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Employee Retention Credit Presented by Office of Fraud Enforcement and National Fraud Counsel


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Employee Retention Credit

Presented by

Office of Fraud Enforcement and National Fraud Counsel

Tuesday, July 25, 2023



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Speakers



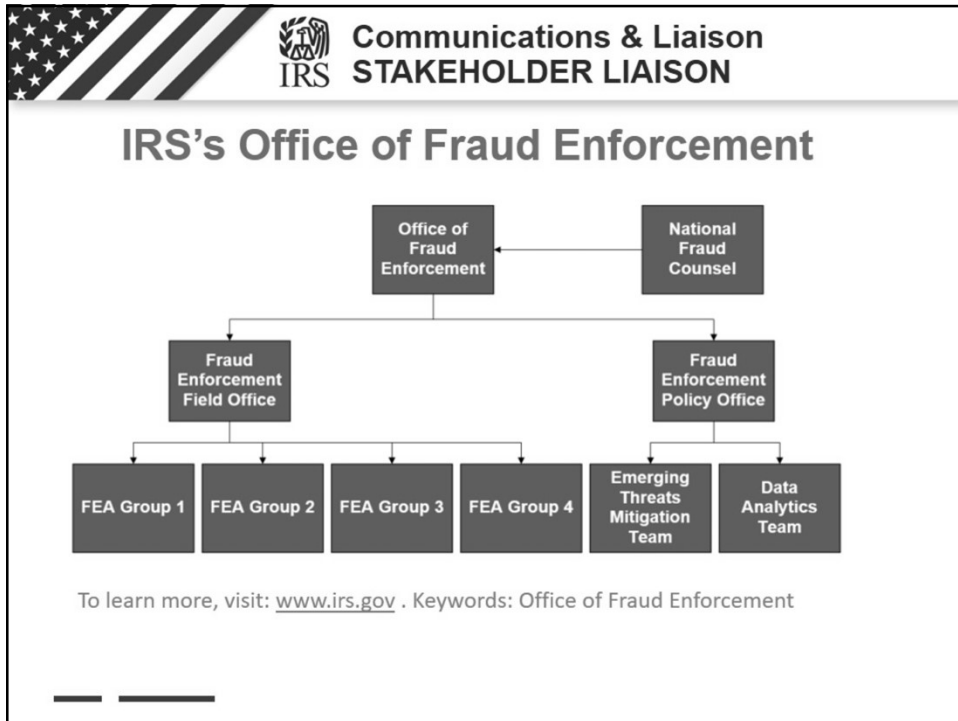
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Presentation Objectives

- **Provide Overview of the Employee Retention Credit (ERC)**
- **Discuss Key Areas of ERC Compliance**
- **List Characteristics of Potential ERC Fraud**
- **Describe Ways to Report Potential ERC Fraud & Steer Your Clients Away From It**



ERC Overview

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What Is The Employee Retention Credit?

- The Coronavirus Aid, Relief, and Economic Security Act (C.A.R.E.S. Act) in March of 2020.
- A fully refundable credit available to eligible employers against employment taxes.
- Applies to Forms 941, 943, 944, and CT-1.
- Goals:
 - ❖ Incentivize companies for retaining employees on their payrolls
 - ❖ Provide payroll tax relief to help sustain businesses during pandemic



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ERC Tops IRS's Dirty Dozen List

2023 Dirty Dozen summary:


Employee Retention Credit claims

Taxpayers should be aware of aggressive pitches from scammers who promote large refunds related to the [Employee Retention Credit \(ERC\)](#). The warning follows blatant attempts by promoters to con ineligible people to claim the credit. The IRS highlighted these schemes from promoters who have been blasting ads on radio and the internet touting refunds involving Employee Retention Credits. These promotions can be based on inaccurate information related to eligibility for and computation of the credit. Additionally, some of these advertisements exist solely to collect the taxpayer's personally identifiable information in exchange for false promises. The scammers then use the information to conduct identity theft.

