

MONEY MYTHS SERIES

ERC Mills: The Employee Retention Credit Pitch and Who Pays It Back

Who qualified for the ERC, who has to pay it back, the 2025 law changes, IRS programs and the prosecutions of ERC promoters.

By Eric Ridley, attorney, Ridley Law · Updated September 2026 · Read online with live links: ridleylawoffices.com/employee-retention-credit/

Part of our [money myths series](#), where we check what social media says about money against the statute, the IRS and the courts.

The claim: your business qualifies for up to \$26,000 per employee from the Employee Retention Credit, there's nothing to lose, and we'll file it for a percentage. **The verdict:** the ERC was a real pandemic credit, but most businesses the "ERC mills" signed up didn't qualify. The IRS found 60% to 70% of the claims it reviewed in 2024 showed an unacceptable level of risk. The business, not the promoter, has to pay back a wrongly claimed credit, with interest. In 2026 there's nothing left to claim: the filing deadlines passed in 2024 and 2025, and the 2025 budget law barred late claims for the second half of 2021.

Up to 25%

Contingency fee a promoter could take from your ERC refund (IRS, 2023)

60% to 70%

Share of 1 million+ reviewed claims with unacceptable risk (IRS, June 2024)

April 15, 2025

Last day to file any 2021 ERC claim; 2020 claims closed April 15, 2024 (IRS)

6 years

IRS time to assess late-2021 ERC claims after the 2025 budget law

588

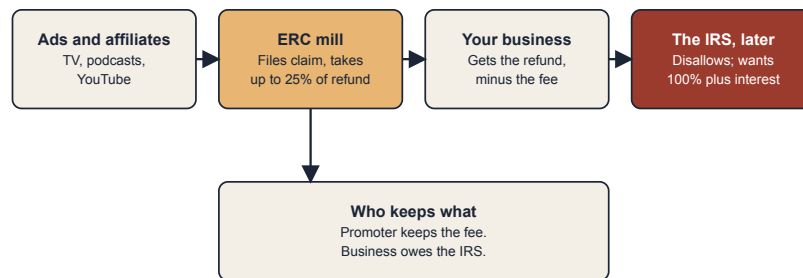
IRS criminal investigations into ERC fraud through September 30, 2025 (IRS-CI)

From 2022 into 2023, it was hard to avoid the ads. A group of U.S. senators wrote to the Federal Trade Commission in January 2024 that more than 9,000 ERC advertisements had run on national and local TV between October 2022 and May 2023, citing a New York Times analysis. Idaho's Attorney General warned that "advertisers claiming businesses can receive \$26,000 per employee" were charging "large upfront fees or contingent fees based on the refund obtained." Podcasts and YouTube channels joined in as paid affiliates.

Who gets paid when you follow this advice

The ERC mill, first and for sure. When the IRS stopped processing new claims in September 2023, it warned that "a promoter can collect a contingency fee of up to 25% of the ERC refund." The IRS later explained that it set the first repayment program at 80% "because many of the ERC promoters charged a percentage fee that they collected at the time of payment or in advance of the payment, and the recipients never received the full amount."

A federal case in Utah shows the numbers. In the Tri-Cities Restoration case (D. Utah, July 2025), brought by a business against its ERC firm, the court described a 15% contingency fee, over \$2 million of credits claimed, and \$351,303 paid to the firm. The business later learned it didn't qualify and repaid 80% of the credit through the IRS's voluntary disclosure program. The firm kept its fee. The complaint also alleged that the firm recruited "podcasters, YouTube content creators, and others as affiliates" and paid them based on the credits delivered.



Where does the "\$26,000 per employee" number come from?

It's the maximum, not the typical amount: up to \$5,000 per employee for all of 2020, plus up to \$7,000 per employee for each of the first three quarters of 2021, according to the IRS.

The 2020 credit, from the CARES Act, was 50% of up to \$10,000 of qualified wages per employee for the year. The 2021 credit under IRC § 3134 was 70% of up to \$10,000 of wages per employee per quarter. The Infrastructure Investment and Jobs Act ended the credit after September 30, 2021, for most businesses, so the fourth quarter of 2021 was available only to "recovery startup businesses." Adding \$5,000 to three quarters of \$7,000 gives the \$26,000 headline. A business only got that if it qualified in every one of those periods and paid enough wages to each employee.

Who qualified for the Employee Retention Credit?

