

EMPLOYEE RETENTION CREDIT UPDATE

JJ

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JOSHUA JENSON, CPA

CPA Firm Founder

31 Years Practicing CPA

National Speaker

Tax & CPE Instructor

2x Author & YouTuber



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JOSHUA JENSON, CPA aka JJ

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Joshua has 31 years of public accounting experience in the area of tax, specializing in LLC, partnership, S corporation, and related individual tax matters. He still practices in the trenches in the CPA firm he founded nearly 26 years ago.

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ADP is JJ the CPA's exclusive choice for payroll and HR services.

JJ has traveled to over 60 cities, presenting tax courses to thousands of fellow CPAs covering the latest tax laws and strategies. The U.S. Chamber of Commerce named him top 10 Small Business Expert to follow. He has appeared on local as well as national news programs for the last 20 years, becoming a regular tax season guest on several local and national radio programs.

Joshua Jenson is a licensed CPA in Oklahoma and Texas, and a member of the American Institute of CPAs and Oklahoma Society of CPAs. JJ serves on the Tax Committee for the Oklahoma Society of CPAs and has served as the past Chairperson of the OSCPA Educational Foundation and was named CPA of the year by his CPA peers. Joshua is a 1993 graduate of Abilene Christian University where he earned his accounting degree.

JJ the CPA has over 92,000 SUBSCRIBERS and over 7.5 million views on his YouTube channel "JJ THE CPA," and is heavily represented on social media, with daily postings, including daily videos released on everything dealing with money. Search #JJTHECPA to find him ON ANY SOCIAL MEDIA PLATFORM.

JJ has authored 2 books available on Amazon, "JJ THE CPA HERE!" AND "CRACKING THE CPA CODE." THE FIRST BOOK reveals the top 60 questions from his clients, and his solutions, over his 30 years in practice covering issues related to banking, business structure, insurance, and taxes. THE SECOND BOOK PROVIDES THE SECRET OF HOW TO GET REFERRALS FROM CPA's.

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Q & A SESSION: ENTER IN THE CHAT

Following the update will be a question and answer session only until 3:30 pm cst.

This will be recorded. Do NOT provide information about yourself or your client. Your question, the name and picture you have placed as your “screen name” on the Zoom will be included in the recording and will be available to the public without any edit. If you are asked to unmute yourself, the video of you and your voice will be recorded and will be available to the public. **You release all rights to this and will not be able to request it be removed.**

There won't be time for you to provide a specific example of you or your client's circumstance. If you provide such details, your question will be skipped. You will need to formulate your question in a general manner. **It may not be possible to answer all the questions.**

I will select the questions randomly, not in the order asked, as I will first answer questions that appear more general in nature and that would benefit the audience overall.

You need to be present at the time I may answer question, as I may ask for clarification and you unmute yourself to discuss it. If you are not present, I probably won't answer the question.

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Spots

FREE TAX SEMINAR

SIGN UP HERE

TUESDAY 11/28 @ 12:30 pm cst

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4 Hrs CPE 12:00 pm cst

LIVE Zoom \$47

- *Save Taxes Now*
- *Latest Tax Strategies*
- *S-Corp & Partnerships*
- *Biz Green Tax Credits*
- *Employer Tax Credits*
- *Secure Act 2.0 & More*
- ***Get 320 Page PowerPoint***



INDIVIDUAL FEDERAL TAX UPDATE SEMINAR

This Friday 11/10
4 Hrs CPE 10:30 am cst

LIVE Zoom \$47

- *Save Taxes Now*
- *Latest Tax Strategies*
- *Green Tax Credits*
- *Secure Act 2.0*
- *S-Corp & Partnerships*
- *Self-Employed & More*
- ***Get 280 Page PowerPoint***



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My
TEAM = **3 Months**

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ERICA & HALEY



THE TEAM



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With a 15% member discount off services.


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- RETIREMENT SERVICES
- HEALTH BENEFITS

Book a meeting with Erica and Haley

> 317-503-3847

✉ Erica.Schmadeke@ADP.com



OVERVIEW

Covered will be a general overview of ERC in it's current state, due dates for filing for ERC (Form 941-x), checking on status of ERC, when to report ERC for income tax purposes, where to report ERC for income tax purposes, recap of recent IRS nationwide webinar, IRS announcement of processing delay, recent IRS announcement of specific and new withdrawal procedures specific to ERC, recent released IRS Memo 2023-005 related to qualifying for ERC with supplier and first time IRS penalty abatement program.

