

Employee Retention Credit Scams

Cross References

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As aggressive marketing continues, the Internal Revenue Service has renewed an alert for businesses to watch out for tell-tale signs of misleading claims involving the Employee Retention Credit.

The IRS and tax professionals continue to see a barrage of aggressive broadcast advertising, direct mail solicitations and online promotions involving the Employee Retention Credit. While the credit is real, aggressive promoters are wildly misrepresenting and exaggerating who can qualify for the credits.

The IRS has stepped up audit and criminal investigation work involving these claims. Businesses, tax-exempt organizations and others considering applying for this credit need to carefully review the official requirements for this limited program before applying. Those who improperly claim the credit face follow-up action from the IRS.

“The aggressive marketing of the Employee Retention Credit continues preying on innocent businesses and others,” said IRS Commissioner Danny Werfel. “Aggressive promoters present wildly misleading claims about this credit. They can pocket handsome fees while leaving those claiming the credit at risk of having the claims denied or facing scenarios where they need to repay the credit.”

The Employee Retention Credit (ERC), also sometimes called the Employee Retention Tax Credit or ERTC, is a legitimate tax credit. Many businesses legitimately apply for the pandemic-era credit. The IRS has added staff to handle ERC claims, which are time-consuming to process because they involve amended tax returns.

“This continual barrage of marketing by advertisers means many invalid claims are coming into the IRS, which also means it takes our hard-working employees longer to get to the legitimate Employee Retention Credits,” Werfel said. “The IRS understands the importance of these credits, and we appreciate the patience of businesses and tax professionals as we continue to work hard to get valid claims processed as quickly as possible while also protecting against fraud.”

The IRS has been issuing warnings about aggressive ERC scams since last year, and it made the agency’s list this year of the Dirty Dozen tax scams that people should watch out for.

This is an ongoing priority area in many ways, and the IRS continues to increase compliance work involving ERC. The IRS has trained auditors examining ERC claims posing the greatest risk, and the IRS Criminal Investigation division is working to identify fraud and promoters of fraudulent claims.

The IRS reminds anyone who improperly claims the ERC that they must pay it back, possibly with penalties and interest. A business or tax-exempt group could find itself in a much worse cash position if it has to pay back the credit than if the credit was never claimed in the first place. So, it's important to avoid getting scammed.

When properly claimed, the ERC is a refundable tax credit designed for businesses that continued paying employees while shut down due to the COVID-19 pandemic or that had a significant decline in gross receipts during the eligibility periods. The credit is not available to individuals.

Warning signs of aggressive ERC marketing. There are important tips that people should be wary of involving the Employee Retention Credit. Warning signs to watch out for include:

- Unsolicited calls or advertisements mentioning an “easy application process.”
- Statements that the promoter or company can determine ERC eligibility within minutes.
- Large upfront fees to claim the credit.
- Fees based on a percentage of the refund amount of Employee Retention Credit claimed. This is a similar warning sign for average taxpayers, who should always avoid a tax preparer basing their fee on the size of the refund.
- Aggressive claims from the promoter that the business receiving the solicitation qualifies before any discussion of the group's tax situation. In reality, the Employee Retention Credit is a complex credit that requires careful review before applying.
- The IRS also sees wildly aggressive suggestions from marketers urging businesses to submit the claim because there is nothing to lose. In reality, those improperly receiving the credit could have to repay the credit—along with substantial interest and penalties.

These promoters may lie about eligibility requirements. In addition, those using these companies could be at risk of someone using the credit as a ploy to steal the taxpayer's identity or take a cut of the taxpayer's improperly claimed credit.

How the promoters lure victims. The IRS continues to see a variety of ways that promoters can lure businesses, tax-exempt groups and others into applying for the credit.

- Aggressive marketing. This can be seen in countless places, including radio, television and online as well as phone calls and text messages.
- Direct mailing. Some ERC mills are sending out fake letters to taxpayers from the non-existent groups like the “Department of Employee Retention Credit.” These letters can be made to look like official IRS correspondence or an official government mailing with language urging immediate action.
- Leaving out key details. Third-party promoters of the ERC often don't accurately explain eligibility requirements or how the credit is computed. They may make broad arguments suggesting that all employers are eligible without evaluating an employer's individual circumstances.
 - For example, only recovery startup businesses are eligible for the ERC in the fourth quarter of 2021, but promoters fail to explain this limit.
 - Again, the promoters may not inform taxpayers that they need to reduce wage deductions claimed on their business' federal income tax return by the amount of the Employee Retention Credit. This causes a domino effect of tax problems for the business.

- Payroll Protection Program participation. In addition, many of these promoters don't tell employers that they can't claim the ERC on wages that were reported as payroll costs if they obtained Paycheck Protection Program loan forgiveness.

How businesses and others can protect themselves. The IRS reminded businesses, tax-exempt groups and others being approached by these promoters that there are simple steps that can be taken to protect themselves from making an improper Employee Retention Credit.

- Work with a trusted tax professional. Eligible employers who need help claiming the credit should work with a trusted tax professional. The IRS urges people not to rely on the advice of those soliciting these credits. Promoters who are marketing this ultimately have a vested interest in making money. In many cases they are not looking out for the best interests of those applying.
- Don't apply unless you believe you are legitimately qualified for this credit. Details about the credit are available on [IRS.gov](https://www.irs.gov), and again a trusted tax professional—not someone promoting the credit—can provide critical professional advice on the ERC.
- To report ERC abuse, submit Form 14242, *Report Suspected Abusive Tax Promotions or Preparers*. People should mail or fax a completed Form 14242 and any supporting materials to the IRS Lead Development Center in the Office of Promoter Investigations.

Mail:

Internal Revenue Service Lead Development Center
Stop MS5040
24000 Avila Road
Laguna Niguel, California 92677-3405
Fax: 877-477-9135

Properly claiming the ERC. There are very specific eligibility requirements for claiming the ERC. These are technical areas that require review. They can claim the ERC on an original or amended employment tax return for qualified wages paid between March 13, 2020, and December 31, 2021. However, to be eligible, employers must have:

- Sustained a full or partial suspension of operations due to orders from an appropriate governmental authority limiting commerce, travel or group meetings because of COVID-19 during 2020 or the first three quarters of 2021,
- Experienced a significant decline in gross receipts during 2020 or a decline in gross receipts during the first three quarters of 2021, or
- Qualified as a recovery startup business for the third or fourth quarters of 2021.