Employers whose operations were fully or partially suspended by a government COVID-19 order, employers with the required drop in gross receipts, and certain recovery startup businesses in late 2021 (IRS).

The IRS has flagged these mistakes in promoter-filed claims.

- ✓ Claiming every available quarter, which the IRS said is uncommon for a legitimate claim.
- ✓ Relying on government guidance that didn't order a suspension, or on supply chain problems alone.
- ✓ Treating rules like mask requirements as a suspension. The IRS says modifications that didn't affect the ability to operate don't count.
- ✓ Claiming wages already used for Paycheck Protection Program loan forgiveness.
- ✓ Claiming for periods before the business existed or paid wages.

The IRS also warned specifically about promoters who say there's "nothing to lose." In fact, the business stood to lose the credit, plus interest and possible penalties.

Who has to pay back an ERC that was wrongly claimed?

The business does. The IRS says "anyone who incorrectly claims the credit has to pay it back and may owe penalties and interest," and Treasury regulations make an erroneous ERC refund assessable against the employer.

The promoter isn't on the hook to the IRS for your refund, and the IRS says many promoters collected their percentage when the refund was paid or before. In its 2023 Dirty Dozen warning, the IRS said businesses "are ultimately responsible for the accuracy of the information on their tax return." Interest on underpayments was 7%, compounded daily, in the fourth quarter of 2026. The business also had to reduce its federal wage deduction by the credit, so a disallowed credit means amending income tax returns too.

California doesn't follow that last rule. The Franchise Tax Board says California doesn't conform to the federal wage-deduction reduction and doesn't include the credit in California gross income.

What did the 2025 budget law change for the ERC?

It barred the IRS from paying third- and fourth-quarter 2021 claims filed after January 31, 2024, gave the IRS six years to assess those credits, and created a penalty for "COVID-ERTC promoters" who fail due-diligence rules (Pub. L. 119-21, § 70605, July 4, 2025).

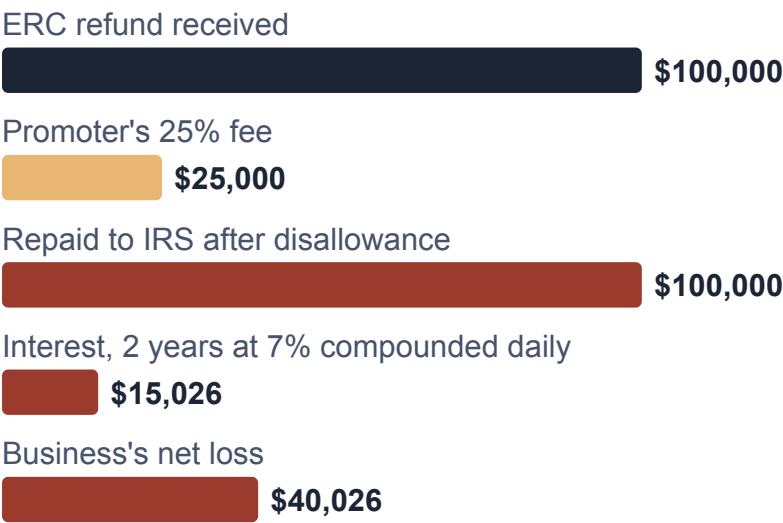
Under § 70605(d), no third- or fourth-quarter 2021 credit can be allowed or refunded after July 4, 2025, "unless a claim for such credit or refund was filed by the taxpayer on or before January 31, 2024." A federal court in California upheld that retroactive bar in *Key Meetings, Inc. v. United States* (N.D. Cal., June 26, 2026). Section 70605(e) extends the time to assess those credits to six years, and § 70605(f) extends the 20% penalty for excessive refund claims so it also covers employment taxes. The new \$1,000-per-failure promoter penalty targets advisers paid on contingency whose ERC work made up a large share of their business.

What did the IRS do about ERC mills?

It stopped processing new claims on September 14, 2023, offered a withdrawal program and two repayment programs, and reported that its 2024 review found most claims risky.

- **Moratorium (September 2023):** the IRS halted processing of new claims with more than 600,000 claims waiting.
- **Withdrawal program (October 2023):** businesses that hadn't been paid, or hadn't cashed the check, could withdraw. "Claims that are withdrawn will be treated as if they were never filed."
- **First voluntary disclosure program (December 2023 to March 22, 2024):** repay 80% and name the advisers. It brought in \$1.09 billion from over 2,600 applications.
- **Risk review (June 2024):** of more than 1 million claims, 10% to 20% were highest risk, 60% to 70% showed unacceptable risk, and 10% to 20% were low risk.
- **Second voluntary disclosure program (to November 22, 2024):** repay 85%, for 2021 periods only.

