



News & Insights

Tulsa Tax Attorney David Potts for the Journal Record - Let's review Employee Retention Credit rules

February 29, 2024

By: [David T. Potts](#)

The Journal Record

<https://journalrecord.com/2024/02/gavel-to-gavel-lets-review-employee-retention-credit-rules/>

The IRS continues to formulate new ways of reviewing Employee Retention Credit ("ERC") claims to identify ineligible taxpayers. Many businesses were misled into filing claims for ERC by promoters who often misled or misrepresented eligibility rules. If you claimed and received ERC you were not entitled to, you should consider participating in the Employee Retention Credit Voluntary Disclosure Program ("ERC-VDP") to correct it. Anyone claiming ERC they are not entitled to, risks detection by the IRS, that could result in substantial penalties and increase the risk of criminal prosecution. Taxpayers have until March 22, 2024, to apply for the ERC-VDP.

The ERC-VDP requires a taxpayer to:

- Voluntarily pay back the ERC, minus 20%.
- Cooperate with any requests from the IRS for more information.
- Sign a closing agreement.

There are several benefits to participating in the ERC-VDP:

- Only repay 80% of the ERC received.
- No need to repay any interest you received on your ERC refund.
- No amending income tax returns to reduce wage expense.
- 20% reduction is not taxable as income.
- Penalties and interest will not be charged.

Businesses, tax-exempt organizations and government entities are eligible to apply for the ERC-VDP for each tax period that meets all of the following requirements:

- ERC claimed on a tax return has been processed and paid as a refund, that has been cashed or deposited, or paid in the form of a credit applied to a tax period.
- You now think that you were not entitled to any ERC.
- You are not under employment tax examination by the IRS.
- You are not under criminal investigation by the IRS.
- The IRS has not reversed or notified you of an intent to disallow your ERC.

The IRS has issued a list of possible warning signs that an ERC claim may be questionable, including:

- Too many quarters being claimed.
- Government orders that don't qualify.
- Too many employees and wrong calculations.
- Business citing supply chain issues.
- Business claiming ERC for a full tax period when only partially suspended.
- Business did not pay wages or did not exist during eligibility period.
- Promoter says there is nothing to lose.

Taxpayers are strongly advised to review their ERC claims in preparation of increased IRS scrutiny and to determine if they need to participate in the ERC-VDP to reduce IRS risk exposure.

Attorneys

- David T. Potts

Practices

- Tax