

ERC: The 2<sup>nd</sup> Round  
Voluntary Disclosure  
Program

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Course Description P. 1

  
VOLUNTARY  
WITHDRAWAL

  
VOLUNTARY  
DISCLOSURE

  
PENALTY RELIEF

  
1<sup>ST</sup> ROUND  
EXPIRED MARCH

  
EXPIRES 11:59 PM  
NOVEMBER 22,  
2024

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Background P. 2

- The CARES Act of 2020
  - Ineligible if received PPP
  - Engaged in trade or business
  - Government shut-down orders
  - Had eligible employees
  - Paid wages to eligible employees

- The COVID-Related Tax Relief Act of 2020 (COVID Act)
  - Part of the Omnibus Package
  - Eligible if received PPP
  - Expanded to 1<sup>st</sup> & 2<sup>nd</sup> Q 2021
    - 70% of qualified wages
    - \$ 10,000 per employee, per quarter
    - 20% decrease in Gross Receipts

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## Background

### P. 3

- The American Rescue Plan Act of 2021
  - Expanded to 3<sup>rd</sup> & 4<sup>th</sup> Q 2021
  - Unexpired state orders
  - Statute extension – 5-years
- Amend payroll tax returns – 941-X, 943-X, 944-X or CT-1X
- Regular statute
  - 3-years from Due Date (April 15<sup>th</sup>)
  - 2-years from date tax is paid

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P. 4

## IRS Investigation Focus

- Abuse
- Fraud
- Unscrupulous Promoters
- Supply Chain Disruptions – EVERYONE QUALIFIES
- Family attribution doesn't apply



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## IRS Approach

### P. 4-5

- July 2023 – shift in resources
  - Verify & investigate
  - Compliance & eligibility
- September 14, 2023 – suspended processing returns
  - Broaden the scope of reviews
  - Protect against fraud, penalties & interest

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IRS  
Approach  
P. 4-5

- October 19, 2023
  - IR Notice 2023-193
  - Voluntary Withdrawal Program
- December 2023
  - 20,000 letters sent to employer
  - Disallowing claims
  - 300 criminal cases
  - \$ 3 billion of erroneous ERC claims

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IRS  
Approach  
P. 4-5

- January 5, 2024
  - 3.6 million claims
  - 600,000 still to process
- August 15, 2024
  - 2,600 participants in 1<sup>st</sup> ERC Voluntary Disclosure Program
- Criminal Investigations – 460 fraudulent claims
  - \$ 7 billion
  - 37 investigations – 17 convictions & 9 sentencings

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P 6

### Warning Signs of Incorrect ERC Claim

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- Too many quarters being claimed
- Government orders that don't qualify
- Too many employees and wrong calculations
- Businesses claiming ERC for too much of a tax period
- Businesses don't pay wages or didn't exist during eligibility period
- The promoter says, "there's nothing to lose"

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P. 6

### Tax Tips 2024-72: Common Errors

- Essential business – fully operational and/or no decline in gross receipts
- No applicable government order
- Businesses reported family members' wages as qualified
  - IRS Notice 2021-49
- Businesses using same wages as used for PPP
- Large employers claiming wages for service providing employees
  - Only Non-service providing employees were eligible
  - 500 or more full-time employee

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### Supply Chain Disruption

P. 6

Chief Counsel Memo 2023-005

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June 20, 2023

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§2301 of the CARES Act

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I.R.C. §3134

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No statutory language identifies supply chain disruption

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IRS Notice 2021-20 – narrow definition

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### Notice 2021-20 & Supply Chain Disruption

P. 6 - 7

- Hindered operations
- Suppliers who provide “critical goods or materials” were shut down
- At least 10% reduction in hours or revenue
- Disruption results in decreased profits
- No disruption if
  - Work from another location
  - Get product from another supplier
- Chief Counsel: **“a supply chain disruption, by itself, does not rise to the level of a full or partial suspension...”**

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Substantiating  
the Disruption  
P. 7

Employer must provide the following:

- The government order causing the supplier to suspend operations;
- The inability to obtain the supplier's goods or materials which cause the full or partial suspension of operations; AND
- The inability to obtain these critical goods or material from an alternate supplier.

