

## IRS Issues New Guidance on Amending Income Tax Returns After Receiving ERC: What Taxpayers Need to Know

By Heather Posey, Esq., EA

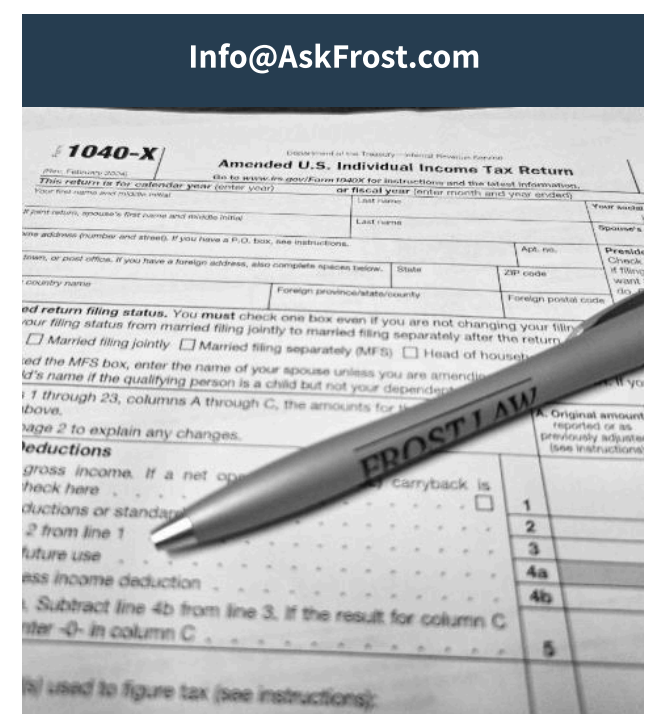
On March 20, 2025, the IRS released addressing how businesses may handle the income tax effects of Employee Retention Credit (“ERC”) claims. The changes, issued in the form of new and revised FAQs, provide the IRS’ current position on how taxpayers should adjust their income tax returns to account for ERC claims.

To this point, businesses were instructed to apply rules similar to Internal Revenue Code section 280C(a) as noted in section 2301(e) of the CARES Act and Notice 2021-20. Section 280C(a), which is generally used for other employment tax credits, disallows a deduction for wages paid or incurred up to the amount of the tax credit determined for that tax year. Therefore, businesses that received or had a reasonable expectation of receiving the ERC were to reduce the wage expenses on their income tax returns for the tax year in which the qualified wages were paid or incurred (i.e. 2020 and/or 2021). This adjustment ensures businesses do not receive a double benefit by both deducting wages paid and also receiving the credit based on those wages.

However, the IRS is prohibited from assessing additional tax once the statute of limitations for assessments has passed—generally, 3 years after the later of (1) the return’s due date or (2) the return’s filing date. Accordingly, businesses are not able to amend their income tax returns after the statute of limitations has lapsed.

Due to the delays in processing ERC claims and the high rates of alleged fraud touted by the IRS, many businesses were hesitant to amend their income tax returns in advance of receiving their claim for refund prompting the need for additional guidance.

The new FAQs provide for a streamlined alternative: instead of amending past returns, employers may instead include the amount of ERC as income in the year paid. This approach is grounded in a long-standing tax principle, the **tax benefit**





**rule**, which requires taxpayers to include in income any prior deductions that later prove inconsistent with the outcome (such as receiving an ERC without reducing the wage expense, or later receiving reimbursement for a previously-deducted expense).

The new IRS guidance addresses a common scenario, wherein a business claimed the ERC but did not reduce the wage expense deduction on the tax return for the year in which such wages were paid prior to the expiration of the relevant statute of limitations. Instead, the IRS now allows taxpayers to correct the overstated deduction by including the ERC amount in gross income in the year they received the credit.

For example, if a business claimed \$1,000 in qualified wages in 2021 and received \$700 in ERC in 2024 without having reduced the 2021 wage expense, it can now include the \$700 in its 2024 gross income. This approach avoids the need to amend prior year returns, offering administrative relief to affected taxpayers.

The updated guidance also outlines options for businesses who reduced their wage expense in anticipation of receiving the credit but the claim was denied, in whole or in part, thereby creating a potential whipsaw effect. The taxpayer may either amend the return or, in most cases, simply increase their wage expense in the year the disallowance became final.

This flexibility is significant, especially for businesses where the window to file an amended return is closing or has already passed. It ensures they can still correct their wage deductions without missing out on legitimate tax benefits. With these updates, the IRS has provided clarity for businesses navigating the often-complex relationship

between ERC claims and income tax reporting. Whether dealing with allowed or disallowed claims, businesses now have more straightforward pathways to ensure compliance—minimizing administrative hurdles while avoiding unallowable tax benefits.

Taxpayers with questions about how to apply these new rules should consult with a trusted tax professional. If you would like to discuss your case in detail, don't hesitate to reach out to us at [\(410\) 941-3875](tel:4109413875) or [schedule a confidential consultation](#) with our team of tax attorneys.

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