

## IRS Announces Withdrawal Process for Employee Retention Credit Claims

October 25, 2023

On October 19, 2023, the [IRS announced](#) (IR-2023-193) a withdrawal process for Employee Retention Credit (ERC) claims. The ERC withdrawal procedure follows an earlier [IRS announcement](#) (2023-169) on September 14, 2023, of an immediate moratorium on processing new ERC claims and increased scrutiny of pending ERC claims. These recent developments stem from IRS concerns about a flood of improper ERC claims being submitted by ineligible businesses that have been misled by aggressive promoters. The IRS moratorium is described in further detail in [this September 2023 client alert](#).

Under the ERC claim withdrawal process, certain employers that submitted an ERC claim – but have not yet had the claim processed or received a refund (including where the IRS has paid the claim, but the refund check has not been cashed or deposited) – may withdraw their submission and avoid penalties, interest, and issues with repayment of the ERC. The claim withdrawal process is intended to help businesses that were misled by aggressive promoters into submitting invalid ERC claims. Withdrawing a willfully filed fraudulent ERC claim, however, will not insulate a business from potential criminal investigation and prosecution.

To be eligible for the ERC claim withdrawal process, an employer must meet **all** of the following requirements:

- The employer submitted the ERC claim on an adjusted employment return (IRS Forms 941-X, 943-X, 944-X and CT-1X).
- The employer filed the adjusted employment return only to claim the ERC and made no other adjustments.
- The employer withdraws the entire amount of the ERC claim.
- The IRS has not paid the ERC claim or, if the IRS has paid the ERC claim, the employer has not cashed or deposited the refund check.

The specific [procedure for withdrawing an ERC claim](#) depends on an employer's situation, including whether the employer's claim is under audit. If an employer used a professional payroll company to file an ERC claim, the payroll company may need to withdraw the claim, depending on whether the claim was submitted individually or batched with others.

Employers that are not eligible for the ERC claim withdrawal process may amend their adjusted employment return in accordance with the guidance issued by the IRS on its [ERC frequently asked questions page](#).

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our [AI Principles](#), may be considered Attorney Advertising and is subject to our [legal notices](#).

---

## Key Contacts

Timothy Shapiro Palo Alto	tshapiro@cooley.com +1 650 843 5403
Calvin Lee New York	calvin.lee@cooley.com +1 212 479 6378

---

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.