Treas. Reg. §31.6001-1 and  
Treas. Reg. §1.6001-1

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The 2<sup>nd</sup> Round Voluntary Disclosure Program  
P. 7

- Claim or refund prior to August 15, 2024
- IRB Notice 2024-30
- Tax year 2021 quarters only
- Correct without fear of penalty or criminal investigation
- I.R.C. 280C -- amended returns & offset to wages

- Repay 85% of amount received
- Keep the INTEREST
- Sell out the Preparer
- **File by 11:59pm November 22, 2024**
- 1<sup>st</sup> ERC VDP – do not apply again



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Eligibility –  
employer  
participation  
P. 8

- Not under criminal investigation
  - Have not been notified they will be
- IRS has not been notified by a third party of employer's noncompliance
  - IRS has not received information of enforcement action
- No current employment tax examination for time periods
- No ERC recapture for any tax period applying for (Letter 6577-C)
- Employer has not received IRS demand for repayment
- Employer hasn't filed an amended return to remove the ERC

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**Eligibility – employer participation**      P. 8

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- Third-party payer – I.R.C. §3504
  - Professional employer organizations
  - Third-party is the employer
  - Third-party submits the application
- Entity responsible for payroll returns, taxes, etc.
  - Control Groups
  - Common Control
  - Submits the application

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**Terms of the Program**  
P. 9

- Employment Tax Adjustment – not eligible for ERC
- Repay 85% of ERC claimed
- Pay in full prior to closing agreement
  - No interest assessed
  - Keep interest received
- Installment agreement available – if approved

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**Terms of the Program**  
P. 9

- Income Tax Effects – no need to file amended returns
  - Form 8082 – Administrative Adjustment Request
  - Observation – when to use
- Preparer/Advisor Information
- Application of Penalties – no civil penalties if 85% paid prior to closing agreement
- Execute closing agreement

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Terms of  
the  
Program  
P. 10

- Installment Agreements are available
- Cash flow problem
- Unable to pay 85% by closing agreement
- 433-A and/or 433-B required
- Installment agreement accepted prior to closing agreement
- Practitioner Note

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Procedures for Participation P 10

- Form 15434 – Application for Employee Retention Credit Voluntary Disclosure Program
- Each tax period – separate form
- Attach supporting documents
- E-file: [www.irs.gov/DUT](http://www.irs.gov/DUT)
- **11:59 pm November 22, 2024 (local time)**
- Signed under penalties of perjury

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Procedures for Participation P 11

<ul style="list-style-type: none"> <li>• Include taxpayer's information</li> <li>• Form 2848 (POA) if represented</li> <li>• Identify tax periods claimed               <ul style="list-style-type: none"> <li>• Tax year 2021 quarters only</li> </ul> </li> <li>• Identify full amount of ERC claimed</li> </ul>	<ul style="list-style-type: none"> <li>• Complete Form SS-10               <ul style="list-style-type: none"> <li>• Consent to Extend the Time to Assess Employment Taxes</li> <li>• 1<sup>st</sup> &amp; 2<sup>nd</sup> Q 2021</li> </ul> </li> <li>• Third Party attaches original Form 941 Schedule R               <ul style="list-style-type: none"> <li>• Control group</li> <li>• Common Payer</li> </ul> </li> <li>• Include preparers information               <ul style="list-style-type: none"> <li>• Description of services provided</li> </ul> </li> </ul>
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P. 12

Department of the Treasury - Internal Revenue Service  
**Form 15434** Application for Employee Retention Credit (ERC)  
 Voluntary Disclosure Program  
 OMB Number 1545-2216

This form is used by employers to apply for the Employee Retention Credit (ERC) Voluntary Disclosure Program. Use the Document Upload Tool to submit completed and signed application packages at <https://www.irs.gov/efps>. Submit a payment for each period listed in Part IV via Electronic Federal Tax Payment System (EFTPS). See Form 15434 instructions "When and How to Pay" for payment guidance.

