

TAX LAW

INFORMATION MEMO

DECEMBER 27, 2023

IRS Launches Voluntary Disclosure Program Allowing Businesses to Avoid Penalties if They Pay Back a Portion of Incorrectly Claimed Employee Retention Tax Credits

On Dec. 21, 2023, the Internal Revenue Service (IRS) launched a new Voluntary Disclosure Program that allows businesses to pay back only a portion of funds in satisfaction of the full amount of credit that they received based on ineligible Employee Retention Tax Credit (ERTC) claims. This announcement comes amid the IRS's ongoing attempt to combat erroneous ERTC claims, fueled in part by aggressive marketing by self-proclaimed "ERTC experts," which have led many businesses to claim credits to which they are not eligible (you can read more about the predatory practices of these "ERTC experts" in our post from Sept. 15, [available here](#)).

Eligible businesses will have until March 22, 2024, to file a Voluntary Disclosure Program application with the IRS. In the IRS's recognition of the fact that many of the "ERTC experts" charged a percentage fee collected either in advance or at the time of ERTC payment, and the businesses therefore never received the full amount of funds, those businesses that are accepted into the program will be required to repay only 80% of the full amount of the credit received. In addition, the business will not have to repay interest that the IRS paid on the business's ERTC refund claim, if any.

Businesses that are able to repay the 80% in full will not be required to pay any interest or penalties on the amount that is repaid. Businesses that are unable to repay the 80% in full may be considered for an installment agreement on a case-by-case basis but will be required to pay penalties and interest in connection with entering into the installment agreement.

Additionally, businesses must provide the IRS with the names, addresses and telephone numbers of any advisers or tax preparers who advised or assisted them with their ERTC claim and details about the services provided.

Who is Eligible?

Businesses, tax-exempt organizations and government entities that meet the following requirements are eligible to apply for the Voluntary Disclosure Program:

- The ERTC claimed on an employment tax return has been processed and paid as a refund that has been cashed, deposited or applied as a credit to one of the applicant's tax periods.
- The applicant believes that they are not entitled to claim any amount of the ERTC.
- The applicant is not under an employment tax examination (audit) by the IRS.
- The applicant is not under criminal investigation by the IRS.
- The applicant has not had its ERTC claim reversed or received notice of the IRS's intent to reverse its ERTC claim.

How to Apply?

Eligible businesses can apply for the Voluntary Disclosure Program by preparing and submitting Form 15434, Application for Employee Retention Credit Voluntary Disclosure Program, and, if the application includes tax periods ending in 2020, the ERTC Voluntary Disclosure-specific Form SS-10, Consent to Extend the Time to Assess Employment Taxes.

Eligible businesses that claimed the ERTC through a third-party payor under the third-party payor's employee identification number (EIN), rather than its own EIN, may still participate in the Voluntary Disclosure Program, but the third-party payor must submit the application, including Form 15434 and other required documents, on the business' behalf.

Applicants that are unable to repay the 80% in full may request consideration for an installment agreement by including a completed Form 433-B, Collection Information Statement for Business, and supporting document with their application package.

It is important to note that this Voluntary Disclosure Program is only available to those businesses that have had their ERTC claims processed and paid. Businesses with pending ERTC claims may request to withdraw their entire ERTC claim under the IRS's special withdrawal process.

For any questions about the information presented in this memo, please contact [Frank C. Mayer](#), [Jared A. Joyce](#), [Jessica M. Blanchette](#), any attorney in Bond's [tax practice](#) or the Bond attorney with whom you are regularly in contact.

