

September 20, 2023

Pacific Northwest Action Wednesday IMRS Call

Virtual Meeting via MS Teams

Time: 10:00 am –11:00 am (PDT)

Attendees:

Internal Revenue Service

- John Blakeman, Stakeholder Liaison
- Mercean Lam, Stakeholder Liaison
- Lisa Novack, Stakeholder Liaison
- Kristen Hoiby, Stakeholder Liaison
- Jacqueline Schmidt, TAS NM
- Sarah DeBurle, TAS WA

Practitioner Representatives

- Jeremy Saladino, WA
- Brian Hein, OR
- Robin Smith, WSTC
- Steven Fox-Middleton, WA
- Lisa Rogers, AKSCPA
- Ami Oppe, AKSCPA
- Elliot Gidan, CO
- Kate Grubb, WSSEA
- James Adelman, NAEA, OSEA
- Doug Henne, OSCP
- Barbara Culver, WSSEA
- Dale Marino, OATC
- Ellen Briscoe, NMSEA, NATP
- Mark Neumeister, OK
- Michael Davidson, ORSEA
- Edwin del Carpio, WA
- Vera Likhonin, STA, WA
- Robin Harris, OK
- Sarah Northcutt, OSCP
- Cynthia Polley, WA
- Melissa Burr, OSCP
- David Freeland, AAATP
- Carol Wild, OATC
- Gail Baudendistel, WA
- Harriet Strothers, OSCP
- Heather Jackson, OSCP
- LaVeta Scherer, WA NATP
- Katrina Anderson, OSCP
- Shawn Mattingly, WA
- Benita Mairs, WAATP
- Rebecca Lammers
- Greg Nunn, WA

- Melissa Rainwater-Flemming

Meeting Summary

IR 2023-169: ERC claims processing paused

Amid rising concerns about a flood of improper Employee Retention Credit claims, the Internal Revenue Service today announced an immediate moratorium through at least the end of the year on processing new claims for the pandemic-era relief program to protect honest small business owners from scams.

The IRS continues to work previously filed Employee Retention Credit (ERC) claims received prior to the moratorium, but renewed a reminder that increased fraud concerns means processing times will be longer. On July 26, the agency announced it was increasingly shifting its focus to review these claims for compliance concerns, including intensifying audit work and criminal investigations on promoters and businesses filing dubious claims. Hundreds of criminal cases are being worked, and thousands of ERC claims have been referred for audit.

Payouts for these claims will continue during the moratorium period but at a slower pace due to the detailed compliance reviews. With the stricter compliance reviews in place during this period, existing ERC claims will go from a standard processing goal of 90 days to 180 days – and much longer if the claim faces further review or audit. The IRS may also seek additional documentation from the taxpayer to ensure it is a legitimate claim.

The IRS is developing new initiatives to help businesses who found themselves victims of aggressive promoters. This includes a settlement program for repayments for those who received an improper ERC payment; more details will be available this fall.

In addition, the IRS is finalizing details that will be available soon for a special withdrawal option for those who have filed an ERC claim but the claim has not been processed. This option, which can be used by taxpayers whose claim hasn't yet been paid, will allow the taxpayers, many of them small businesses who were misled by promoters, to avoid possible repayment issues and paying promoters contingency fees. Filers of these more than 600,000 claims awaiting processing will have this option available. Those who have willfully filed fraudulent claims or conspired to do so should be aware, however, that withdrawing a fraudulent claim will not exempt them from potential criminal investigation and prosecution.

Taxpayers are encouraged to review IRS guidance and tools for helping determine ERC eligibility, including frequently asked questions and a new question and answer guide to help businesses understand if they are actually eligible for the credit.

[Employee Retention Credit | Internal Revenue Service \(irs.gov\)](https://www.irs.gov/retirement-plans/employee-retention-credit)

The Internal Revenue Service continues to warn businesses to watch out for aggressive marketing by nefarious actors involving the Employee Retention Credit (ERC) and urged people to watch out for red flags that can signal trouble. Although promoters advertise that ERC submissions are "risk free," there are actually huge risks facing businesses as the IRS increases its audit and criminal investigation work. Hundreds of criminal cases are being worked, and thousands of ERC claims have been referred for audit.

The IRS 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.

Warning signs to avoid 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.
- Preparers seeking anonymity by refusing to sign the ERC return being filed by the business as well as supplying their identifying information and a tax identification number. Similar to "ghost preparers," this limits the risk to just the taxpayer claiming the credit.
- 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.

Unscrupulous promoters may lie about eligibility requirements, including refusing to provide detailed documents supporting their computations of the ERC. 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 businesses can protect themselves:

Businesses, tax-exempt groups and others being approached by these promoters can take simple steps 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.

- Request a detailed worksheet explaining ERC eligibility and the computations used to determine the ERC amount.
- Don't apply unless you believe you are legitimately qualified for this credit. Details about the credit are available on 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, people should mail or fax a completed Form 14242, Report Suspected Abusive Tax Promotions or Preparers, and any supporting materials to the IRS Lead Development Center in the Office of Promoter Investigations. Here is the page for reporting suspected tax fraud activity: [How Do You Report Suspected Tax Fraud Activity? | Internal Revenue Service \(irs.gov\)](#) and the link for Form 14242 can be found on this page [as well as other forms for other types of suspected tax fraud...check it out!]

Issues, Questions and Concerns:

Issue: We heard from one preparer with 5 clients now, 1041 returns, with letter 3463C saying the return is not signed, but all have valid 8879s associated with them. Another preparer had a Form 709, Gift Tax Return client get the same letter, but it also had a valid 8879 associated with it [e-signatures are still valid for certain paper filed returns]

A: An interesting question, and not sure why this is happening. The Form 709 is understandable, with new employees not fully grasping that it can have an electronic signature these days, but the 1041s are another story. We will look into this.

Q: Any movement on the Form 56 question?

A: Just got the email from our IMRS person that W&I has the issue and is working it. She will let us know as soon as she gets a response.

Q: How can we get updated POAs into the system? Practitioner states she uploads updated POA [for other periods, for example], but when she tries to pull transcripts, they are not available.

A: We are not sure why this is happening, and will check into it.

Q: Is there a comprehensive list of what returns can be e-signed?

A: E-filed returns can accept e-signatures and some paper filed returns can also accept e-signatures these days. Here is the link to the page regarding e-signatures on certain paper forms: [Details on using e-signatures for certain forms | Internal Revenue Service \(irs.gov\)](#)

Question/suggestion: is there any way to look up the status of an ERC claim?

A: At the moment, there is not, other than calling the Business and Specialty Help Line at 800-829-4933, but even then, they might not know. We do understand that many claims were sent in quite a while ago, and there is a need to understand how the processing is moving along. Please understand that there is a lot going on at IRS right now regarding the Employee Retention Credit and the numerous claims being submitted, and we will keep you posted as to how things are progressing.

Another suggestion is to continue monitoring the IRS Operations page for the processing status of these returns. [IRS Operations: Status of Mission-Critical Functions | Internal Revenue Service](#)

As of September 21, 2023, there were 9,000 unprocessed Forms 941. If you filed electronically and received an acknowledgement, you don't need to take any further action other than promptly responding to any requests for information. These tax returns are processed in the order received. Please don't file a second tax return.

As of September 20, 2023, our total inventory of unprocessed Forms 941-X was approximately 735,000 some of which cannot be processed until the related 941s are processed.

Next Scheduled Meeting; Wednesday, October 18, 2023