

# IRS ANNOUNCES EMPLOYEE RETENTION CREDIT VOLUNTARY DISCLOSURE PROGRAM



On December 21, 2023, the Internal Revenue Service ("IRS") unveiled [details](#) concerning the Employee Retention Credit Voluntary Disclosure Program ("ERC-VDP"). This program is aimed at taxpayers who mistakenly claimed and received Employee Retention Credit ("ERC") refunds for specific quarters when they were not eligible. (Previous ERC withdrawal relief only applied to taxpayers who had not received the ERC funds, or who had not deposited the ERC checks).

Under the current ERC-VDP, taxpayers can repay the ERC funds received to avoid penalties and interest. Only 80% of the amount received is required to be repaid; the reduced repayment rate is meant to alleviate the financial burden on taxpayers who paid a contingency fee to promoters of ERC filings. The ERC-VDP also offers relief from penalties and interest on the entire ERC amount, not only the 80% returned.

Applications for the ERC-VDP will be accepted until March 22, 2024. Applicants approved for participation must sign a closing agreement acknowledging their ineligibility for the ERC and provide information about any tax preparers or advisors who assisted in claiming the credit. The IRS has released a set of [Frequently Asked Questions](#) related to the ERC-VDP to assist with various

questions.

In addition to the ERC-VDP, the IRS [announced](#) that it has started issuing another round of 20,000 letters with proposed tax adjustments to recapture incorrect or dubious 2020 ERC claims while work continues for the 2021 tax year. This is in addition to the 20,000 letters already being sent out and thousands of claims referred for audit.

### Qualification

ERC-VDP is for taxpayers who have received ERC refunds or credits but no longer believe they are entitled to it. Taxpayers do not qualify for the ERC-VDP if any of the following apply:

- The taxpayer is under criminal investigation or has been notified that it is under criminal investigation;
- The taxpayer is undergoing an IRS employment tax examination for the tax period(s) in which it is applying to the ERC-VDP;
- The taxpayer received a notice and demand for repayment of all or part of the ERC; or
- The IRS already received information that the taxpayer is not in compliance.

To use the ERC-VDP for a specific quarter, taxpayers must relinquish the entire ERC claim for that quarter. Taxpayers wishing to reduce only a portion of the ERC claimed in a quarter are not eligible for ERC-VDP and must file an amended return to adjust the ERC claimed.

Taxpayers who claim the ERC through third-party payers (e.g., payroll agents or professional employer organizations) can also participate in the ERC-VDP, but the third-party payer must apply on the taxpayer's behalf.

### Participation

Participation in ERC-VDP entails:

1. executing a closing agreement,
2. confirming ineligibility for ERC during the relevant tax period(s), and
3. repaying 80% of the claimed ERC to the Department of Treasury.

Participants will also be excused from repaying overpayment interest on any issued ERC refund, with underpayment interest only applying if the participant does not make full payment before executing the closing agreement. Repayment can be made through an installment arrangement, with interest accruing prospectively from the agreement date if approved.

#### Deadline for Applications

To apply for ERC-VDP, taxpayers must complete [Form 15434](#), Application for ERC-VDP and submit it via the [IRS Document Upload Tool](#) by 11:59 pm on March 22, 2024. Form 15434 must be signed by an authorized person under penalties of perjury.

Taxpayers applying for ERC-VDP for a period ending in 2020 must include a completed and signed statute extension [Form ERC-VDP SS-10](#). ERC-VDP applications will be processed on a first-come, first-served basis, although the exact processing time is uncertain. Applicants can contact the ERC-VDP hotline at (414) 231-2222 to inquire about their application status or seek assistance with the ERC-VDP process, including Form 15434 completion.

#### Approval of Application

Upon approval of a taxpayer's application, the IRS will prepare a closing agreement and send it to the participant. Upon receiving the ERC-VDP closing agreement package, participants have ten business days to review and return the signed agreement and payment of any due balances to receive all program benefits. Payments should be made via the [Electronic Federal Payment System](#). Taxpayers unable to pay the entire balance due may be considered for an installment agreement. **It's important to note that participation in ERC-VDP does not exempt taxpayers from potential criminal investigation or prosecution by the IRS.**

#### Income Tax Impact to Taxpayers

The ERC has also affected the income tax responsibilities of many taxpayers. This is because wages used to calculate an ERC claim cannot be used as deductions against income; therefore, taxpayers who received ERC were expected to adjust their wage deductions for the tax years 2020 and/or 2021 to account for the ERC amounts they received.

For those ERC-VDP participants who had not yet made amendments to their income tax returns to reduce their wage deductions by the ERC they claimed, there is no requirement to file amended returns or Administrative Adjustment Requests ("AARs"). However, participants who had already reduced their wage deductions by the amount of ERC claimed have the option to file an amended return or AAR to recover the taxes on wage expenses that were previously reduced. Importantly, there will be no additional income attributed to taxpayers due to their involvement in the ERC-VDP program where only 80% of the claimed ERC is repaid.

#### FAQs and Assistance

To assist taxpayers with the application process, eligibility for the program, the calculation of balances due and other general information about the program, the IRS has published a list of [Frequently Asked Questions](#).

If there are any questions or further assistance is needed, [BMF Advisors](#) are available for support.