LEARNING OBJECTIVES

- Learn what the latest is with the Federal Employee Retention Tax Credit
- Learn to better understand recent changes of these topics and how they may apply to you or your client's circumstances
- Learn more about these topics to better serve your clients with expanded and up-to-date information
- Learn of any potential effective dates of Federal tax law changes of these topics
- Learn how to withdraw an ERC claim

- General Overview of ERC in it's Current State
- Due Dates for Filing for ERC (Form 941-X)
- Checking on Status of ERC
- When to Report ERC for Income Tax Purposes
- Where to Report ERC for Income Tax Purposes
- Recap of Recent IRS Nationwide Webinar
- IRS Announcement of Delay
- Recent IRS Announcement of Specific and New Withdrawal Procedures Specific to ERC
- Recent Released IRS Memo 2023-005 Related to Qualifying for ERC with Supplier
- First Time IRS Penalty Abatement Program



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What's Included



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- Everything at your fingertips



Easy, Instant Access to Data

- Generate and schedule multi-client reports & tax forms for your RUN Powered by ADP® (RUN) and Workforce Now® (WFN) clients
- Easily add clients to your dashboard & refer new ones
- Quickly process client payrolls
- Access payroll trends, client notifications and track tax notices



Simplified GL Setup & Mapping

- Access **seamless, two-way integration** between RUN and QuickBooks Online for your clients
- Easily import your clients' QuickBooks® chart of accounts
- User-friendly, self-service GL setup and mapping also available for other popular accounting solutions – QuickBooks Desktop, Xero, Sage and Thomson CS



Tools to Help Expand Your Role as Strategic Advisor

- Compensation benchmark data
- **The CCH® Resource Library**, including current & archived US Master Tax Guides, Tax Reform Library & much more
- Payroll calculators, tax forms and useful reference guides
- Extensive library of complimentary CPE courses

Dashboard

accountingtoday **TOP NEW PRODUCTS WINNER** '17-'19 CPA Practice Advisor **TECHNOLOGY INNOVATION AWARD** '17-'19 **ADP Accountant Connect** **Accountant ConnectSM** One login. Everything you need. Check out our **NEW Accountant Connect Video.** [Learn More](#)

This is your homepage. View the list of your **active and terminated** clients. Go into each client profile by clicking on their legal name or DBA (choose display name within settings).

Dive into the actions and resources by clicking on the images along the left-hand side column.

Export reports into your **general ledger**.

Clients who need attention have notification icons. **RUN clients** are marked with an "R," **WFN clients** are marked with a "W."

The screenshot shows the ADP Accountant Connect dashboard for a demo firm (12346). The interface includes a top navigation bar with the ADP logo and user information (JS). A left-hand navigation menu lists various tools: Dashboard, Clients, Reports & Tax Forms, Analysis Tools, Calculators, Products & Services, Resources, CCH Tax Resources, and CPE Learning. The main content area displays a 'Clients' list with search and view options. The list includes clients like 'Amys Pizza LLC', 'Anderson Furnishings LLC', 'Barter's Appliances', 'Brite Mind Innovations LLC', 'D & R Cars LLC', and 'Daves Boat Shop LLC', each with notification icons (R for RUN, W for WFN) and menu options for reports and tax forms. A 'Queue' section on the right shows an empty queue with a 'Go To Reports and Tax Forms' button. A 'News' section at the bottom right features a '2020 U.S. Master Tax Guide' and 'Accountant Year-end Resources'. Callout boxes provide instructions: one points to the 'Queue' section, another to the 'Add Client' button, and others to the left-hand navigation menu and the 'News' section.

View previously generated reports in the **queue**.

Follow the **news** links to get the latest industry information. And check out our **CPE Learning Center** for complimentary CPE opportunities!

Informational Purposes Only.

Analysis Tools



◦ Compensation Benchmarking, Powered by ADP® DataCloud

Easily search for **up-to-date salary and total cash compensation benchmark data** delivered across more than 1,500 different job functions.

Search results can be broken down further by **location, industry, employee or revenue size, experience level and hourly vs. salaried workers.**

Bonus and overtime amounts are also available.

