

## IRS Backlog is Thwarting Congress's Plan to Expediently Provide Eligible Businesses with ERC

A growing number of businesses are significantly impacted by the IRS's lengthy delays in processing Employee Retention Credit (ERC) claims. Sadly, many employers' initial, hopeful expectations of mitigating crushing pandemic financial stress with timely receipt of ERC—as Congress intended for eligible businesses—are being replaced with anxiety and disappointment. The National Taxpayer Advocate Service's 2022 Annual Report to Congress (2022 TAS Report) emphasizes that “for business taxpayers, delays in providing congressionally authorized pandemic relief may have required some businesses to lay off workers or even to shutter operations.”

As of March 2023, according to the IRS, there were nearly 900,000 employers with filed, but unprocessed, ERC claims.<sup>2</sup> Understandably, many of these concerned business owners are reaching out for answers from their trusted tax advisors, their representatives in Congress, and the IRS itself. While we can't provide our readers with the precise date to expect to receive their ERC refunds, it is important to bring attention to this matter and review the issues involved.

### Reasons for the Backlog

Congress created one of the most important and sought-after pandemic relief measures, the ERC, via the CARES Act for those eligible businesses that kept their employees on payroll and/or paid health plan expenses during the pandemic. The amount of this payroll tax credit that an eligible business may receive is significant—up to \$26,000 per employee — and Congress intended this measure of relief to reach eligible employers before their operations suffered irreparable harm and forced them to shut their doors altogether.





Eligibility for the ERC requires careful analysis at all stages of the process, but we may generally say here that businesses may qualify if: (1) they experienced partial suspensions (i.e., capacity restrictions, spacing restrictions, and other required modifications) due to governmental orders limiting commerce, travel or group meetings, or (2) they experienced significant declines in quarterly gross receipts (as compared to their 2019 quarterly gross receipts).

After eligibility is determined, the mechanism itself for claiming ERC is a rather straightforward process—filing the appropriate Forms 941-X with the IRS. However, once received by the IRS, the process grinds to a regrettable halt. Indeed, as stated by the Treasury Inspector General for Tax Administration (TIGTA), “ongoing and considerable delays in the processing of amended Forms 941 filed by businesses resulted in businesses not timely receiving the immediate financial relief for which this legislation was enacted.”<sup>3</sup> According to TIGTA, several factors have contributed to this, including, but are not limited to:

1. A slow start. “The IRS did not immediately begin processing Forms 941-X with pandemic relief claims. [T]he IRS did not begin processing amended returns reporting qualified Sick and Family Leave Credits and the ERC for 12 months after the pandemic relief legislation was enacted.”<sup>4</sup>
2. Failure to prioritize suspended claims. “The IRS did not begin prioritizing amended employment tax returns with COVID-19 related employer credits or tracking the processing of the backlog of suspended Forms 941-X for eight months after procedures to process the amended employment tax returns were available.”<sup>5</sup>
3. Trained staff shortage. “[T]he IRS did not provide training for its employees to process these claims until March and April 2021.”<sup>6</sup>
4. IRS error. A significant number of amended returns were erroneously suspended by the IRS.<sup>7</sup>

5. The nature of paper filings. Form 941-X is still a paper return lacking an electronic filing alternative.

Even now, several months after TIGTA’s report was issued, the IRS’s website continues to reflect a concerning and chronic backlog without any specific end in sight.<sup>8</sup> Noting that “not all of these returns involve a COVID-19 credit,” the IRS still states that as of April 19, 2023, a “total inventory of unprocessed Forms 941-X” of approximately 979,000 being worked at two IRS locations (Cincinnati and Ogden).<sup>9</sup>

The 2022 TAS Report urges corrective measures in the context of paper backlogs, stating that:

In August, Congress passed the Inflation Reduction Act, which provides the IRS with supplemental funding of nearly \$80 billion over the next ten years. The legislation includes about \$3.2 billion to improve taxpayer services, \$4.8 billion to modernize the IRS’s information technology (IT) systems, \$25.3 billion to support taxpayer services and enforcement operations, and the balance for enforcement. The paper backlogs and broader customer service deficiencies require priority attention. [Emphasis added]. If this additional funding is prudently spent, the IRS should be able to bring about a complete modernization makeover of its paper processing operations, with the ability to hire and train an advanced workforce, replace outdated technology and systems, and dramatically improve taxpayer services and the taxpayer experience.<sup>10</sup>

### Conclusion

Form 941-X processing delays are causing real problems for thousands of businesses that are still struggling in the aftermath of the pandemic. And, until recently, IRS projections only pointed to a compounding problem in light of the millions







of Forms 941-X anticipated in the near future.<sup>11</sup> However, IRS Commissioner Werfel recently introduced a measure of hope into the discussion. On April 19, 2022, at a Senate Finance Committee hearing, Commissioner Werfel expressed that with the end of filing season, the IRS can redeploy people off the phones and hopefully, “double per week the amount of refund of credits that we’re processing.” According to Werfel, this would mean that approximately 40,000 ERC claims per week could be processed, with priority given to the oldest claims.

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