

IRM PROCEDURAL UPDATE

DATE: 11/30/2023

NUMBER: wi-21-1123-1138

SUBJECT: Disallowance Actions for Certain Form 94XX ERC Claims

AFFECTED IRM(s)/SUBSECTION(s): 21.7.2.7.8

CHANGE(s):

IRM 21.7.2.7.8 Added new subsection with guidance on handling and closing actions for Form 94XX ERC claims meeting certain filtering criteria for no Forms W-2 filed and/or entity establishment dates.

(1) The IRS is operating filters to identify Employee Retention Credit (ERC) claims filed for entities which:

- Have not filed Forms W-2 as expected; or,
- Were not established prior to or during the period for which ERC could be claimed (March 13, 2020 through December 31, 2021).

(2) The IRS has determined that Forms 94XX reporting new or increased ERC amounts (only) filed for accounts meeting the specified filtering criteria will be formally disallowed.

(3) Cases meeting the specified filtering criteria will be identified to AM on a spreadsheet. The cases will be reassigned and notated as follows to indicate which filtering criteria was met:

- IDRS number: **0230448611** — CII Case Note: **No W-2**
- IDRS number: **0230488068** — CII Case Note: **Establishment Date**
- IDRS number: **1388899251** — CII Case Note: **Failed both Establishment Date and No W-2**

(4) The procedures which follow are to be applied by AM employees specifically designated (**only**) to work these cases. Take action as follows:

1. Review the associated Form 94XX for entry items reporting new or increased non-refundable or refundable ERC amounts; if such entries are found, continue to Step 2 below. Otherwise, if the Form 94XX does **not** report a new or increased ERC amount:
 - Enter "No W-2 filter does not apply", or "Establishment date filter does not apply", or "No W-2/Establishment date filters do not apply", in CII case notes as appropriate per the filter identified.

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- Reassign the case and correct any case Priority Code as per guidance in (11) of IRM 21.7.2.7, *COVID-19 Related Employment Tax Relief*.
2. All other Form 94XX processing guidelines and requirements also apply to Forms 94XX reporting new or increased ERC amounts meeting the specified filtering criteria. As usual:
 - Review the associated Form 94XX for completeness and processability (e.g., for a Form 941-X claim, see (2) and (3) in IRM 21.7.2.4.7.6.2, *Form 941-X Tax Decrease — Claim*). Perfect or reject any unprocessable Forms 94XX as appropriate.
 - Review for account conditions that require special handling (i.e., open CAT-A or AIMS status, RICS/RIVO/IDT, etc.). Suspend, route, or otherwise address the account condition encountered as appropriate.
 - Consider guidance specific to processing Forms 94XX reporting ERC changes found in IRM 21.7.2.7.6.3, *Form 94XX — Employee Retention Credit (ERC)*. # [REDACTED] #
 3. Continue handling processable Forms 94XX reporting new or increased ERC amounts meeting the specified filtering criteria as per guidance in (5), (6), or (7) below depending on which filter was met or if both filters were met.

(5) **No W-2 filter met:**

If	Then
The Form 94XX also reports other changes which meet CAT-A criteria when considered separately	<ul style="list-style-type: none"> • Refer the case to CAT-A as usual. • State in the case notes that the missing Form W-2 ERC filter was met but that the other changes reported separately meet CAT-A criteria.
The Form 94XX also reports other allowable changes	<p>Partially disallow the claim:</p> <ol style="list-style-type: none"> 1. Enter "Partial disallowance per No W-2 filter met" in CII case notes. 2. Complete a TC 29X adjustment in Blocking Series 18 (or 00 if the original return is attached) with appropriate IRNs/CRNs to record the allowable portion of the correction requested on the Form 94XX. 3. Send Letter 106C per instructions in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i>, and insert the following text in an open paragraph: "Employee Retention Credit (ERC) is only available for eligible employers that paid qualified wages to employees between

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	<p>March 13, 2020, and December 31, 2021. Our records show that your business did not file Forms W-2, Wage and Tax Statement, for tax years ended December 31, 2020, or December 31, 2021, reporting the payment of any wages to employees."</p>
<p>The Form 94XX also reports other unallowable changes</p>	<p>Disallow the claim:</p> <ol style="list-style-type: none"> 1. Enter "Full disallowance per No W-2 filter met" in CII case notes. 2. Complete a TC 290 .00 Blocking Series 98 (or 99 if the original return is attached) adjustment to record a full disallowance of the claim. 3. Send Letter 105C per instructions in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i>. Insert the following text in an open paragraph and insert appropriate text in a second open paragraph to address the reason other items are being disallowed: "Employee Retention Credit (ERC) is only available for eligible employers that paid qualified wages to employees between March 13, 2020, and December 31, 2021. Our records show that your business did not file Forms W-2, Wage and Tax Statement, for tax years ended December 31, 2020, or December 31, 2021, reporting the payment of any wages to employees."
<p>There are no other changes reported on the Form 94XX</p>	<p>Disallow the claim:</p> <ol style="list-style-type: none"> 1. Enter "Full disallowance per No W-2 filter met" in CII case notes. 2. Complete a TC 290 .00 Blocking Series 98 (or 99 if the original return is attached) adjustment to record a full disallowance of the claim. 3. Send Letter 105C per instructions in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i>, and insert the following text in an open paragraph: "Employee Retention Credit (ERC) is only available for eligible employers that paid qualified wages to employees between March 13, 2020, and December 31, 2021."