Phishing and smishing

Taxpayers and tax professionals should be alert to fake communications from those posing as legitimate organizations in the tax and financial community, including the IRS and the states. These messages arrive in the form of an unsolicited text (smishing) or email (phishing) to lure unsuspecting victims to provide valuable personal and financial information that can lead to identity theft. The IRS initiates most contacts through regular mail and will never initiate contact with taxpayers by email, text or social media regarding a bill or tax refund.

ERC – Overview




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ERC Legislation	Effective Period of Paid Wages
<div>CARES Act</div> <div>Coronavirus Aid, Relief, and Economic Security Act</div>	<div>2020, Quarters 1 through 4</div> <div>(Beginning March 13, 2020)</div>
<div>Relief Act</div> <div>Taxpayer Certainty and Disaster Tax Relief Act of 2020</div>	<div>2021, Quarters 1 and 2</div>
<div>ARP Act</div> <div>American Rescue Plan Act (I.R.C. § 3134)</div>	<div>2021, Quarters 3 and 4</div>
<div>*IIJA</div> <div>Infrastructure Investment and Jobs Act</div>	<div>2021, Quarter 4</div>

ERC – Overview

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Eligible Employer Types


☒ **INCLUDES:**

- ✓ Employers Carrying On A Trade or Business
- ✓ Tax-Exempt Employer
- ✓ Tribal Entities (Govt and Non-Govt) Carrying On A Trade or Business

☐ **Does NOT include:**

- X All Governmental Employers for 2020 and most in 2021
- X Household Employers

ERC – Overview

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Eligibility Requirements

To be eligible during the applicable periods of eligibility, generally certain employers must have met one of the following conditions:

- ☐ Fully or partially suspended operations due to a COVID-19 government order, **OR**
- ☐ Had the required decline in gross receipts, **OR**
- ☐ (For Q3 and Q4 only) Met the definition of a Recovery Startup Business*

* Maximum total ERC for RSBs = \$50,000 for each quarter.

ERC – Overview



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Qualified Wages

Payments to employees by the employer that are subject to FICA, plus qualified health plan costs.

Small Employer	Small Employer	Small Employer
Tax Year in Which Wages Were Paid	Average # of Full-Time Employees in 2019	Wage Description
2020	100 or Fewer	Wages to Any Employee
2021	500 or Fewer	Wages to Any Employee

Large Employer	Large Employer	Large Employer
Tax Year in Which Wages Were Paid	Average # of Full-Time Employees in 2019	Wage Description
2020	More than 100	Only the Wages paid to any employee for the time the employee did not provide services
2021	More than 500	Only the Wages paid to any employee for the time the employee did not provide services

ERC – Overview



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Dollar Limitations: Maximum ERC Per Employee

Tax Year 2020

50% of up to \$10,000 QW per employee

Maximum: **\$5,000** per employee for 3/13/2020 through 12/31/2020

Tax Year 2021

70% of up to \$10,000 QW per employee

Maximum: **\$7,000** per employee per quarter

ERC – Overview



Polling Question #1

To be eligible for ERC, an employer must

- a. Experience full or partial suspension of operations.
- b. Experience the required decline in Gross Receipts.
- c. Send an email to Office of Fraud Enforcement.
- d. Meet either a or b.

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Polling Question #2

When is a Recovery Startup Business eligible for ERC?

- a. 1st and 2nd Quarters of 2021.
- b. 3rd and 4th Quarters of 2021.
- c. All Quarters of 2020.
- d. Only in 2021.

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Key Areas of ERC Compliance

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Impact of Other Credit and Relief Provisions

Generally, an employer may not obtain ERC for wages that were used to obtain certain other tax and non-tax benefits.

Key Areas of ERC Compliance

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No ERC for Wages Used to Obtain PPP Loan Forgiveness

IRC § 3134(h)(2)

Generally, under Notice 2021-20, eligible employers who received PPP loans are also allowed to report/claim ERC to the extent that 1st and 2nd draw PPP loans have not been forgiven during the covered period.

