

# Congressional and IRS ERC Timeline

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Date

Congress/IRS Actions

Key Information

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March 27, 2020

Congress enacts the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act ([P.L. 116-136](#)), creating the Employee Retention Credit (“ERC”).

- Max. credit is \$5k per employee per year, calculated based on qualified wages (Sec. 2301(b)(1))
- Employers eligible if either:
  - 50% or more reduction in gross receipts against the same quarter from 2019 and maintained a 20% or more reduction in subsequent quarters; or
  - Business operations were fully or partially suspended during the quarter due to a COVID-related government order (Sec. 2301(c)(2))
- Large employers with more than 100 full-time employees can only use wages paid to employees who are not providing services (Sec. 2301(c)(3)(A)(i))
- ERC not available to recipients of Paycheck Protection Program (“PPP”) funds (Sec. 2301 (j))
- Eligible wages paid between March 12, 2020 and December 31, 2020 (Sec. 2301(m))
- Other limitations for employers taking other credits, like paid family and medical leave credits (*See, e.g.,* Sec. 2301 (h))



March 31, 2020

Senate Finance Committee Chairman Charles Grassley (R-Iowa) issues [Employee Retention Credit FAQs](#) clarifying the application of the “not providing services” requirement for large employers.

- Provides that “not providing services” means performing services on a reduced schedule, and employers will receive a credit for the difference between the total wages paid to the employee and the amount the employer would have paid for the reduced hours or services actually provided by the employee



May 2020

IRS issues a Fact Sheet about the ERC and various FAQs. [IRS FS-2020-05](#).

- [FAQs](#) about what government orders count
  - Statements from a government official during a press conference or interview do not count (FAQ 28)
  - The government order has to actually affect the employer's operation of its trade or business (FAQ 28)
  - Examples of government orders include: business closure orders, shelter-in-place orders, curfew orders, and health orders requiring closure for cleaning (FAQ 28)
  - Does not matter if the order is actually enforced (FAQ 28)
- [FAQs](#) about "full or partial suspension"
  - Partial suspension if "more than a nominal" portion of business operations are suspended by a government order (FAQ 30)
  - Modifications required by government order must have "more than a nominal effect on the business operations" (FAQ 34)



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July 29, 2020

IRS issues temporary regulations authorizing the IRS to assess any portion of the ERC it contends was erroneously credited, paid, or refunded. [26 C.F.R. § 31.3111-6T](#); [26 C.F.R. § 31.3221-5T](#).



December 27, 2020

Congress enacts the Taxpayer Certainty and Disaster Tax Relief Act ([P.L. 116-260](#)).

- Extended the ERC for 6 months, through June 30, 2021 (Sec. 207(a)(1))
- Max credit of \$7,000 per employee per quarter instead of annually (Sec. 207(b))



- Gross receipts test changed to a 20% reduction in gross receipts, instead of 50%, and the comparison quarters expanded (Sec. 207 (d)(1)(A))
- Definition of large employer changed to 500 full-time employees (Sec. 207 (e))
- Most PPP loan participants can claim ERC using wages they did not use for PPP forgiveness (Sec. 207 (j))
- Expanded to certain government employers (Sec. 207 (d)(3))

March 1, 2021

IRS issues [Notice 2021-20](#).

- Includes 71 questions and answers about the ERC
- The IRS defines the term nominal for purposes of the partial suspension rules
  - Modifications altering customer behavior (for example, mask requirements or making store aisles one way to enforce social distancing) or that require employees to wear masks and gloves while performing their duties will not result in more than a nominal effect on the business operations (FAQ 18)
  - Telework, by itself, does not result in a more than nominal effect on the business (FAQ 15)



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March 11, 2021

Congress enacts the American Rescue Plan Act of 2021. [P.L. 117-2](#).

- Extended ERC for six more months, through the end of 2021 (Sec. 3134(n))
- Certain startup businesses could be eligible (Sec. 3134(b)(1)(B))
- Severely financially distressed businesses excepted from large employer wage restrictions (Sec. 3134(c)(2)(C))



March 2021

IRS begins processing ERC claims for the first time. [TIGTA Report 2024-400-068, at 3 \(Sept. 30, 2024\)](#).



April 19, 2021

IRS issues [Notice 2021-23](#), providing that [Notice 2021-20](#) still applies to the ERC in the wake of Congressional amendments.



May 28, 2021

Processing of ERC claims suspended until July 2021 for ERC claims for the first quarter of 2021 and earlier, and until February 2022 for the second quarter of 2022 and later. [TIGTA Report 2024-400-068, at 3 \(Sept. 30, 2024\)](#).



August 23, 2021

IRS issues [Notice 2021-49](#) and [Revenue Procedure 2021-33](#).

- Defines full-time employee (Notice 2021-49 at 20)
- Addresses the treatment of tips and wages paid to majority owners as qualified wages (Notice 2021-49 at 21)
- Provides a safe harbor allowing employers to exclude PPP loan forgiveness and certain grants from an employer's gross receipts (Notice 2021-49 at 32)



November 15, 2021

Congress enacts the Infrastructure Investment and Jobs Act ([P.L. 117-58](#)).

- Retroactively eliminated the ERC for the fourth quarter of 2021, except for certain startup businesses



December 20, 2021

IRS issues [Notice 2021-65](#).

- Modified Notice 2021-49 to account for changes made by the Infrastructure Act



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March 7, 2023

IRS Office of Professional Responsibility publishes a bulletin explaining its position on how Circular 230 applies to ERC professionals. OPR Issue [No. 2023-02](#).