The screenshot shows the 'Annual Compensation Explorer' interface. It includes a search bar with 'ADP Benchmark Job' and 'Accountant' selected. Below the search bar, there are filters for 'All Industries', '\$ All Revenue Sizes', 'All Employee Sizes', and 'All Pay Types'. A 'Map View: States' dropdown is open, showing a table for 'New Jersey' with 'Base Salary' at 68,000 (8.80% vs. National) and 'Total Cash Comp.' at 71,613 (8.64% vs. National). To the right, there are charts for 'Overtime' and 'Bonus' with various metrics and benchmarks.

Provide your clients with **accurate insights about real trends in compensation** that can help them fine-tune their compensation strategies.

Compensation Benchmarking from ADP DataCloud provides real, up-to-date insight into market pay for jobs in the U.S. based on aggregated and anonymized payroll data from ADP's vast payroll base of nearly 30 million people, and is updated quarterly.

The CCH Resource Library, powered by IntelliConnect



- Current and prior 20 years of **U.S. Master Tax Guide**
- **State Tax Law Library** for support in all 50 states & U.S. jurisdictions
- **Tax Reform Library** with detailed explanation & analysis of the Tax Cuts & Jobs Act of 2017, with customizable **client letters**
- **Key Facts & Figures Cards** for quick and easy reference to federal tax rates & more
- The latest **federal & state tax news & legislation**, updated daily

CCH Resource Library | Wolters Kluwer | Accountant ConnectSM

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Start Tax News Master Tax Guide State Tax Laws & Regs Health Care Reform Library Tax Reform Library

Search CCH Resource Library

Latest Tax News

- I.1, IRS Issues Empty 2018 Required Amendments List for Qualified Retirement Plans (Notice 2018-91), (Nov. 26, 2018)
- M.1, Weekly Report from Washington, D.C., (Nov. 26, 2018)
- S.8, Montana—Personal Income Tax: IRC Sec. 199A Pass-Through Deduction Not Allowed, (Nov. 26, 2018)

Federal and State Tax Current Developments Smart Chart: Immediate Access to this Year's Federal and State Tax, Compliance and Legislative Updates by Date.

More Tax News »

U.S. Master Tax Guide (2018)

- Quick Tax Facts
- Foreword By Tony Nitti
- Overview
- Tax Rates
- Checklists
- Special Tax Tables

Chapters

- 1 Individuals
- 2 Corporations
- 3 S Corporations

State Tax Laws & Regulations

| | |
|-------------|----------------|
| A | N |
| Alabama | Nebraska |
| Alaska | Nevada |
| Arizona | New Hampshire |
| Arkansas | New Jersey |
| | New Mexico |
| C | New York |
| California | New York City |
| Colorado | North Carolina |
| Connecticut | North Dakota |
| D | |

My History

- Explanation: U.S. Master Tax Guide® (2018), 2001, Employer Health Insurance Mandate
- Explanation: U.S. Master Tax Guide® (2018), 101, Who Must File an Individual Tax Return
- Explanation: U.S. Master Tax Guide® (2018), 101, Who Must File an Individual Tax Return
- News: CCH Federal Tax Weekly - Current, No. 47, Federal Tax Weekly, (Nov. 23, 2018)
- News: Today's Federal and State Tax News Highlights, S.8, Montana—Personal Income Tax: IRC Sec. 199A Pass-Through Deduction Not Allowed, (Nov. 26, 2018)

More History »

Easily search for the tax information you need, when you need it, right from your Accountant Connect dashboard



ERC

Update

EMPLOYEE RETENTION

CREDIT

EMPLOYEE RETENTION CREDIT (ERC)

EXECUTIVE SUMMARY

Can take if received PPP

- **Retroactive back to 3/13/2020**
- **Wages used for ERC cannot be used for PPP forgiveness**
- **Wages used already for PPP forgiveness can't be used for ERC purposes**

Credit **50%** of qualified \$10,000 wages for 2020

Credit **70%** of qualified \$10,000 wages for 2021 extended to 9/30/2021

\$10,000 max wages per calendar year 2020

- Max \$5,000 payroll tax credit per employee for all 2020

\$10,000 MAX WAGES PER QUARTER FOR 1st, 2nd & 3rd QUARTERS 2021

- Max **\$7,000** payroll tax credit per employee per quarter
 - Max \$21,000 per employee for 2021
- Available 4th quarter 2021 for recovery start ups

