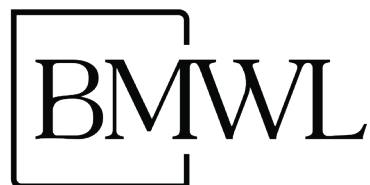


# IRS ANNOUNCES A SECOND ERC AMNESTY-TYPE PROGRAM THAT EXPIRES NOVEMBER 22, 2024

*By Kaylyn Varnum, CPA  
& Mike Batts, CPA*

NONPROFIT SPECIAL ALERT™



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By Kaylyn Varnum, CPA & Mike Batts, CPA

August 16, 2024

In two IRS Information Releases (IR-2024-212 and IR-2024-213) issued on August 15, 2024,<sup>1,2</sup> the IRS announced that it has opened a second Employee Retention Credit (ERC) Voluntary Disclosure Program (VDP). The VDP is essentially an amnesty program for improperly claimed ERCs.

As we have outlined in prior Special Alerts, the IRS has issued numerous warnings to taxpayers regarding improper or erroneous ERC claims in light of growing concerns regarding fraud and aggressive marketing by third-party promoters.

In December 2023, the IRS opened a special voluntary disclosure program to encourage employers to return ERC payments for which they did not qualify. Under the December 2023 VDP, eligible employers were only required to pay back 80% of the credit they received and were not required to repay any interest received. Additionally, no penalties or interest applies to the December 2023 VDP participants. The 2023 VDP program expired on March 22, 2024.

***The latest Information Release highlights the second ERC VDP, which expires November 22, 2024. Interested employers must apply for this ERC VDP by November 22, 2024, and, if accepted, will be required to repay 85% of the credits received. Importantly, the second ERC VDP applies only for ERCs claimed for tax periods in 2021 and not for any tax periods in 2020.***

“[This] limited reopening of the Voluntary Disclosure Program provides an opportunity for those with improper claims to come in ahead of IRS compliance work and get a discount on repayments,” said IRS Commissioner Danny Werfel. “This is especially important given increasing IRS compliance actions involving bad claims, many of them are the result of aggressive marketing tactics to lure unsuspecting [employers] into claiming the complex credit. This provides a final window of opportunity for those misled [employers] to make adjustments and avoid future compliance action by the IRS.”

The IRS also announced that it would be mailing thousands of letters reversing or recapturing improperly paid ERC claims, anticipating that its next round of mailings could reach up to 30,000 letters this fall. Employers who receive these recapture letters will be ineligible to participate in the second ERC VDP for any calendar quarters covered by the letters.

Like the first ERC VDP, this second ERC VDP does not require employers to repay interest received from the IRS on ERC claims. Additionally, the IRS will not charge participants in the second ERC VDP interest or penalties on any credits that are timely repaid.

One of the requirements to qualify for the second ERC VDP is that employers must provide the IRS with the names, addresses, telephone numbers, and details about the services provided by any advisors or preparers who advised or assisted them with their claims.

Employers who applied to participate in the first ERC VDP should not reapply to participate in the second ERC VDP with respect to the same tax periods.

In order to apply to participate in the second ERC VDP, employers must file Form 15434,<sup>3</sup> Application

<sup>1</sup> Source: <https://www.irs.gov/newsroom/irs-reopens-voluntary-disclosure-program-to-help-businesses-with-problematic-employee-retention-credit-claims-sending-up-to-30000-letters-to-address-more-than-1-billion-in-errant-claims>

<sup>2</sup> Source: <https://www.irs.gov/newsroom/irs-provides-details-of-second-employee-retention-credit-voluntary-disclosure-program-for-improper-claims-open-through-nov-22>

<sup>3</sup> Source: <https://www.irs.gov/forms-pubs/about-form-15434>

for Employee Retention Credit Voluntary Disclosure Program, and submit it through the IRS Document Upload Tool.<sup>4</sup> If an employer utilizes a payroll processor that reports, collects, and pays employment taxes on the employer's behalf using the third party's Employer Identification Number, the third party (not the employer) must file Form 15434 to participate in the second ERC VDP.

Once the Form 15434 is processed by the IRS, the IRS will contact the employer (or its representative) to go over the application. If the IRS approves the application, the IRS will mail the employer a closing agreement and the employer must repay 85% of the ERC they received using the Electronic Federal Tax Payment System (EFTPS). Once the payment has been made, the employer must return a signed closing agreement to the IRS.

Participants in the second ERC VDP that are unable to repay the 85% of the ERC in full may enter into an installment agreement with the IRS to pay over time. Penalties and interest will apply under the standard installment agreement policy.

The IRS has posted an FAQ webpage with additional information regarding the second Employee Retention Credit Voluntary Disclosure Program, including specific procedures for determining eligibility and applying for the second ERC VDP.<sup>5</sup> The IRS has also included a chart of potential interest and penalties applicable to improper claims (see Q5 under the "General Information about the second Employee Retention Credit Voluntary Disclosure Program" section).

## BMW Can Help

BMW has helped numerous nonprofit organizations (churches, private schools, charities, etc.) claim significant Employee Retention Credit amounts based on careful analysis of the facts and available guidance. We have a highly knowledgeable and experienced task force dedicated to assisting clients in addressing the ERC and certain other pandemic-related matters. If you would like to discuss the validity of your organization's ERC claim, please reach out to our team directly at [C19TaskForce@NonprofitCPA.com](mailto:C19TaskForce@NonprofitCPA.com).

Additionally, BMW has formed a team to represent nonprofits in IRS Employee Retention Credit examinations. Nonprofit organizations that have been notified of an IRS inquiry or examination in connection with an ERC claim can email the BMW IRS ERC Audit Representation Team at [ERCAuditTeam@NonprofitCPA.com](mailto:ERCAuditTeam@NonprofitCPA.com).

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<sup>4</sup> Source: <https://www.irs.gov/help/irs-document-upload-tool>

<sup>5</sup> Source: <https://www.irs.gov/newsroom/frequently-asked-questions-about-the-second-employee-retention-credit-voluntary-disclosure-program>

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