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March 20, 2023

IRS updates its annual “[Dirty Dozen](#)” list to include ERC promoters.



July 15, 2023

IRS states it reduced its inventory of unprocessed claims from 724,000 to 362,000. [TIGTA Report 2024-400-068, at 4 \(Sept. 30, 2024\)](#).



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July 21, 2023

IRS issues [AM 2023-005](#), providing its position that a supply chain disruption, without an appropriate government order in place, does not rise to the level of a full or partial suspension.



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July 24, 2023

IRS issues final regulations authorizing the IRS to assess any portion of the ERC it contends was erroneously credited, paid, or refunded. [26 C.F.R. §§ 31.3111-6 and 31.3134-1 \(T.D. 9978\)](#).

- These regulations adopted, with minor changes, the proposed regulations the IRS issued in 2020



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September 14, 2023

IRS issues [IR-2023-169](#), announcing a moratorium on processing new ERC claims through the end of 2023.



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October 19, 2023

IRS issues [IR-2023-193](#), announcing its withdrawal initiative that allows certain employers to withdraw their ERC claims without penalty.



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November 3, 2023

IRS issues [AM 2023-007](#), providing its position that OSHA guidance is not, on its own, a qualifying government order.



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December 6, 2023

IRS has issued \$1.3 billion worth of ERC disallowance letters. [TIGTA Report 2024-400-068](#), at 9 (Sept. 30, 2024).



December 6, 2023

IRS announces it is sending 20,000 letters to taxpayers disallowing ERC claims for employers that did not exist or did not have employees during the relevant period. [IR-2023-230](#).



December 21, 2023

IRS announces its Voluntary Disclosure Program (“VDP 1”), allowing businesses to voluntarily repay 80% of their ERC claim. [IR-2023-247](#).

- No interest or penalties
- Must provide contact information for ERC advisors
- The following employers are not eligible:
  - Employers under criminal investigation
  - Employers under employment tax examination for the tax period for which they are applying;
  - Employers who already received an IRS notice and demand to repay their ERC; and

- Employers that are the subject of a tip the IRS received from a third party about the employer's noncompliance



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December 21, 2023

IRS announces it has issued \$573 million worth of ERC recapture letters. The IRS also announces it has received 2,609 VDP applications disclosing over \$1 billion in ERC. TIGTA Report 2024-400-068, at 9, 12 (Sept. 30, 2024).



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January 15, 2024

IRS mails letters notifying 500 taxpayers selected at random of a pre-refund audit of their ERC claims. TIGTA Report 2024-400-068, at 12 (Sept. 30, 2024).



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January 31, 2024

U.S. House of Representatives passes legislation that would prevent ERC claims filed after January 31, 2024. H.R. 7024, Tax Relief for American Families and Workers Act of 2024 (118th Congress 2023-2024). The Senate rejected it.





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February 9, 2024

IRS mails letters to almost 3,000 businesses selected at random from unprocessed ERC claims asking the businesses to confirm they are entitled to the ERC claimed. [TIGTA Report 2024-400-068, at 13 \(Sept. 30, 2024\)](#).



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February 12-16, 2024

IRS CI hosts educational sessions for preparers of ERC claims. [TIGTA Report 2024-400-068, at 13 \(Sept. 30, 2024\)](#).



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March 11, 2024

IRS issues [IRS Tax Tip 2024-15](#), including several warning signs that an ERC claim is incorrect.

- Warning signs include:
  - Too many quarters being claimed
  - Government orders in place but the taxpayer's operations weren't affected or the taxpayer chose to suspend their business operations voluntarily
  - Too many employees qualifying
  - Supply chain issues but no qualifying government order
  - Claiming ERC for an entire quarter when business operations were only suspended for part of a quarter
  - Business did not pay wages or did not exist during the eligibility period
  - Promoters who say the taxpayer has nothing to lose



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March 22, 2024

IRS ends VDP 1. [IR-2023-247](#).



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April 13, 2024

IRS has 1.4 million unprocessed ERC claims. [TIGTA Report 2024-400-068, at 6 \(Sept. 30, 2024\)](#).



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July 26, 2024

IRS issues a press release with 5 new warning signs of ERC abuse. [IR-2024-198](#).

- Warning signs include:
  - Essential business during the pandemic that could fully operate and didn't have a decline in gross receipts
  - Business unable to support how a government order fully or partially suspended business operations (must be more than nominal)
  - Business reporting family members' wages as qualified wages
  - Business using wages already used for Paycheck Protection Program loan forgiveness
  - Large business incorrectly including wages for employees who were providing services
- Also reminded businesses about other warning signs previously mentioned in March 2024 in IRS Tax Tip 2024-15.



August 2024

IRS announces it will start processing the highest and lowest risk ERC claims and reopening the VDP until November 22, 2024. [IR-2024-212](#). The moratorium remains in effect for claims received after January 31, 2024. [TIGTA Report 2024-400-068, at 14](#).

- The second VDP program (“VDP 2”) has the same eligibility requirements and terms as VDP 1, except the repayment amount is 85% of the ERC instead of 80%



September 2024

IRS announces it will extend the 30-day period to contest disallowance letters to 2 years. [Understanding Letter 105-C, Disallowance of the Employee Retention Credit | Internal Revenue Service](#).



October 10, 2024

IRS announces that ERC processing is underway on about \$10 billion worth of eligible claims. [IR-2024-263](#).