Includes health insurance paid by the employer for applicable payroll

Employer size dependent on average number of employees

- Both 2020 and 2021, the average number of employees **based on 2019**
- The threshold for **2020 is 100** employees
- The threshold for **2021 is 500** employees
- The threshold and below, all wages qualify if employer qualifies for ERC (exceptions exist)
- Above the threshold, only wages paid to employees that didn't provide services qualify for an employer who qualifies for ERC (exceptions do exist)

Not limited to employer social security taxes & refundable

NOT AVAILABLE FOR MORE THAN 50% OWNERS OR SPOUSES, RELATED INDIVIDUALS IN MOST EVERY CIRCUMSTANCE **OR SELF-EMPLOYED on SELF-EMPLOYED INCOME**

Two ways to qualify (either/or) both not required

- Government partial or full suspension of operations limiting commerce, travel, or group meetings **Or**
- A specific decline in gross receipts for the quarter

If by reduction in gross receipts

50% decrease in gross receipts for 2020

- 2020 quarter compared to corresponding quarter in 2019

20% decrease in gross receipts for 2021

- 2021 quarter compared to corresponding quarter in **2019**
- Option to compare to preceding quarter

Claiming & receiving the ERC

- Report & file form 941-x
 - **Either claiming a credit carryover or refund**
- **Regardless of method to receive the benefit of the payroll tax credit, the qualified wages & info must be reported on form 941 (or form 941-x if not on original form 941)**

FILING DEADLINE FOR ERC WITH FORM 941-X 3 YEARS FROM ORIGINAL FILING DUE DATE

The IRS states the original due date is considered April 15th of the succeeding year in which the Form 941 relates to. Read Form 941-X instructions for additional information.

Any quarter in **2020**: ORIGINAL DUE DATE 4/15/21

941-X DUE DATE 4/15/24

Any quarter in **2021**: ORIGINAL DUE DATE 4/15/22

941-X DUE DATE 4/15/25

ERC STATUS

Can I check on the status of Form 941-X with the IRS?

Unfortunately, there is no way to check on the actual “status” of the filing with the IRS online. You can call the IRS to inquire if they have received your Form 941-X. Based on experience, the IRS system will only know when the Form 941-X has been processed and a check is on the way. That time-frame is approximately 9 to 12 months, so don't be too concerned if you call the IRS has no record (yet) of your Form 941-X if you are calling too soon.

Call IRS (800) 829-4933. Press 3 for Employment Tax.

WHEN TO REPORT COVID TAX CREDITS

AS CITED IN IRS NOITCE 2021-49: section 2301(e) generally provides, in relevant part, that rules similar to the rules of section 280c(a) of the code shall apply. Section 280c(a) requires tracing to the specific wages generating the applicable credit. See, generally, treas. Reg. § 1.280c-1. To satisfy this tracing requirement, the taxpayer must file an amended return or AAR, as applicable

Per IRS notice 2021-49 (pages 24-25) specifically states the credit is to be reflected on the tax Return in which the wages were deducted that received the tax credit.

Employee retention tax credits

In year wages were deducted, regardless of when the credit was received

Or filed for

WHERE TO REPORT COVID TAX CREDITS

Employee retention tax credits

Reported as a reduction of wages

Per IRS instructions for
Schedule C or F
Forms 1120-s
1065
1120

Specifically see the instructions regarding the deduction of “taxes”
Applies to both refundable and nonrefundable portions of the credit

RECAP OF IRS NATIONWIDE ERC SEMINAR

The IRS recently held a nationwide webinar on ERC. It covered the IRS announced delay in processing new ERC claims, and the ERC withdrawal process.

IRS TEMPORARILY PAUSES PROCESSING ERC CLAIMS, TO RESUME 1/1/24

The IRS is still processing ERC claims (Form 941-X). ERC did NOT end.

The IRS announced September 14, 2023 it will stop processing new ERC claims (Form 941-X) received between 9/15/23 and 12/31/23.

They will continue to process ERC claims they have received.

For ERC claims placed on hold, processing will resume in 2024 for ERC claims previously set aside.