**Part I - Taxpayer Information**

1. Taxpayer's name  
 2. Employer identification number (EIN)  
 3. Number and street (or P.O. box number if mail is not delivered to a street address)  
 4. Room/Suite  
 5. City, town or post office  
 6. State  
 7. ZIP code  
 8. Telephone number  
 9. Fax number (optional)  
 10. Email address (optional)

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P. 12

**Part II - Third-Party Payer Client Information (Third-party payers only. See instructions)**

11a. Are you a third-party payer filing this form on behalf of a client? (See instructions)  
 Yes (complete 11b-11d)  No (skip to Part III)

11b. Third-party payer client's name  
 11c. Third-party payer client's EIN  
 11d. Tax period(s) for which you filed an employment tax return claiming ERC on your client's behalf

**Part III - Are you authorizing another individual to represent you before the IRS?**

12. Attach a properly completed Form 2848, Power of Attorney and Declaration of Representative, if applicable. Check this box if you have a 2848 on file or are attaching a 2848

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P. 12

**Part IV - General Information**

Provide information regarding the filing and receipt of ERC for the application tax period ending (date), below.

	June 30, 2020	September 30, 2020	December 31, 2020	March 31, 2021	June 30, 2021	September 30, 2021	December 31, 2021	Total All Periods
13a. Form Reported Non-Refundable ERC								
13b. Reported Refundable ERC								
13c. Total Reported ERC (Sum 13a+13b)								
14. Reduction for ERC-VDP (20% of Line 13c)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
15. Estimate due in ERC-VDP (Line 13c minus separate payments to which the participant is eligible) (See Form 15434 instructions "When and How to Pay" for payment guidance)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Payments through EFTPS only prior to closing agreement

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P. 13

Part V - Preparers/Advisors

16. Did an individual, business, and/or organization(s) advise you (or your client) to claim the ERC?  
 Yes (complete lines 17-24 for each preparer/advisor)     No (move to next sector)

Identify each preparer/advisor who assisted you in filing your ERC claim(s) for refund.

Preparer/Advisors 1.

17. Name \_\_\_\_\_ 18. Company/Firm name \_\_\_\_\_

19. Telephone number \_\_\_\_\_ 20. Number and street \_\_\_\_\_

21. City \_\_\_\_\_ 22. State \_\_\_\_\_ 23. ZIP code \_\_\_\_\_

24. Describe the services provided by the preparer/advisor \_\_\_\_\_

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P. 13

**Sign Here - Taxpayer**

Under penalties of perjury, I declare that I have examined this submission, including any accompanying documents, and to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete.

Your signature \_\_\_\_\_ Date \_\_\_\_\_

Your name (print) \_\_\_\_\_ Your title (print) \_\_\_\_\_ Best daytime telephone number \_\_\_\_\_

**Sign Here - Representative**

Under penalties of perjury, I declare that I have examined this submission, including any accompanying documents, and to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete. Declaration of representative is based on all information of which representative has any knowledge.

Representative's signature \_\_\_\_\_ Date \_\_\_\_\_

Representative's name (print) \_\_\_\_\_ Representative's title (print) \_\_\_\_\_ Representative's telephone number \_\_\_\_\_

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P. 14

Payment - EFTPS

- Separate payments for each tax period
- Form Type -- 941
- "Audit Adjustment & Advanced Payment of Tax Deficiency"
- Payments made prior to closing agreement



