

IRS ANNOUNCES SECOND EMPLOYEE RETENTION CREDIT VOLUNTARY DISCLOSURE PROGRAM



On August 15, 2024, the Internal Revenue Service (IRS) announced [details](#) of the launch of a second Employee Retention Credit Voluntary Disclosure Program (ERC-VDP). The second program is similar to that of the original one that ended in March earlier this year, but with some key modifications to the qualifications and the repayment percentage. The second ERC-VDP is again aimed at assisting taxpayers who claimed and received Employee Retention Credit (ERC) refunds for quarters that were ineligible for the credit; however, this second program will only be for 2021 tax periods and require a larger percentage of the ERC refunds to be repaid.

Under the second ERC-VDP, taxpayers can repay the ERC funds received to avoid penalties and interest. Only 85% of the ERC 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.

Applications for the second ERC-VDP will be accepted until November 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 second ERC-VDP, the IRS [announced](#) that it has started issuing another round of 30,000 letters with proposed tax adjustments to recapture incorrect or dubious ERC claims. This is in addition to the thousands of letters that have already been sent out and the thousands of claims referred for audit.

Qualifying for the Second ERC-VDP

The second ERC-VDP is for taxpayers who received ERC refunds or credits from 2021 tax periods, but no longer believe that they were eligible for the credit.

Taxpayers do not qualify for the second 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 second ERC-VDP;
- the taxpayer was notified by the IRS that the ERC received is being recaptured for the tax periods in which it is applying for the second ERC-VDP;
- the taxpayer received a notice and demand for repayment of all or part of the ERC; or
- the IRS already received or acquired information that the taxpayer is not in compliance.

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

Participating in the Second ERC-VDP

Participation in the second ERC-VDP entails executing a closing agreement, confirming ineligibility for ERC during the relevant tax period(s), and repaying 85% 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 ERC-VDP Applications

To apply for the second 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 November 22, 2024. Form 15434 must be signed by an authorized person under penalties of perjury. Taxpayers applying for the program for an ERC claimed in the first or second quarters of the 2021 tax year must include a completed and signed statute extension ERC-VDP Form SS-10. The 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 ERC-VDP 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 for 2021 were expected

to adjust their wage deductions for the 2021 tax year to account for the ERC amounts they received. For those second 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 second ERC-VDP program where only 85% of the claimed ERC is repaid.

FAQs and Assistance with the Second ERC-VDP

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.