The IRS pause in processing does NOT extend the due dates of filing Form 941-X.

IRS ANNOUNCES WITHDRAWAL PROCESS FOR ERC

The IRS announced the details of a special withdrawal process to help those who filed an Employee Retention Credit (ERC) claim and are concerned about its accuracy.

This new withdrawal option allows certain employers that filed an ERC claim but have not yet received a refund to withdraw their submission and avoid future repayment, interest and penalties. Employers that submitted an ERC claim that's still being processed can withdraw their claim and avoid the possibility of getting a refund for which they're ineligible.

The IRS created the withdrawal option to help small business owners and others who were pressured or misled by ERC marketers or promoters into filing ineligible claims. Claims that are withdrawn will be treated as if they were never filed. The IRS will not impose penalties or interest. Those who willfully filed a fraudulent claim, or those who assisted or conspired in such conduct, should be aware that withdrawing a fraudulent claim will not exempt them from potential criminal investigation and prosecution.

WHO CAN ASK TO WITHDRAW AN ERC CLAIM

Who can ask to withdraw an ERC claim

Employers can use the ERC claim withdrawal process if **all** of the following apply:

- They made the claim on an **adjusted employment return** (Forms 941-X, 943-X, 944-X, CT-1X).
- They filed the adjusted return only to claim the ERC, and they made **no other adjustments**.
- They want to withdraw **the entire amount** of their ERC claim.
- The IRS **has not paid** their claim, or the IRS has paid the claim, but they haven't cashed or deposited the refund check.

Taxpayers who are not eligible to use the withdrawal process can reduce or eliminate their ERC claim by filing an amended return. For details, see the Correcting an ERC claim – Amending a return section of the frequently asked questions about the ERC.

HOW TO WITHDRAW AN ERC CLAIM

How to withdraw an ERC claim

To take advantage of the claim withdrawal procedure, taxpayers should carefully follow the special instructions at [IRS.gov/withdrawmyerc](https://www.irs.gov/withdrawmyerc), summarized below.

- Taxpayers whose professional payroll company filed their ERC claim should consult with the payroll company. The payroll company may need to submit the withdrawal request for the taxpayer, depending on whether the taxpayer's ERC claim was filed individually or batched.
- Taxpayers who filed their ERC claims themselves, haven't received, cashed or deposited a refund check and have not been notified their claim is under audit should fax withdrawal requests to the IRS using computer or mobile device. The IRS has set up a special fax line to receive withdrawal requests. This enables the agency to stop processing before the refund is approved. Taxpayers who are unable to fax their withdrawal using a computer or mobile device can mail their request, but this will take longer for the IRS to receive.

HOW TO WITHDRAW AN ERC CLAIM

How to withdraw an ERC claim (continued)

- Employers who have been notified they are under audit can send the withdrawal request to the assigned examiner or respond to the audit notice if no examiner has been assigned.

Those who received a refund check, but haven't cashed or deposited it, can still withdraw their claim. They should mail the voided check with their withdrawal request using the instructions at [IRS.gov/withdrawmyerc](https://www.irs.gov/withdrawmyerc).

DETAILS TO WITHDRAW AN ERC CLAIM

If you filed a claim requesting a refund for an ERC and would now like to withdraw your claim, this page will tell you whether you can do so and, if so, how to withdraw your claim.

If you need help figuring out if you're eligible to claim the ERC, use the “ERC Checklist.” If you request to withdraw your claim, you'll be asking the IRS **not to** process your **entire adjusted employment tax return** (Form 941-X, 943-X, 944-X, CT-1X) for the tax period that included your ERC claim. Claims that are withdrawn will be treated as if they were never filed. The IRS will not impose penalties or interest.

If you made any other changes on the adjusted employment tax return or you only need to reduce your ERC claim (not withdraw it entirely), you can't use the withdrawal process. Instead, you need to amend your return. For more information on these situations, see the Correcting an ERC claim – Amending a return section of the frequently asked questions about the ERC.

HOW TO REQUEST TO WITHDRAW AN ERC CLAIM

How to request an ERC claim withdrawal

You will follow different steps depending on your situation.

