

IRS Announces Amnesty Program for Ineligible Employee Retention Tax Credit Claims

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PRACTICES Employee Benefits and Executive Compensation

The IRS recently announced a new withdrawal program for employers who filed claims for the employee retention tax credit (“**ERTC**”) who are concerned their claim may be invalid. The ERTC is a refundable tax credit for businesses that had employees during the COVID-19 pandemic and that either (i) continued paying employees while their business operations were fully or partially suspended due to a governmental shutdown order or (ii) had a significant decline in gross receipts during the relevant period. The IRS is concerned that employers, especially small businesses, may have been scammed, pressured, or misled by aggressive marketers and promoters into filing an ERTC claim for which the business is ineligible. The new withdrawal process is intended to let such businesses avoid penalties and interest on such ineligible ERTC refunds.

To withdraw an ERTC claim, the employer must fax or mail a withdrawal request to the IRS, and the withdrawal will be effective so long as the employer has not received, cashed, or deposited an ERTC refund check and also has not been notified their claim is under audit. For claims under audit, the employer can mail its withdrawal request to the assigned examiner or respond to the audit notice if an examiner has yet to be assigned. For employers who have received but not cashed or deposited their ERTC refund check, they may request a withdrawal of their claim by mailing a voided ERTC refund check and their withdrawal request to the IRS. According to the IRS’s announcement, “claims that are withdrawn will be treated as if they were never filed [and the] IRS will not impose penalties or interest” on such claims. In the announcement, the IRS encourages employers to consult with their benefits counsel who understands the complex ERTC rules, rather than a marketer and promoter trying to get a hefty contingency fee on ERTC claims, to determine whether they have a valid ERTC claim.

The IRS announcement is available [here](#).