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& COMPANY, P.S.C.**

Certified Public Accountants  
and Consultants



# Employee Retention Credit Voluntary Disclosure Program



**If you're a business owner, you're probably familiar with the employee retention tax credit. The ERC provides eligible businesses with refundable tax credits based on qualified wages paid to employees after March 12, 2020, to keep them employed during the COVID-19 pandemic.**

Many businesses mistakenly claimed the Employee Retention Credit, often facilitated by third-party vendors and promoters, also known as ERC mills. These ERC mills aggressively marketed the tax credit, stretching the truth or blatantly lying about who could get the credit. As a result, many businesses claimed and received the credit when they didn't actually qualify for it.

The problem was so widespread that the IRS implemented a moratorium on processing ERC claims in September 2023.

Recognizing that many honest small business owners fell victim to these schemes, the IRS introduced the Employee Retention Credit Voluntary Disclosure Program, which enables taxpayers who received tax credits even though they didn't qualify a way to remediate the situation.

## **What is the ERC-VDP?**

The Disclosure Program allows businesses, tax-exempt organizations, and government entities to voluntarily rectify mistaken ERC claims through March 22nd, 2024. The process involves reporting the problem, repaying 80% of the credit received, cooperating with the IRS, and signing a closing agreement.

It's worth noting that the Voluntary Disclosure Program is not for everyone. Many entities were rightfully eligible for the credit and claimed it correctly. The Voluntary Disclosure Program is specifically for those who may have mistakenly applied for and received the credit without qualifying for it.



If you're unsure about your eligibility for the Employee Retention Credit, the IRS has provided an eligibility checklist on their website. Your CPA can also offer further clarity and guidance.

## Eligibility for the Voluntary Disclosure Program

If you are in the midst of an employment tax audit or a criminal investigation by the IRS, you are not eligible for the Voluntary Disclosure Program. Also, if the IRS has already reversed your ERC claim or notified you of an intent to do so, you are not eligible for the program.

If you applied for the Employee Retention Credit, but your claim has not been paid yet, you might be eligible for the ERC claim withdrawal process, a separate IRS program.

## Benefits of participating in ERC-VDP

The Voluntary Disclosure Program offers several advantages. You repay only 80% of the ERC received with no interest. The process is straightforward, with no additional taxes. If you make a full repayment before signing the closing agreement, the IRS will waive penalties and interest. They will also not audit the ERC claims for tax periods resolved under the Voluntary Disclosure Program.

## Application Process

To apply, you can complete the ERC Voluntary Disclosure Program application provided by the IRS and Form SS-10. Be sure to submit your application via the IRS Document Upload Tool by March 22, 2024.

If you're unable to pay the full amount, include Form 433-B for installment payment consideration.



## What to expect after you apply

After submitting your application, the IRS will confirm receipt and eligibility. Approved applications will lead to a closing agreement and repayment instructions, including installment plans if applicable. The agreement terms are final and not subject to appeal.

If rejected, the IRS will provide reasons and possible corrective actions, which may involve resubmission of the Voluntary Disclosure Program application or filing amended tax returns.



# Final Thoughts

This document is intended to provide a brief overview of the ERC Voluntary Disclosure Program. It is not a substitute for speaking with one of our expert advisors. If you would like to speak with one of our advisors about your unique situation, please contact our office.





## About Harding, Shymanski & Co.

Harding, Shymanski & Company, P.S.C. is a public accounting firm with offices in Evansville, Indiana, and Louisville, Kentucky. We are one of the largest accounting firms in Southern Indiana and Kentucky, providing experienced professionals who look beyond the numbers to the heart of complex issues.

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