- You haven't received a refund and haven't been notified your claim is under audit
- You haven't received a refund and you've been notified your claim is under audit
- You received a refund check but haven't cashed or deposited it

If you use a professional payroll company and they filed your ERC claim for you, you should consult with them if you want to withdraw your ERC claim. Depending on how the company filed your claim – individually or batched with others – you may need to have them submit your withdrawal request.

HOW TO REQUEST TO WITHDRAW AN ERC CLAIM IF YOU HAVEN'T RECEIVED A REFUND OR NOTICE

Section A: You haven't received a refund and haven't been notified your claim is under audit

If you filed an adjusted return (Form 941-X, 943-X, 944-X, CT-1X) to claim the ERC and you would like to withdraw your entire claim, use the process below. If you filed adjusted returns for more than one quarter, you must follow the steps below **for each tax period** for which you are requesting a withdrawal.

HOW TO REQUEST TO WITHDRAW AN ERC CLAIM IF YOU HAVEN'T RECEIVED A REFUND OR NOTICE

To request a withdrawal, follow these steps:

- If you can't fax your withdrawal request, you can mail it to the address in the instructions for the adjusted return that applies to your business. Before doing so you should make a copy of the signed and dated first page to keep for your records. It will take longer for the IRS to receive your request if you mail it. Track your package to confirm delivery.
1. Make a **copy** of the adjusted return with the claim you wish to withdraw.
 2. In the left margin of the first page, write “**Withdrawn.**”
 3. In the right margin of the first page:
 1. Have an authorized person **sign** and **date** it.
 2. Write their **name** and **title** next to their signature.
 4. **Fax the signed copy** of your return to the IRS's ERC claim withdrawal fax line at 855-738-7609. This is your withdrawal request. Keep your copy with your tax records.

Form **941-X: Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund**

(Rev. April 2023)

Department of the Treasury — Internal Revenue Service

OMB No. 1545-0029

Employer identification number (EIN) -

Name (not your trade name)

Trade name (if any)

Address

Foreign country name Foreign province/county Foreign postal code

Read the separate instructions before completing this form. Use this form to correct errors you made on Form 941 or 941-SS. Use a separate Form 941-X for each quarter that needs correction. If you are correcting more than one quarter, you must check all five pages. Don't attach this form to Form 941 or 941-SS unless you're reclassifying workers; see the instructions for line 42.

Part 1: Select ONLY one box.

1. Adjustment. Check this box if you are adjusting underreported tax amounts and overreported tax amounts on this form. The amount shown on line 27, if less than zero, may only be applied as a credit to your Form 941, Form 941-SS, or Form 944 for the tax period in which you're filing this form.

2. Claim. Check this box if you overreported tax amounts and you are using the claim process to ask for a refund or abatement. Don't check this box if you're correcting ANY underreported tax amounts.

Part 2: Complete the certifications.

3. I certify that I've filed or will file Forms W-2 as required.

Note: If you're correcting underreported tax amounts only, go to Part 3 on page 2 and skip lines 4 and 5. If you're correcting overreported tax amounts, for purposes of the certifications on lines 4 and 5, Medicare tax doesn't include Additional Medicare Tax. Form 941-X can't be used to correct overreported amounts of Additional Medicare Tax unless the amounts weren't withheld from employee wages or an adjustment is being made for the current year.

4. If you checked line 1 because you're adjusting overreported federal income tax, social security tax, Medicare tax, or Additional Medicare Tax, check all that apply. You must check at least one box. I certify that:

Return You're Correcting...

Check the type of return you're correcting.

941

941-SS

Check the ONE quarter you're correcting.

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Enter the calendar year of the quarter you're correcting.

(YYYY)

Enter the date you discovered errors

/ /

(MM / DD / YYYY)

Withdrawn

Write "Withdrawn" in left margin of form

Write your name, position in the company or organization, signature and date in the right margin of form

John Doe, President, John Doe, Date (MM/DD/YYYY)

HOW TO REQUEST TO WITHDRAW AN ERC CLAIM IF YOU HAVEN'T RECEIVED A REFUND OR NOTICE

HOW TO REQUEST TO WITHDRAW AN ERC CLAIM IF YOU HAVEN'T RECEIVED A REFUND AND CLAIM IS UNDER AUDITOR NOTICE

Section B: You haven't received a refund and you've been notified your claim is under audit

If you've been notified that the IRS is auditing the adjusted return that includes your ERC claim, prepare your withdrawal request using the steps in Section A, but don't fax to the withdrawal fax line or mail it using the address below. Instead:

- If you've been assigned an examiner, communicate with your examiner about how to fax or mail your withdrawal request directly to them.
- If you haven't been assigned an examiner, respond to your audit notice with your withdrawal request, using the instructions in the notice for responding.

