

How to Withdraw an Employee Retention Credit Claim

Cross References

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The IRS and tax professionals continue to see aggressive advertising, direct mail solicitations and online promotions involving the Employee Retention Credit (ERC). These promoters have misled employers and harmed honest employers by misrepresenting and exaggerating who is eligible for this pandemic-era credit.

The IRS is offering an option for taxpayers who filed a claim requesting a refund for an ERC and would now like to withdraw the claim to avoid getting a refund for which they're ineligible.

The claim withdrawal process is a piece of a larger effort by the IRS, working in conjunction with the tax professional community, to help protect taxpayers by stopping a claim from being processed.

The IRS is committed to protecting taxpayers that mistakenly claimed the ERC, as well as those eligible for the ERC, which is also sometimes called the Employee Retention Tax Credit or ERTC.

As a reminder, anyone who incorrectly claims the ERC has to pay it back and may owe penalties and interest. The IRS wants to help honest taxpayers avoid this situation.

The IRS encourages employers to seek out a trusted tax professional who understands the complex ERC eligibility rules, not a promoter or marketer trying to get a hefty contingency fee. Trusted tax professionals may also be able to assist with the claim withdrawal process.

The IRS reminds employers that if they request a withdrawal, it means they are asking the IRS not to process their entire adjusted employment tax return for the tax period that included the ERC claim. Claims that are withdrawn will be treated as if they were never filed. The IRS will not impose penalties or interest.

Who can request to withdraw an ERC claim? Employers can use the ERC claim withdrawal process if all of the following apply:

- They made the claim on an adjusted employment tax return (Forms 941-X, 943-X, 944-X, CT-1X).
- They filed the adjusted return only to claim the ERC, and they made no other adjustments.
- They want to withdraw the entire amount of their ERC claim.
- The IRS has not paid their claim, or the IRS has paid the claim, but they haven't cashed or deposited the refund check.

Businesses that have willfully filed fraudulent claims, assisted in such conduct or conspired to do so should be aware, however, that withdrawing a fraudulent claim will not exempt them from potential criminal investigation and prosecution.

Employers that can't use this process may still be able to file another adjusted return if they need to:

- Reduce the amount of their ERC claim
- Make other changes to their adjusted return

The frequently asked questions about the ERC have more details for these employers. Visit the following web address for details:

<https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit>

How to request to withdraw an ERC claim. Employers that filed their ERC claim through a professional payroll company and want to request a claim withdrawal will need to contact the entity that filed the claim on their behalf. These companies may include a certified professional organization (CPEO), professional employer organization (PEO) or other Section 3504 agents.

Taxpayers that filed an adjusted return to claim the ERC and who want to withdraw their entire claim can use the process below. They must follow the steps for each tax period for which they are requesting a withdrawal. The fax line is a secure, relatively fast way for the IRS to receive withdrawal requests. If the IRS accepts the withdrawal request, the adjusted tax return will not be processed.

Section A: Employers who haven't received a refund and haven't been notified their claim is under audit. If the employer filed an adjusted return (Form 941-X, 943-X, 944-X, CT-1X) to claim the ERC and would like to withdraw the entire claim, they can use the process below. If they filed adjusted returns for more than one tax period, they must follow the steps below for each tax period for which they are requesting a withdrawal.

To request a withdrawal, follow these steps:

- 1) Make a copy of the adjusted return with the claim they wish to withdraw.
- 2) In the left margin of the first page, write "Withdrawn."
- 3) In the right margin of the first page:
 - Have an authorized person sign and date it.
 - Write their name and title next to their signature.
- 4) Fax the signed copy of the return to the IRS's ERC claim withdrawal fax line at 855-738-7609 using a computer or mobile device. This is the withdrawal request. Keep the copy with tax records.

If a taxpayer can't fax their request, they can mail the signed copy to the address in the instructions for the adjusted return that applies to their business or organization. Before doing so they should make a copy of the signed and dated first page to keep with their tax records. It will take longer for the IRS to receive a mailed request. Track the package to confirm delivery.

Section B: Employers that haven't received a refund and have been notified their claim is under audit. Employers facing an IRS audit, also referred to as an exam, can still withdraw their ERC claim. If a taxpayer has been notified that the IRS is auditing the adjusted return that includes their ERC claim, they should prepare their withdrawal request using the steps in Section A, but they should not fax it to the withdrawal fax line or mail it using the address below. Instead:

- If they've been assigned an examiner, they should communicate with the examiner about how to fax or mail the withdrawal request directly to them.
- If they haven't been assigned an examiner, they should respond to the audit notice with the withdrawal request, using the instructions in the notice for responding.

Section C: Employers who received a refund check but haven't cashed or deposited it. Employers that have received a refund check but still haven't cashed or deposited it, can still withdraw their claim. They need to mail the voided check with their withdrawal request using these steps:

- 1) Prepare the claim withdrawal request using the steps in Section A but don't fax the request.
- 2) Write "Void" in the endorsement section on the back of the refund check.
- 3) Include a note that says, "ERC Withdrawal" and briefly explain the reason for returning the refund check.
- 4) Make copies for tax records of the front and back of the voided check, the explanation notes and the signed and dated withdrawal request page.
- 5) Don't staple, bend or paper clip the voided check; include it with your claim withdrawal request and mail it to the IRS at:

Cincinnati Refund Inquiry Unit
PO Box 145500
Mail Stop 536G
Cincinnati, OH 45250

Track your package to confirm delivery.

What to expect after submitting a withdrawal request. Taxpayers will get a letter from the IRS about whether their withdrawal request was accepted or rejected. The approved request is not effective until the taxpayer has the acceptance letter from the IRS.

If the IRS accepts the withdrawal, the taxpayer may need to amend their income tax return.