

Update on the Employee Retention Tax Credit: Where's My Refund?

June 2022

Thousands of employers across the country have claimed the employee retention tax credit (ERTC), an important form of payroll tax relief that Congress made available to certain employers for keeping their employees on the payroll during the COVID-19 pandemic.¹ Although Congress intended for the ERTC to provide fast tax relief to employers, in reality, many employers have been waiting up to a year or more to receive their credit in the form of a refund from the Internal Revenue Service (IRS). These delays have affected employers across the spectrum and regardless of whether their employment tax returns are filed by the business itself, a professional employer organization (PEO), or other service provider.

Why is my ERTC refund delayed? Due to the COVID-19 pandemic, the IRS developed a significant backlog of unprocessed employment tax returns, which are the forms employers are required to use to claim the ERTC. Unless an employer obtained an advance payment of the ERTC—an option that many employers were not able to timely utilize—employers were forced to wait for their employment tax return (or, as applicable, their amended employment tax return) to be processed by the IRS in order to receive a refund of the credit amount.

How did the IRS backlog get so large? The IRS backlog of unprocessed employment tax returns developed in large part due to the impact of the pandemic on IRS operations. The IRS faced many of the same challenges that employers across the country faced in terms of temporary office shutdowns, staffing challenges, and having to adapt many tasks to a remote work environment. Another major reason for the backlog is that the IRS experienced a tremendous increase in the number of amended employment tax returns (generally Form 941-X) filed by employers—an increase that the IRS was unprepared to deal with, especially because Form 941-X may only be filed on paper. The increase in Form 941-X filings was driven by changes that Congress made to the ERTC in late 2020, which retroactively expanded eligibility for the ERTC to more employers. In addition, the complexity of the credit made it difficult for many employers to determine their eligibility for and/or the amount of their credit until after the deadline to file their regular employment tax return. As a result, in practice, Form 941-X often became the only avenue available to many employers to claim the ERTC.

What is the IRS doing to resolve the processing delays? Earlier this year, the IRS [reassigned](#) 1,200 employees to focus on clearing out unprocessed mail and unprocessed amended returns, including Form 941-X. The IRS has also aggressively pursued the [hiring](#) of thousands of new employees, although those hiring efforts have been stymied by competition for workers among other potential employers in today's tight labor market. Despite those ongoing challenges, the IRS has made progress in working through its backlog—for example, *the number of*

¹ Eligible employers were generally allowed to claim the ERTC beginning with respect to wages paid after March 12, 2020 and before October 1, 2021. The ERTC was available to employers meeting the definition of “recovery startup business” for an additional calendar quarter (Q4 2021).

unprocessed Forms 941-X has been reduced from 445,000 to 215,000 over the period of January 26, 2022 to June 15, 2022. Although that is significant progress, those numbers also show that many employers continue to wait for their ERTC claims to be processed. You can follow the IRS's progress in reducing the backlog [here](#) under "Filed a Tax Return" (figures are generally updated weekly).

Can anyone help me get my ERTC refund faster? Can I get an update from the IRS? The long waits for ERTC refunds that many employers have experienced have not gone unnoticed. Numerous individuals and groups, including members of Congress, the National Taxpayer Advocate, NAPEO, and employer representatives have repeatedly raised this concern with the IRS and emphasized the need for fast action. As recently as April 7, 2022, nearly 70 members of Congress [wrote](#) to IRS Commissioner Rettig about the delays in processing ERTC claims, stating that constituents report often waiting eight to 10 months to receive payment checks. The letter requested that the IRS "take immediate action to alleviate this problem by creating a separate phone line and electronic mailbox specifically for small businesses and nonprofit organizations who are claiming this **emergency** credit and giving a timeline to receive relief." To our knowledge, the IRS has not implemented that request and we are aware of no plans to do so.

Although increased funding and the greater use of technology may help the IRS avoid similar problems in the future, with respect to the current backlog of ERTC claims, there is little more the IRS can do at this time besides continuing to have special employee teams focus on reducing the backlog. Because the Form 941-X may only be filed on paper, there are few technological solutions available to aid the process. Commissioner Rettig has, however, broadly committed to having all backlogs returned to "healthy" levels by the end of 2022.