

IRM PROCEDURAL UPDATE

DATE: 10/19/2023

NUMBER: wi-21-1023-1039

SUBJECT: ERC Claim Withdrawal Program

AFFECTED IRM(s)/SUBSECTION(s): 21.7.2.7.7

CHANGE(s):

IRM 21.7.2.7.7 Added subsection with information about the new ERC claim withdrawal program.

ERC Claim Withdrawal Program

(1) The IRS developed a new ERC claim withdrawal program to assist certain employers who may have filed incorrect claims for Employee Retention Credit (ERC) after having fallen prey to aggressive advertising and other contacts misrepresenting eligibility requirements. In general, employers who filed an ERC claim (only) which has not yet been processed or who received a refund check for an ERC claim (only) but have not yet cashed or deposited the refund check will be permitted to withdraw their claim. Participation in the withdrawal program:

- May prevent issuance of an incorrect refund.
- May allow an employer to return a refund check and correct their account, penalty and interest-free, without the burden of filing another Form 94XX.

(2) Employers requesting eligibility and filing information for the ERC claim withdrawal program can be referred to:

- IR 2023-193 dated Oct 19, 2023 — "IRS announces withdrawal process for Employee Retention Credit claims; special initiative aimed at helping businesses concerned about an ineligible claim amid aggressive marketing, scams"
- FS-2023-24 dated October 2023 — "Help for businesses: Steps for withdrawing an Employee Retention Credit claim | Internal Revenue Service (irs.gov)"
- IRS.gov/withdrawmyerc — "Withdraw an Employee Retention Credit (ERC) claim"
- Updated FAQs — "Frequently asked questions about the Employee Retention Credit"

(3) To be eligible, employers must withdraw the **entire amount** of ERC claimed (**only**) on a previously filed Form 94XX **and**:

- Must not have not received an associated refund check or credit to their account; or,
- Received an associated refund check but did not cash or deposit the refund check; or,
- The Form 94XX is currently under examination/audit.

Note: If a client company wishes to withdraw an ERC claim filed on their behalf by an aggregate employment tax return filer (Section 3504 Agent, CPEO, or PEO), they must contact the third-party payer to coordinate the ERC claim withdrawal request.

(4) The ERC claim withdrawal program **can't** be used to:

- Withdraw a claim for ERC made on an original employment tax form.
- Withdraw only a portion of a previous ERC claim.
- Withdraw a claim for ERC if the associated Form 94XX reported other non-ERC wage/tax/credit corrections.
- Withdraw a claim for ERC if the associated refund check was received and cashed/deposited.
- Withdraw a claim for ERC if the credit was previously disallowed in full (i.e., previously recorded ERC amount(s) were reversed and a letter or notice was issued).
- Make other corrections to the account.

Note: Employers who incorrectly claimed ERC but who are ineligible to participate in the ERC claim withdrawal program should file a new Form 94XX as usual to make corrections and pay any amount owing when they file.

(5) Employers meeting ERC claim withdrawal program eligibility requirements are instructed to:

1. Make a copy of the Form 94XX which incorrectly claimed ERC.
2. Write "Withdrawn" on the left margin of the first page.
3. Sign, date, and include the individual signer's name and title on the right margin of the first page.
4. Fax the withdrawal request to (855) 738-7609. (Alternately, taxpayers may use the address for filing Form 94XX to mail a withdrawal request; however, taxpayers should be discouraged from mailing withdrawal requests due to potential delays in processing.)

Exception: Taxpayers must submit withdrawal requests for Forms 94XX under examination/audit to the assigned examiner or by responding to the audit notice instead of making a request via the withdrawal program fax line.

Note: Signature requirements for ERC claim withdrawal requests are the same as for Forms 94XX.

Note: Employers returning refund checks in association with ERC claim withdrawals are instructed to include a copy of the voided check with the withdrawal request.

Caution: The fax line identified above is dedicated to the ERC claim withdrawal program and **can't** be used for any other submissions.

(6) This IRM will be updated as more information becomes available, including information on how ERC withdrawal program cases will be controlled, identified, and worked.