Key Areas of ERC Compliance



Other Wages Excluded from ERC*

Wages used for the following credits/benefits generally cannot be used to report/claim ERC:

- Credit for Sick Leave and Family Leave Wages.
- Research & Development Payroll Tax Credit.
- Work Opportunity Tax Credit.
- Indian Employment Credit.
- Grants for Shuttered Venue Operators and Restaurant Revitalization in the third and fourth quarters of 2021.
- Credit for Employees who are Active Duty Members of the Uniformed Services.

*This list is not all-inclusive

Key Areas of ERC Compliance



No Deduction on Income Tax Return for ERC Wages

Section 2301(e) of the CARES Act and IRC § 3134(e)

Reduce deduction for wages on business's income tax by ERC allowed on the Employment Tax (E.T.) returns for the tax year.

If the credit is later claimed on an amended E.T. return, the corresponding income tax return may also need to be amended to reduce wage expenses claimed on the original income tax return.

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Exclusions Of Wages Of Specific Employees

Section 2301(e) of the CARES Act and IRC § 3134(e) excludes wages paid to employees with the following relationships to a majority owner of a corporation or of a partnership or other entity from ERC eligibility:

- A. A child or a descendant of a child.
- B. A brother, sister, stepbrother, or stepsister.
- C. The father or mother, or an ancestor of either (e.g., grandparent).
- D. A stepfather or stepmother.



Exclusions Of Wages Of Specific Employees – continued (cont.)

Section 2301(e) of the CARES Act and IRC § 3134(e) excludes wages paid to employees with the following relationships to a majority owner of a corporation or of a partnership or other entity from ERC eligibility:

- E. A niece or nephew.
- F. An aunt or uncle.
- G. A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.
- H. An individual (other than a spouse of the taxpayer) who lives with owner.

Note: Also, wages of the owner are NOT qualified UNLESS the owner has none of the close relatives above who were living at the time the owner received wages.

Key Areas of ERC Compliance



Special Five-Year Statute of Limitations for ERC in the 3rd and 4th Quarters of 2021 *IRC § 3134(l)*

Noncompliance – Generally within **five years** of the filing date of the tax return to assess any amount attributable to ERC applicable for 3rd & 4th quarters of 2021.

Fraud – No specified time limit to assess tax.
IRC § 6501(c)(3).

Key Areas of ERC Compliance



Polling Question #3

What additional benefit may an employer obtain for qualified wages used to claim ERC?

- a. Work Opportunity Tax Credit.
- b. 2nd PPP Loan That Was Forgiven.
- c. Credits for Sick Leave Wages Paid.
- d. None of the Above.

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Polling Question #4

How are qualified wages for ERC treated on the income tax return?

- a. No deduction is allowed for ERC wages in the amount of the credit.
- b. A deduction is allowed if the PPP Loan for same wages was not forgiven.
- c. A full deduction is allowed for ERC wages.
- d. A double deduction is allowed for ERC wages.

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ERC ELIGIBILITY/REQUIREMENTS

- **U.S. Department of the Treasury website's page for Small Business Tax Credit Programs**
 - **Employee Retention Credit - 2020 vs 2021 Comparison Chart**
 - **Notice 2021-49 – Exclusion of Wages of Specific Employees, Effects of PPP Loan Activity**
 - **COVID Tax Tip 2022-170 – Warning of Third Parties Promoting Improper ERC Claims**
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Characteristics of Potential ERC Fraud



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Fictitious Businesses

Identity Theft

Inflated or False ERC

Characteristics of Potential ERC Fraud

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Polling Question #5

Which of the following occurrences is the strongest indicator of potential ID theft?

- a. E.T. Returns filed for periods preceding the entity creation date.
- b. Entity created immediately after the CARES Act was enacted.
- c. Multiple original E.T. returns filed for the same entity.
- d. No corresponding W-2 forms timely filed.



Polling Question #6

Which of the following is the strongest indicator that a business may be fictitious?

- a. Record of regular Federal tax deposits.
- b. No W-2 Forms filed for \$600,000 in wages reported on Form 941 to claim ERC.
- c. Deduction for wages on the income tax return.
- d. History of timely filing employment tax returns.