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<p>Closing Agreement P. 14</p>	<p>I.R.C. §7121</p> <p>Signed within 10-days from date of mailing to IRS</p> <p>Additional 10-day extension upon request</p> <p>Full pay 85% prior to closing agreement</p> <p>Installment agreement included if applicable</p>
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<p>Denied Participation</p> <hr/> <p>No Judicial Review</p> <p>No Administrative Appeal</p>	<p>P. 12</p>
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<p>Closing Agreement</p>	<p>P. 14</p>
<p>“execution of a closing agreement under this Voluntary Disclosure Program does not preclude the IRS from investigating any associated criminal conduct or recommending prosecution for violation of any criminal state and does not provide any immunity from prosecution”</p>	

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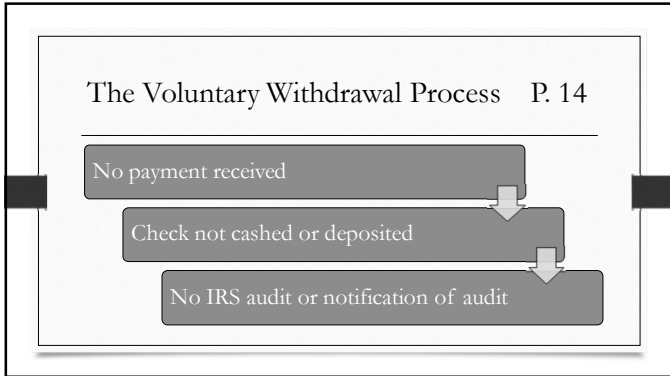
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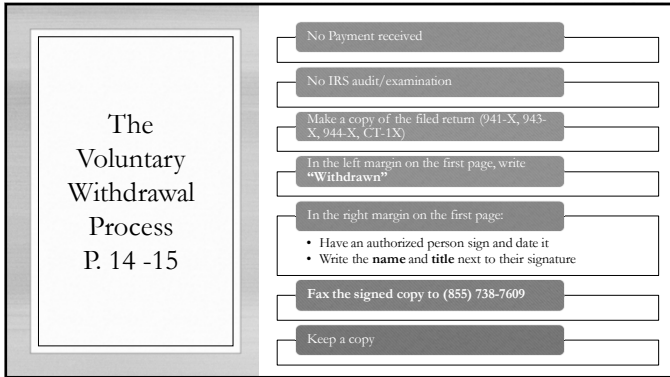
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Sample claim withdrawal request

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

**Withdrawn**

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

P. 15

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The  
Voluntary  
Withdrawal  
Process  
P. 15

- No Payment received
- Under IRS audit/examination
- Make a copy of the filed return (941-X, 943-X, 944-X, CT-1X)
- In the left margin on the first page, write "Withdrawn"
- In the right margin on the first page:
  - Have an authorized person sign and date it
  - Write the **name** and **title** next to their signature
- Give documentation to the examiner (RA or RO)
- Keep a copy

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The Voluntary Withdrawal Process P. 16

- **Payment received**
- No IRS audit/examination
- Make a copy of the filed return (941-X, 943-X, 944-X, CT-1X)
- In the left margin on the first page, write "Withdrawn"
- In the right margin on the first page:
  - Have an authorized person sign and date it
  - Write the **name** and **title** next to their signature
- Write **"VOID"** in the endorsement section on the back of the refund check

- Include a note that says, **"ERC Withdrawal"** and **briefly explain** the reason for returning the refund check
- **Make copies of everything**
- **Mail with tracking:**  
 Cincinnati Refund Inquiry Unite  
 PO Box 145500  
 Mail Stop 536 G  
 Cincinnati OH 45250

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The  
Voluntary  
Withdrawal  
Process  
P. 16

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<b>ERC &amp; Income Tax Reporting P. 17</b>	§2301(e) of the CARES Act
	§I.R.C. 280C(a)
	ERC received – reduces qualified wages and/or health insurance
	Not included in Gross Income