	Our records show that your business did not file Forms W-2, Wage and Tax Statement, for tax years ended December 31, 2020, or December 31, 2021, reporting the payment of any wages to employees."
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(6) **Establishment date filter met:**

If	Then
The Form 94XX also reports other changes which meet CAT-A criteria when considered separately	<ul style="list-style-type: none"> • Refer the case to CAT-A as usual. • State in the case notes that the establishment date ERC filter was met but that the other changes reported separately meet CAT-A criteria.
The Form 94XX also reports other allowable changes	<p>Partially disallow the claim:</p> <ol style="list-style-type: none"> 1. Enter "Partial disallowance per Establishment Date filter met" in CII case notes. 2. Complete a TC 29X adjustment in Blocking Series 18 (or 00 if the original return is attached) with appropriate IRNs/CRNs to record the allowable portion of the correction requested on the Form 94XX. 3. Send Letter 106C per instructions in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i>, and insert the following text in an open paragraph: "Employee Retention Credit (ERC) is only available for eligible employers that paid qualified wages to employees between March 13, 2020, and December 31, 2021. Our records show that your business was established after December 31, 2021."
The Form 94XX also reports other unallowable changes	<p>Disallow the claim:</p> <ol style="list-style-type: none"> 1. Enter "Full disallowance per Establishment Date filter met" in CII case notes. 2. Complete a TC 290 .00 Blocking Series 98 (or 99 if the original return is attached) adjustment to record a full disallowance of the claim. 3. Send Letter 105C per instructions in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i>. Insert the

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	<p>following text in an open paragraph and insert appropriate text in a second open paragraph to address the reason other items are being disallowed: "Employee Retention Credit (ERC) is only available for eligible employers that paid qualified wages to employees between March 13, 2020, and December 31, 2021. Our records show that your business was established after December 31, 2021."</p>
There are no other changes reported on the Form 94XX	<p>Disallow the claim:</p> <ol style="list-style-type: none"> 1. Enter "Full disallowance per Establishment Date filter met" in CII case notes. 2. Complete a TC 290 .00 Blocking Series 98 (or 99 if the original return is attached) adjustment to record a full disallowance of the claim. 3. Send Letter 105C per instructions in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i> and insert the following text in an open paragraph: "Employee Retention Credit (ERC) is only available for eligible employers that paid qualified wages to employees between March 13, 2020, and December 31, 2021. Our records show that your business was established after December 31, 2021."

(7) **Both No W-2 and Establishment Date filters met:**

If	Then
The Form 94XX also reports other changes which meet CAT-A criteria when considered separately	<ul style="list-style-type: none"> • Refer the case to CAT-A as usual. • State in the case notes that both the missing Form W-2 ERC and Establishment Date filters were met but that the other changes reported separately meet CAT-A criteria.
The Form 94XX also reports other allowable changes	<p>Partially disallow the claim:</p> <ol style="list-style-type: none"> 1. Enter "Partial disallowance per No W-2 and Establishment Date filters met" in CII case notes. 2. Complete a TC 29X adjustment in Blocking Series 18 (or 00 if the original return is attached) with appropriate IRNs/CRNs to

	<p>record the allowable portion of the correction requested on the Form 94XX.</p> <p>3. Send Letter 106C per instructions in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i>, and insert the following text in two open paragraphs: "Employee Retention Credit (ERC) is only available for eligible employers that paid qualified wages to employees between March 13, 2020, and December 31, 2021." "Our records show that your business was established after December 31, 2021. Our records also show that your business did not file Forms W-2, Wage and Tax Statement, for tax years ended December 31, 2020, or December 31, 2021, reporting the payment of any wages to employees."</p>
The Form 94XX also reports other unallowable changes	<p>Disallow the claim:</p> <ol style="list-style-type: none"> 1. Enter "Full disallowance per No W-2 and Establishment Date filters met" in CII case notes. 2. Complete a TC 290 .00 Blocking Series 98 (or 99 if the original return is attached) adjustment to record a full disallowance of the claim. 3. Send Letter 105C per instructions in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i>. Insert the following text in two open paragraphs and insert appropriate text in a third (floating) open paragraph to address the reason other items are being disallowed: "Employee Retention Credit (ERC) is only available for eligible employers that paid qualified wages to employees between March 13, 2020, and December 31, 2021." "Our records show that your business was established after December 31, 2021. Our records also show that your business did not file Forms W-2, Wage and Tax Statement, for tax years ended December 31, 2020, or December 31, 2021, reporting the payment of any wages to employees."

<p>There are no other changes reported on the Form 94XX</p>	<p>Disallow the claim:</p> <ol style="list-style-type: none"> 1. Enter "Full disallowance per No W-2 and Establishment Date filters met" in CII case notes. 2. Complete a TC 290 .00 Blocking Series 98 (or 99 if the original return is attached) adjustment to record a full disallowance of the claim. 3. Send Letter 105C per instructions in IRM 21.5.3.4.6.1, <i>Disallowance and Partial Disallowance Procedures</i>, and insert the following text in two open paragraphs: "Employee Retention Credit (ERC) is only available for eligible employers that paid qualified wages to employees between March 13, 2020, and December 31, 2021." "Our records show that your business was established after December 31, 2021. Our records also show that your business did not file Forms W-2, Wage and Tax Statement, for tax years ended December 31, 2020, or December 31, 2021, reporting the payment of any wages to employees."
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