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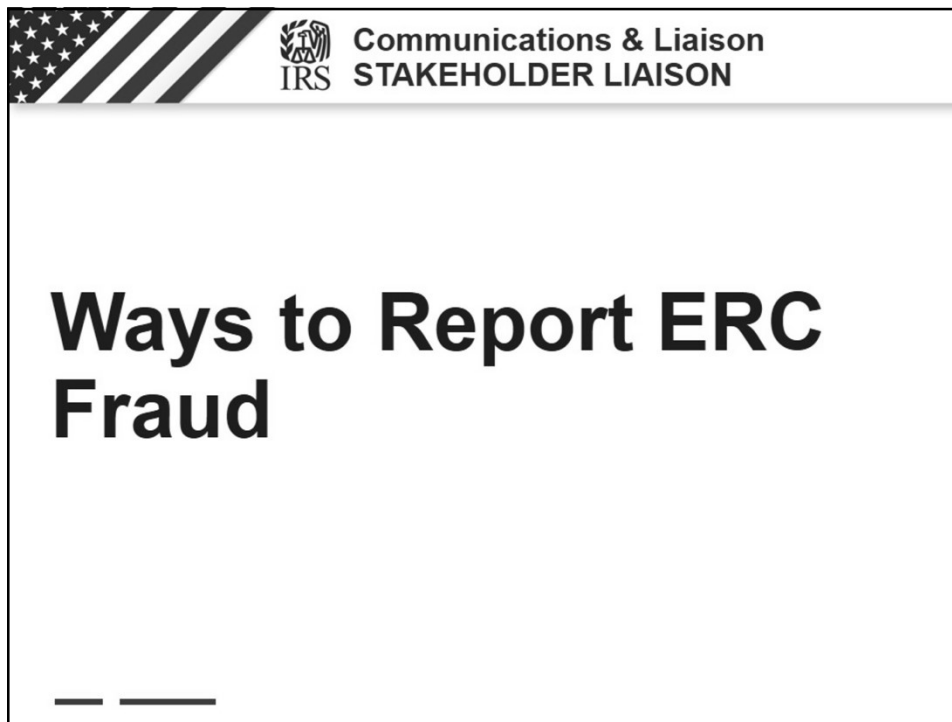




Polling Question #7

What is the Statute of Limitations to assess tax attributable to ERC that was reported fraudulently?

- a. Special Five-Year Statute of Limitations.
- b. Three-Year Statute of Limitations.
- c. No Statute of Limitations.
- d. Special 10-Year Statute of Limitations.

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Form 3949-A, Information Referral

➤ **Purpose:** To report individual or a business suspected of not complying with the tax laws.

➤ **Submission Methods:** Online @ www.irs.gov
Mail: *Internal Revenue Service*
PO Box 3801
Ogden, UT 84409

Reporting Suspected ERC Fraud


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**Form 3949-A, Information Referral –
cont.**

➤ **Examples of Suspected Non-Compliance/Fraud:**

- False exemptions or deductions
- Kickbacks
- A false or altered document
- Failure to pay tax or withhold
- Unreported income
- Organized crime

Reporting Suspected ERC Fraud


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**Form 14242 – Report Suspected
Abusive Tax Promotions or Preparers**

➤ **Purpose:** to report a suspected abusive tax avoidance scheme and/or tax return preparers who promote such schemes.

➤ **Submission Method:**
Fax to: (877) 477-9135
Mail to: *Internal Revenue Service,
Lead Development Center Stop MS5040,
24000 Avila Road
Laguna Niguel, CA 92677*

Reporting Suspected ERC Fraud


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**Form 14242 – Report Suspected
Abusive Tax Promotions or Preparers – cont.**

➤ **Examples of Suspected Preparer/Promoter Schemes:**

- Abusive micro-captive insurance arrangements
- Improper claims of business credits
- Coordinating the creation and use of fictitious businesses to reap tax benefits

Reporting Suspected ERC Fraud

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Form 14157 – Return Preparer Complaint

➤ **Purpose:** to file a complaint with the IRS against a tax return preparer or tax preparation business. To provide an affidavit, also attach Form 14157-A.