HOW TO REQUEST TO WITHDRAW AN ERC CLAIM YOU HAVED A CHECK BUT HAVEN'T CASH IT

Section C: You received a refund check but haven't cashed or deposited it

1. Prepare the **claim withdrawal request** using the steps in Section A, but don't fax the request.
2. Write "**Void**" in the endorsement section on the back of the refund check.
3. Include a **note** that says, "ERC Withdrawal" and briefly explain the reason for returning the refund check.
4. Make **copies for your tax records** of the front and back of the voided check, the explanation notes and the signed and dated withdrawal request page.
5. Don't staple, bend or paper clip the voided check; include it with your claim withdrawal request and **mail it** to the IRS at (*track your package to confirm delivery*):

Cincinnati Refund Inquiry Unit

PO Box 145500

Mail Stop 536G

Cincinnati, OH 45250

WHAT HAPPENS NEXT IN THE WITHDRAWAL PROCESS

What happens next

The IRS will send you a letter telling you whether your withdrawal request was accepted or rejected. Your approved request is not effective until you have your acceptance letter from the IRS.

If your withdrawal is accepted, you may need to amend your income tax return. If you need help, seek out a trusted tax professional.

IRS BREAKS SILENCE: IRS MEMO 2023-005

Whether, under the scenarios involving supply chain disruptions described below, the operation of an employer's trade or business was fully or partially suspended during a calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19) (also referred to as the "suspension test") such that the employer satisfies the definition of an "eligible employer" under section 2301(c)(2)(A)(ii)(I) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020), and section 3134(c)(2)(A)(ii)(I) of the Internal Revenue Code (Code).

The IRS Memo provides 5 facts with scenarios and results of each.

IRS MEMO 2023-005 SCENARIO 1

Facts

- Employer NOT subject to governmental orders to a partial/full shutdown.
- Employer experienced delays in receiving critical supplies.
- Employer never stopped operations.
- Employer believed supply issues were related to covid-19.
- Supplier did not provide any documentation indicating the supplier was under governmental orders to a partial/full shutdown.

Result

- Employer does NOT qualify for ERC because
 - No governmental order on the employer
 - No governmental order on the supplier
 - Regardless of supplier issue, the employer did not cease operations

IRS MEMO 2023-005 SCENARIO 2:

Facts

- Employer NOT subject to governmental orders to a partial/full shutdown.
- Employer experienced delays in receiving critical supplies due to items stuck at port.
- Employer was told by the supplier that the issues were related to covid-19.
- The supplier did not shut down.
- Supplier did not provide any documentation indicating the supplier was under governmental orders to a partial/full shutdown.

Result

- Employer does NOT qualify for ERC because
 - No governmental order on the employer
 - No governmental order on the supplier
 - Regardless of supplier issue or if supplier was under any governmental orders, the employer would need to demonstrate the critical supplies were delayed due to the governmental order

IRS MEMO 2023-005 SCENARIO 3:

Facts

- Employer WAS subject to governmental orders to a partial/full shutdown.
 - Governmental orders applied only to the month of April 2020.
- Supplier WAS subject to governmental orders to a partial/full shutdown.
 - Governmental orders applied only to the month of April 2020.
- Employer experienced delays in receiving critical supplies after governmental orders ceased.
 - Supplier did not provide any documentation indicating the supplier delays were due to Covid-19 or the governmental orders

Result

- Employer does qualify for ERC for April 2020, due to governmental orders
- Employer does NOT qualify for ERC after April 2020 because
 - No governmental order on the employer or the supplier
 - Regardless of supplier issue or if supplier was under any governmental orders, the employer would need to demonstrate the critical supplies were delayed due to the governmental order

IRS MEMO 2023-005 SCENARIO 4:

Facts

- Employer was NOT subject to governmental orders to a partial/full shutdown.
- Employer experienced delays in receiving critical supplies
- Employer found an alternative supplier for the critical supplies
- The critical supplies cost 35% more than the original supplier

