



## ERC Refund Claim Disallowed? A Hidden Deadline Could Cost You Everything

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**You put in the effort during the pandemic and kept employees working, later learned about the Employee Retention Credit program and filed claims for refund, and then waited, waited, and for good measure, waited some more. Next, official correspondence from the Internal Revenue Service arrived—usually a Letter 105C or Letter 106C—telling you that your refund claim has been disallowed. The letter invites you to appeal the decision with the Independent Office of Appeals, which seems like the logical next step. But be careful. While you prepare your protest, review your computations, and polish your argument, a hidden clock is ticking in the background. If you're not aware of this critical deadline, you could lose forever your ability to receive any amount of the disallowed refund (and overpayment interest...for all your waiting) forever, even if your case is a winning one!**

### The Two-Year Trap

Here's the situation the Service doesn't highlight in its correspondence: The moment the IRS mails your notice of disallowance, a strict two-year countdown begins. This is your statute of limitations—a legal deadline—to file a lawsuit in federal court to recover your ERC refund. Business owners may assume that engaging with the IRS in its administrative appeals process will pause this two-year clock. It does not.

The appeals process can be lengthy, often taking many months even when the IRS is fully staffed and effectively managed; under current conditions and given the volume of appeals resulting from improperly disallowed ERC refund claims, it may easily take more than two years to resolve. And so you could be advocating for your position in good faith with an Appeals Officer, only to find that your two-year window to file a lawsuit has slammed shut. If this happens, you will not only lose your right to take your case to court, the Appeals Officer will take the position that even if they determined you are clearly an eligible employer with fully substantiated qualified wages, you can not be paid the refunds you have been on a five-and-a-half-year journey seeking.





### Why the Deadline is a Hard Stop

Under Internal Revenue Code § 6514, any refund paid after the two-year limitation period expires is considered "erroneous" and "void." This means that even if the IRS paid your refund, it would be permitted to recover that money from you later. Because of this, agency procedures instruct Service personnel not to issue a refund after the deadline has passed (even if that's not what the Code expressly requires).

The bottom line: Once that two-year clock runs out, the door is closed, locked, and walled-over.

### How to Protect Your Business: Your Call to Action

If you've had an ERC refund claim disallowed, you must act strategically to protect your rights. Passively waiting for the appeals process to play out is risky. You have two options:

1. Formally Extend the Deadline. You can ask the IRS to sign an agreement to extend the two-year period for filing a lawsuit. This is authorized by IRC § 6532(a)(2) and is typically accomplished using Form 907, Agreement to Extend the Time to Bring Suit. This is not an automatic process; the Service must agree to the extension by countersigning the form before the clock runs out. Getting this agreement in place ensures you can continue with the administrative appeal without sacrificing your right to go to court—or foregoing receiving refunds in their entirety.
2. File a Lawsuit. The other option is to file a refund claim lawsuit in the appropriate federal court before the two-year deadline expires. While this may sound

like an aggressive step, it is sometimes the most effective way to bring the matter to its conclusion. Filing suit provides finality and moves your case to a neutral forum where a decision will be made.

### Don't Wait to Act

Receiving an ERC disallowance notice is serious and requires immediate and informed action. The most critical step you can take right now is to seek advice from a trusted tax professional to discuss your specific situation. They can help you navigate the appeals process while ensuring your legal right to recover the credit or refund you are owed is fully protected.

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