


# IRS ANNOUNCES WITHDRAWAL PROCESS FOR EMPLOYEE RETENTION CREDIT

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NONPROFIT SPECIAL ALERT™



Withdrawn  
ERC Claims



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## IRS Announces Withdrawal Process for Employee Retention Credit Claims

By Kaylyn Varnum, CPA & Mike Batts, CPA

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For months, the IRS has warned employers to be wary of widespread Employee Retention Credit (ERC) fraud and aggressive ERC promoters. In a September Information Release, the IRS announced that it had implemented a moratorium on processing new ERC claims through at least the end of 2023.<sup>1</sup> Additionally, the September Information Release indicated that the IRS would soon offer a process allowing employers to withdraw pending ERC claims that they believe are invalid.

In a subsequent Information Release issued on October 19, 2023, the IRS announced a special withdrawal process for ERC claims.<sup>2</sup>

*The new process allows employers with pending claims meeting certain criteria to withdraw their ERC claims and avoid future repayment, interest, and penalties.*

The requirements to be able to withdraw an ERC claim under this new process include the following:

- The employer previously filed an ERC claim;
- The employer made the claim on an amended employment tax return (e.g., Form 941-X);
- The employer filed the amended return only to claim the ERC (with no other adjustments);
- The employer now believes its claim is invalid;
- The employer wants to withdraw the **entire amount** of the ERC claim; and

- The employer must have not yet received a refund in connection with its claim (or if it received a refund check, the employer has not yet deposited it).

IRS Commissioner Danny Werfel stated, “The aggressive marketing of these [ERC] schemes has harmed well-meaning businesses and organizations, and some are having second thoughts about their claims. We want to give these taxpayers a way out. The withdrawal option allows employers with pending claims to avoid future problems, and we encourage them to closely review the withdrawal option and the requirements. We continue to urge taxpayers to consult with a trusted tax professional rather than a marketing company about this complex tax credit.”

### How to Withdraw an ERC Claim

The IRS has created a website with detailed instructions for withdrawing an ERC claim.<sup>3</sup> The specific steps for withdrawing an ERC claim depend upon whether the employer has been notified that its ERC claim is under audit, whether the employer utilized the assistance of a professional payroll company in filing its ERC claim, and whether the employer has received its ERC refund.

An employer making a withdrawal of its ERC claim should retain copies of all correspondence, voided checks, and evidence of mailing/faxing in its records.

Once the IRS has processed the withdrawal request, the IRS will send the employer a letter indicating whether the withdrawal was accepted or rejected.

*An exempt organization that generates unrelated business taxable income and that reduced wage deductions on its Form 990-T in connection with an ERC claim may need to amend its Form 990-T (and, possibly, state income tax returns) if it withdraws an ERC claim.*

<sup>1</sup> Source: <https://nonprofitcpa.com/irs-announces-moratorium-on-processing-of-new-erc-claims-amid-widespread-fraud/>

<sup>2</sup> Source: <https://www.irs.gov/newsroom/irs-announces-withdrawal-process-for-employee-retention-credit-claims-special-initiative-aimed-at-helping-businesses-concerned-about-an-ineligible-claim-amid-aggressive-marketing-scams>

<sup>3</sup> Source: <https://www.irs.gov/newsroom/withdraw-an-employee-retention-credit-erc-claim>

## Other Possibilities – Including a Coming IRS Settlement Program for Processed ERC Claims

If an employer has an ERC claim pending, which it now believes is invalid...and if the employer does not qualify to use the withdrawal process described above, one option the employer can consider to reduce or eliminate its ERC claim is to file an amended employment tax return. An employer can file an additional amended employment tax return even if it already filed one to make the original ERC claim.

*Another consideration relates to the IRS's previous announcement that a settlement program is being developed for employers who have received refunds for previously processed ERC claims that they (the employers) now consider to be invalid.*

Settlement programs often provide certain relief from penalty assessments. Therefore, employers who believe they made an invalid claim that has already been processed and who have already deposited their refund check may wish to consult with their tax advisor about the possibility of utilizing the IRS settlement program when it becomes available.

## BMWL Can Help

BMWL has helped numerous nonprofit organizations (churches, private schools, charities, etc.) claim significant Employee Retention Credits based on careful analysis of the facts and available guidance. In many cases, our analysis includes consideration of input from legal counsel regarding certain key criteria. We also help our clients document the basis for any ERC claims that we help them make. 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 your organization's ERC eligibility or the validity of your ERC claim, please reach out to our team directly at [C19TaskForce@NonprofitCPA.com](mailto:C19TaskForce@NonprofitCPA.com).

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

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