



March 8, 2024

Employee Retention Credit Program Update.

For clients who engaged our company to assist you in applying for your Employee Retention Credit (“ERC”), we are honored to have served you and look forward to assisting you with any of your needs in relation to the work we have performed. Consistent with this spirit of collaboration, LIFETIME is providing you with an update on the Moratorium and Withdrawal program, and additional information regarding the ERC program.

Since mid-September 2023, IRS has taken steps to assist businesses that may have been misled by promoters of ERC who engage in aggressive marketing, overpromising results, or inaccurately stating terms of eligibility. We take this opportunity to remind you that you did not become a LIFETIME client through aggressive television, radio, internet marketing or call campaigns about which IRS has regularly issued caution. LIFETIME does not advertise or pressure Clients into an engagement. Instead, a trusted professional referred you to LIFETIME. As for our engagement, we remain confident that you provided us with accurate facts, which in turn allowed us to assist you with your eligibility determination. We nevertheless wish to provide you with the following information for your consideration, and we will continue to review and consult any new, additional and updated IRS pronouncements and other developments regarding ERC.

IRS¹ has established two different programs for employers who believe they may have submitted an *erroneous or questionable* claim. The Special Withdrawal Option applies to cases that IRS has not yet processed, and the Voluntary Disclosure Program applies to employers who have already received their ERC refund. Importantly, while ERC may be generally thought of, or referred to, as a “collective claim” for refund comprising all the quarters for which a taxpayer may be eligible, each program below addresses ERC on quarter-by-quarter basis. Please see below for additional information on these programs.

A. IRS Initiatives.

1. **September 14, 2023 Moratorium (IR-2023-169)²**. IRS stated it won’t begin processing claims submitted prior to September 14, 2023 until at least May 2024 or later (see January 25, 2024, IR-2024-21).

Enhanced Compliance Review of Pending Claims. In a much-welcomed development, IRS has stated that it will engage in an enhanced compliance review of pending claims to identify any refunds that should not be paid. LIFETIME wishes IRS had done that all along, rather than apparently beginning this initiative more than two years after launching the program. In any case, presently there is no timeline for when IRS will begin processing already submitted claims.

2. **October 19, 2023, Withdrawal Program**. This program is for claims submitted prior to and after September 14, 2023, which are not yet processed or if processed, taxpayer has not yet cashed the

¹ <https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit>

² IR-2023-169 (<https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>).

issued ERC check. See FS-2023-24³ for program details. We understand there are approximately one million or more *not-yet-processed* claims. To exercise this option, a taxpayer is not required to withdraw its ERC claim for every quarter; it is available on a quarter-by-quarter basis.

3. **December 21, 2023, Voluntary Disclosure Program (“VDP”)**. IRS program for taxpayers who have already been paid ERC, but who now agree that they are not eligible for any amount of ERC, (meaning \$0), for the particular tax period for which they applied. For example, if taxpayer applied for 4 total quarters, 2 based on reduction in Gross Receipts eligibility, and 2 based on Total or Partial Suspension eligibility, taxpayer *could* choose to participate in VDP for just one or both of the Total and Partial Suspension quarters. (See Q. 8: <https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit-voluntary-disclosure-program#eligibility1>). Deadline to apply is 11:59 PM on March 22, 2024. IRS currently states that the program will not be extended (*John McInelly Executive Lead for ERC, February 9, 2024, Employee Retention Credit Voluntary Disclosure Program (ERC-VDP) Option for Repaying ERC Claims Seminar*). For those taxpayers wishing to participate in the VDP, IRS requires they follow specific requirements. Please see IRS website for more information.

B. Your ERC Specifics.

1. **Eligibility and Documentation**. The facts and circumstances of your expected eligibility exist independently, whether or not they are fully captured and memorialized in any documentation. You initially completed a Questionnaire that attempted to help you identify facts and circumstances to evaluate your eligibility. From your answers, we then created a Covid Impact Letter (“CIL”) that you signed confirming the relevant eligibility information. Collectively, the **CIL**, together with your **responses** to the Questionnaire, and the **documentation** you retained to support your responses and eligibility, comprise the *documentation* of relevant facts and circumstances to support your asserted eligibility. For any client needing assistance in understanding the documentation that you should consider retaining, please contact your Field Consultant.

2. **IRS-ERC Exams**. Should you receive an Information Document Request (“IDR”) notifying you of examination, please promptly forward it to your Field Consultant, who will shepherd it to our home office for our review and assistance.

In closing, we again take this opportunity to thank you for your continued trust in us. We remain confident in our work and committed to working on your behalf to support your Right as a taxpayer to Pay No More Than the Correct Amount of Tax: “Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.” IRS Taxpayer Bill of Rights #3. <https://www.irs.gov/taxpayer-bill-of-rights>

Please contact your Field Consultant with any questions. Thank you, and from all of us here at LIFETIME, we are,

Yours very truly,

LIFETIME ADVISORS, LLC

³ FS-2023-24 (<https://www.irs.gov/newsroom/help-for-businesses-steps-for-withdrawing-an-employee-retention-credit-claim>).