IRS Criminal Investigation's ERC caseload grew from 252 investigations in July 2023 to 588 by September 30, 2025.



Hypothetical. Before penalties. In the 2023-24 voluntary disclosure program the same business would have repaid \$80,000 and ended \$5,000 behind; that program closed March 22, 2024.

Item	Amount
ERC refund received	\$100,000
Promoter's 25% fee	\$25,000
Repaid to IRS after disallowance	\$100,000
Interest, 2 years at 7% compounded daily	\$15,026
Business's net loss	\$40,026

Has anyone gone to prison over ERC claims?

Yes: a New Jersey tax preparer was sentenced to 144 months in April 2026 after seeking more than \$170 million in COVID-era refunds and charging clients a percentage of the refund checks.

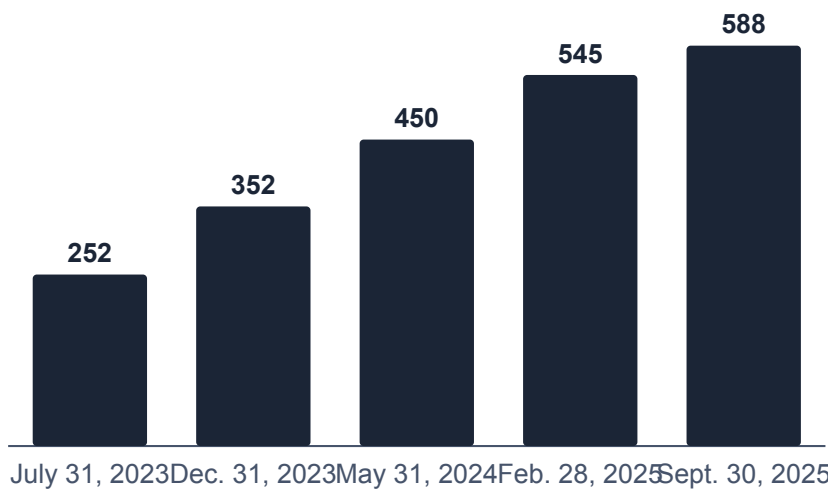
The IRS-CI release says Leon Haynes and his co-conspirators "successfully caused the government to pay out over \$55 million in refunds." In a Brooklyn case, Tiffany Williams and her co-conspirators sought more than \$600 million in credits, causing a loss of about \$45 million. Lakisha Pearson, the former owner of Unity Tax Express, was sentenced in January 2025 to 52 months and ordered to pay \$15.9 million in restitution after filing false claims for others "in exchange for kickbacks." IRS-CI noted that her clients "thought they had been given a government grant." Most of these cases involved invented businesses or fake payrolls. The typical ERC mill customer, a real business that didn't qualify, faces a civil repayment bill, and the bill is the business's to pay.

Worked example: a \$100,000 claim with a 25% fee

The numbers here are hypothetical. A small business files a \$100,000 ERC claim through a promoter charging a 25% contingency fee. The refund arrives, and two years later the IRS disallows it.

- **Fee paid to the promoter:** \$25,000. The business keeps \$75,000.
- **What the IRS wants back:** \$100,000 plus interest. At 7% compounded daily for two years, interest is about \$15,026.
- **Where the business ends up:** about \$40,026 worse off than if it had never filed, before any penalties. The promoter still has \$25,000.

In the first repayment program, the same business could have repaid \$80,000 and ended \$5,000 behind. Those programs closed in 2024.



Sources: IR-2023-169; IR-2024-21; IR-2024-169; IRS-CI, March 26, 2025; IRS-CI FY 2025 annual report.

As of	IRS-CI ERC investigations
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As of	IRS-CI ERC investigations
July 31, 2023	252
Dec. 31, 2023	352
May 31, 2024	450
Feb. 28, 2025	545
Sept. 30, 2025	588

Is anyone still selling ERC services in 2026?

New claims can't be filed, so any 2026 pitch to "get your ERC" is selling something else. The IRS said in 2024 that some promoters even relabeled the credit as a "grant" or stimulus payment.