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<b>ERC &amp; Income Tax Reporting P. 17</b>	Notice 2021-49
	Amended return should be filed
	Tracing requirements – Treas. Reg. 1.280C-1 should be followed
	Tax Benefit Rule
	Matching Principles of Accounting
	IRS runs afoul of past & standard practice

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<b>Qualifying Wages &amp; Compensation P. 18-19</b>		
		
<small>Cash, Cash Equivalent, Cash Value for services performed</small>	<small>Health Insurance paid by Employer &amp; pre-tax Employee amount</small>	<small>PTO, Sick, Vacation pay</small>

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### Non-Qualifying Wages & Compensation P. 19

- Research Credit
- Indian Employment Credit
- Military differential credit
- Family & Medical Leave Credit
- Work Opportunity Credit
- Empowerment Zone Employment Credit
- Paid Sick Leave Credit
- Family Leave Credit
- Paycheck Protection Program
- SBA Economic Aid Hard-Ship Grants
- Restaurant Revitalization Grants

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### Non-Qualifying Individuals P. 19

- Shareholder or Owner
- Relatives (family attribution) of owner/shareholder with at least 50% interest (ownership, capital assets and/or profit)
- Estates or Trust – grantor, beneficiary, or fiduciary
- Relative of grantor, beneficiary, or fiduciary
- Lineal descendants;
  - A child or a descendant of a child;
  - A brother, sister, stepbrother, or stepsister;
  - The father or mother, or an ancestor of either;
  - A stepfather or stepmother;
  - A niece or nephew;
  - An aunt or uncle;
  - A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

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### Legislation Comparison P. 20

	The CARES Act of 2020	The COVID-Relief Act of 2020	The American Rescue Plan Act of 2021
PPP Loan	Disqualifier	• Retroactive back to January 1, 2020 Cannot use same wages	Cannot use same wages
Credit	• 50% \$ 5,000 Per Employee	• 50% \$ 5,000 Per Employee	• 70% \$ 5,000/\$ 7,000 Per Employee
Eligible Quarters	March 13, 2020 thru December 31, 2020	March 13, 2020 thru June 30, 2021	July 1, 2021 thru December 31, 2021
Wage & Maximum Limitation	• Annual \$ 10,000 per Employee	• Annual \$ 10,000 per Employee	• Quarterly \$ 10,000 per Employee (1 <sup>st</sup> & 2 <sup>nd</sup> Q 2021) \$ 14,000 per Employee (3 <sup>rd</sup> & 4 <sup>th</sup> Q 2021)
Gross Receipts Test	• 50% Reduction Compared to same Quarter a 2019	• 20% Reduction Compared to same Quarter 2019 Alternative Election (1 <sup>st</sup> & 2 <sup>nd</sup> Q 2021 Only)	• 20% Reduction Compared to same Quarter 2019 Alternative Election (All Q's 2021)
Employee Limitation	Less than 100 Employees	Less than 100 Employees	Less than 500 Employees
Advance Credit Available	NO	YES (1 <sup>st</sup> & 2 <sup>nd</sup> Q 2021 Only)	YES
Eligible Payroll Taxes	Employer SS Tax Only	Employer SS Tax Only	Employer Medicare Tax Only

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**Bonus**    P 23-25

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P 25

**How do I report fraud regarding ERC?**

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- To report tax-related illegal activities relating to ERC claims, take these steps:
  1. Complete **Form 14242, Report Suspected Abusive Tax Promotions or Preparers PDF**
  2. Include with your form any supporting materials
  3. Provide your contact information: This is optional but will be helpful if we have questions and will let us acknowledge receipt of your referral
  4. Send your form and materials by fax or U.S. mail to the IRS Lead Development Center in the Office of Promoter Investigations
    - IRS Lead Development Center in the Office of Promoter Investigations
    - Mail: Internal Revenue Service Lead Development Center  
Stop MS5040  
25000 Avila Road  
Laguna Niguel, CA 92677-3405
    - Fax: 877-473-9135

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**Any Questions?**

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