Result

- Employer does NOT qualify for ERC
 - No governmental order on the employer or the supplier
 - The employer was able to obtain critical supplies, and did not shutdown
 - Increased supply cost, even if due to Covid-19 reasons, does not qualify for ERC
 - Regardless of supplier issue or if supplier was under any governmental orders, the employer would need to demonstrate the critical supplies were delayed due to the governmental order

IRS MEMO 2023-005 SCENARIO 5:

Facts

- Employer was NOT subject to governmental orders to a partial/full shutdown.
- Employer experienced delays in receiving critical supplies in it's retail store
- Employer was limited in what it could sell and had to raise prices
- Employer did not close operations

Result

- Employer does NOT qualify for ERC
 - No governmental order on the employer or the supplier
 - The employer did not cease operations
 - The employer was able to obtain critical supplies, and did not shutdown
 - Increased prices on products to be sold to customers, even if due to Covid-19 reasons, does not qualify for ERC
 - Regardless of supplier issue or if supplier was under any governmental orders, the employer would need to demonstrate the critical supplies were delayed due to the governmental order

IRS MEMO 2023-005: RESULT

An employer that had no governmental order shutting them down or a reduction in gross receipts can still qualify for ERC if the employer...

Actually shut down (partially or fully),
Due to lacking critical supplies to stay open,
From an existing order of the critical supplies,
From a supplier that was IN FACT under governmental to shut down,
And the supplier IN FACT did shut down due to governmental order,
And the shut down directly precluded providing said critical supplies ordered,
And such critical supplies could not be obtained elsewhere from another supplier.

If the employer meets all these qualifications, the employer qualifies for ERC only during the period (the exact days) in which the employer was actually shut down (and only during the time period in which the supplier was shut down) and no longer than when the employer could reasonably obtain said critical supplies from another supplier (regardless of cost).

IRS PENALTIES EXPECTED WHEN FILING AN AMENDED INCOMETAX RETURN, WITH TAX DUE

Possibly can request and receive relief under the “first time abate” consideration

This is not related to filing form 941-X, but after filing your individual tax return that resulted from an adjustment to your business.

You cannot request this until the penalty has been assessed.

How to qualify for first time abate

You may qualify for first time abate for a penalty if you have a history of good tax compliance.

History of good tax compliance

You are considered having a good tax compliance history if you:

- Filed the same return type, if required, for the past 3 tax years before the tax year you received the penalty.
- Didn't receive any penalties during the prior 3 years, or any penalty was removed for an acceptable reason other than first time abate

IRS PENALTIES EXPECTED WHEN FILING AN AMENDED INCOME TAX RETURN, WITH TAX DUE

First time abate relief and unpaid tax

You can request first time abate for a penalty even if you haven't fully paid the tax on your return. However, the failure to pay penalty will continue to increase until you pay the tax in full.

Example: you didn't fully pay your taxes in 2021 and got a notice with the balance due and penalty charges. You write the IRS requesting penalty relief.

The IRS will remove the penalty up to the date of your request. However, the penalty will continue to increase since the tax is not fully paid. Six months later you pay the tax in full and contact the IRS again to request penalty relief under first time abate for the same return. The IRS can approve first time abatement relief for the additional penalty amount that accrued until the date the tax was fully paid.

IRS PENALTIES EXPECTED WHEN FILING AN AMENDED INCOME TAX RETURN, WITH TAX DUE

How to request first time abate:

Follow the instructions in the IRS notice you received.

Send a written statement or form 843, claim for refund and request for abatement.

If you request reasonable cause relief but our records show you qualify for first time abate, the IRS will apply first time abate. The IRS will notify you they granted your first time abate due to your good compliance history.

If you don't qualify for first time abate, the IRS will consider reasonable cause relief and notify you of our decision.

IRS PENALTIES EXPECTED WHEN FILING AN AMENDED INCOME TAX RETURN, WITH TAX DUE

How to appeal a penalty relief decision

If you received a notice or letter saying the IRS didn't grant your request for first time abate relief, request a different type of penalty relief or see penalty appeal eligibility for next steps.

Interest relief

The IRS charges interest on penalties. Interest increases the amount you owe until you pay your balance in full.

The IRS will automatically reduce or remove the related interest if any of your penalties are reduced or removed.

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