy of the return to IRS USING the taxpayer's COMPUTER OR MOBILE DEVICE to 855-738-7609. (Interesting that IRS specifically says, "your computer or mobile device". This does not mention faxing it from a fax machine. Maybe because this allows IRS to trace where the request came from.

Taxpayers who have been notified they are under audit should send their withdrawal request to the assigned examiner or respond to the audit notice if no examiner has been assigned.

Taxpayers who have received a refund check, but haven't cashed or deposited it, should mail the voided check with their withdrawal request should go to irs.gov/withdrawmyERC for the instructions.

Taxpayers who do not meet the above conditions can file an amended return. The amended return procedure can be found on irs.gov under Correcting an ERC Claim.

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

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