

Everybody's Got Something to Hide Except Me and My Monkey: IRS Issues Moratorium on Processing New Employee Retention Credit Claims

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The IRS has announced an immediate moratorium on the processing of new employee retention credit claims and warns taxpayers of aggressive promoters and marketers “hustling to get a hefty contingency fee.”

On September 14, 2023, the Internal Revenue Service (IRS) issued **News Release IR-2023-169**, which instated a moratorium on the processing of new employee retention credit (ERC) claims until at least December 31, 2023. The IRS will continue to review previously filed ERC claims, but such claims will be subject to a detailed review, which may result in a request from the IRS to provide certain documentation prior to any payout of funds. This review is expected to lengthen the processing time for ERC claims from approximately 90 days to 180 days.

This moratorium is a result of the IRS's increasing concern regarding aggressive promoters who pressure taxpayers into filing

unsubstantiated and incorrect ERC claims. Specifically, the “IRS is increasingly alarmed about honest small business owners being scammed by unscrupulous actors, and . . . could no longer tolerate growing evidence of questionable claims pouring in,” and the “continued aggressive marketing of these schemes is harming well-meaning businesses and delaying the payment of legitimate claims, which makes it harder to run the rest of the tax system.”

The IRS urges taxpayers to “seek out a trusted tax professional who actually understands the complex ERC rules, [and is] not a promoter or marketer hustling to get a hefty contingency fee.”

The IRS is developing a settlement program for repayments for those who received an improper ERC payment. Further details of that program are expected in the fall of 2023. Additionally, the IRS is finalizing details for a special withdrawal option for those who have claimed an ERC, but where such claim has not been processed. In order to further assist taxpayers in determining their eligibility and potential next steps, the IRS simultaneously issued new frequently asked questions (FAQs) about the ERC and an ERC eligibility checklist, both which can be found [here](#).

Taxpayers should proceed with caution and seek advice of a trusted tax advisor, as the IRS Criminal Investigation Division is actively working to identify fraud and promoters of fraudulent claims for potential referral for prosecution to the US Justice Department. The IRS has already uncovered suspected fraud totaling more than \$8 billion, resulting in the initiation of 252 investigations.

Some taxpayers who did not originally claim an ERC may still be eligible to claim an ERC on an amended return, but they should expect significant delays in processing and additional scrutiny on such claims. Taxpayers who may have claimed an ERC improperly

should consult a trusted tax advisor to determine whether their claim is valid, whether to withdraw such claim, or whether to participate in the anticipated IRS settlement initiative. Failure to act could result in substantial penalties if a claim is ultimately disallowed. In addition, taxpayers who made payments to promoters who assisted in making an ERC claim may wish to review any associated contracts to determine whether any recourse is available in respect of improper claims.

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