If your claim was disallowed, the IRS says you generally have two years from the date of the disallowance letter to resolve it administratively or sue for a refund. In April 2026, the IRS announced a new form, Form 907, that some businesses can use to agree to more time. Work through these deadlines with your own CPA or tax attorney, not a firm that's paid a percentage of what it recovers.

Was the ERC ever legitimate?

Yes: the IRS called it "a legitimate credit that has provided a financial lifeline to millions of businesses" in 2023, and its 2024 review found 10% to 20% of claims low risk.

Restaurants closed by local orders, businesses that lost half their revenue, and employers that kept paying staff during shutdowns were the people the credit was written for. Many of them filed through their regular accountants. The trouble came from firms paid on volume telling every business it qualified.

What the ad said	What the law and IRS say
"Up to \$26,000 per employee."	That's the maximum across five periods, for businesses that qualified in each one.
"There's nothing to lose."	The business repays a wrong credit with interest and possible penalties. The IRS flagged this phrase as a warning sign.
"We only get paid if you do."	Contingency fees of up to 25% were paid when the refund arrived and usually not returned.
"It's a grant."	It's a tax credit claimed on an amended payroll tax return, and the IRS can take it back.
"You can still file."	The last deadline was April 15, 2025. Late claims for the second half of 2021 are barred by the 2025 law.

What should you do instead?

If you claimed the ERC through a promoter, review the claim with your own adviser before the IRS reviews it for you.

1 Pull the paperwork

The amended Forms 941-X, the promoter's eligibility memo and the fee agreement. If the memo is generic, that's a warning sign.

2 Test eligibility quarter by quarter

Against the actual government orders or your actual gross receipts. Get a CPA or tax attorney who isn't paid on a contingency.

3 Watch the deadlines

If you got a disallowance letter, the two-year clock is running.

4 Fix the income tax side

A disallowed credit changes your federal wage deduction. California already ignores the credit, so the state return is usually unaffected.

5 Report the promoter

The IRS takes reports on Form 14242. If the business is closing or changing hands, see [closing a California business](#) and [who signs payroll on Friday](#).

Tax credits sold by people paid on a percentage show up elsewhere in this series. See ["free solar"](#), [syndicated conservation easements](#) and [the LLC write-off myth](#), and our [business owner guides](#).

Frequently asked questions

Can I still file for the Employee Retention Credit in 2026?

No. The deadlines were April 15, 2024, for 2020 periods and April 15, 2025, for 2021 periods. The 2025 budget law also barred payment of late-2021 claims filed after January 31, 2024.

What is an ERC mill?

A name, used by the IRS too, for promoters who aggressively marketed the credit, often for a percentage of the refund, and filed claims for businesses that didn't qualify.

Am I responsible if my ERC preparer made a mistake?

Yes. The business that claimed the credit has to repay it, with interest. The IRS says taxpayers are ultimately responsible for the accuracy of their returns.

Is the ERC voluntary disclosure program still open?

No. The first program closed March 22, 2024, and the second closed November 22, 2024.

How long can the IRS audit my ERC claim?

For third- and fourth-quarter 2021 credits, the 2025 budget law gives the IRS at least six years to assess. Other periods have their own limits, so check with your adviser.

Is the ERC taxable in California?

No. California doesn't include the credit in gross income and doesn't require the federal wage-deduction reduction.

Can I get my promoter's fee back?

Possibly, depending on the contract and the facts, but it isn't easy. In *Tri-Cities Restoration*, a federal court dismissed a business's suit against its ERC firm because, after repaying through the IRS program, the business still came out ahead.

This page is general information, not legal, tax or investment advice for your situation. ERC exposure depends on your quarters, your orders and your paperwork, so review it with your own tax professional.

More in the [money myths](#) series.

SOURCES

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- IRS news releases: [IR-2023-49](#) (March 20, 2023); [IR-2023-169](#) (September 14, 2023); [IR-2023-193](#) (October 19, 2023); [IR-2023-247](#) (December 21, 2023); [IR-2024-169](#) (June 20, 2024); [IR-2024-212](#) (August 15, 2024); [IR-2026-58](#) (April 27, 2026); [fourth-quarter 2026 interest rates](#).
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- Letter from U.S. Senators to the Federal Trade Commission, [January 18, 2024](#); Idaho Attorney General, [consumer alert](#), April 10, 2023.
- National Taxpayer Advocate, [2024 Annual Report to Congress](#), [ERC](#).

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