➤ **Submission Method:**

Fax to: (855) 889-7957
Mail to: Attn: Return Preparer Office
401 W. Peachtree Street NW
Mail Stop 421-D
Atlanta, GA 30308

Reporting Suspected ERC Fraud

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Form 14157 – Return Preparer Complaint – cont.

➤ **Examples of Preparer Complaints:**

- Theft of Refund
- Preparer Misconduct (Did not sign return or provide copy of return, filed return w/o permission, misrepresented credentials)
- False Tax Return Items/Document

Reporting Suspected ERC Fraud



Other Resources

- Identity Theft Central
- Report Phishing and Online Scams
- Form 14157: Return Preparer Complaint
- Form 14157-A: Tax Return Preparer Fraud or Misconduct Affidavit
(Send this form in addition to Form 14157)

Reporting Suspected ERC Fraud





Polling Question #8



A taxpayer has come to you for assistance. Another preparer convinced the taxpayer to file amended employment tax returns to claim ERC even though 100% of the PPP loan funds that were used to pay the wages were forgiven. The taxpayer provided you with the preparer's email that states: "The IRS now allows ERC for all wages paid with 1st draw PPP loan even if the loan was forgiven. Your former preparer is incompetent." What is the best course of action to take?

- a. Find the prior return preparer and "settle the score".
- b. Send the taxpayer back to the return preparer to amend the amended return.
- c. Complete Form 14242-Report Suspected Abusive Tax Promotions or Preparers.
- d. Complete Form 14157 Return Preparer Complaint and Form 14157 (Affidavit)

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Know Your Client

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Communication with Clients

- Via Company Website, Social Media, Newsletters, Etc.
- Warn Clients of Phishing Attempts
- Offer Consultation about To-Good-To-Be-True “Tax Benefits”
- Post IRS’s Annual Dirty Dozen List


Steering Clients Away From ERC Fraud



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Professional Responsibility and the Employee Retention Credit
Internal Revenue Service (IRS) sent this bulletin at 03/07/2023 04:16 PM EST




Alerts from Office of Professional Responsibility (OPR)

03/07/2023

<p>OPR Resources</p> <p>Circular 230 Tax Professionals</p> <p>Circular No. 230 (Rev. 6-2014)</p> <p>Frequently Asked Questions</p> <p>Latest News and Guidance from OPR</p> <p>Disciplinary Sanctions - IRB</p> <p>OPR Webinars</p>	<p>Issue Number: 2023-02</p> <p>Inside This Issue</p> <p>Professional Responsibility and the Employee Retention Credit</p> <p>Since the Fall of 2022, the IRS has issued several warnings to employers to beware of third parties promoting improper Employee Retention Credit (ERC) claims. See IRS IR-2023-40 (Mar. 7, 2023); IRS IR-2022-183 (Oct. 19, 2022); COVID Tax Tip 2022-170 (Nov. 7, 2022). With tax filing season in full swing, tax professionals are requesting guidance to ensure they are meeting their Circular 230 professional responsibilities and the standards required to prepare and sign original tax returns, amended returns, or claims for refund relating to these credits.</p>
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See: [Professional Responsibility and the Employee Retention Credit \(govdelivery.com\)](https://www.irs.gov/irm/part30/300101_01)



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Education/Awareness

- Attend practitioner liaison meetings, tax professional conferences, and other similar meetings
- Visit www.irs.gov
- Read [DOJ Tax Division Press Releases](#)
- Report fraudulent schemes, preparers and promoters

Steering Clients Away From ERC Fraud



Key Points

- ERC was available only for qualified wages paid between 3/12/2020 and 12/31/2021.
- No double benefit for qualified wages used for ERC.
- Special Five-Year Statute of Limitations applies to ERC reported for the 3rd and 4th quarters of 2021.

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Key Points – cont.

- www.irs.gov is a reliable source for guidance and alerts related to ERC and provides direction on how to report ERC fraud.
- The IRS is addressing ERC noncompliance/fraud through a variety of strategies and initiatives.

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Upcoming Webinars

- For information on future webinars, visit IRS.gov and use keyword search “webinars”.
- Visit the IRS Video Portal for a variety of video and audio topics.
- www.irsvideos.gov



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THANK YOU!
