

IRS Installs an Escape Hatch in ERC's Two-Year Trap, but Two Signatures are Needed to Open It

By Peter Haukebo, Esq.

Few things have been simple about the Employee Retention Credit, but a new process by the Internal Revenue Service creates a unique opportunity for taxpayers trying to challenge a disallowed refund claim.

In the summer of 2024, the IRS disallowed around 28,000 ERC claims. But some of these claims were improperly denied by the agency. Businesses that may be in this group face a tight window this summer to protect potentially high-dollar refunds they are entitled to.

In September, I wrote about the two-year deadline that quietly closes in on businesses appealing a disallowed ERC refund claim. Many of those businesses are now reaching the end of that two-year window. On April 27, 2026, the IRS announced a new, streamlined process—paired with a new Notice CP320B and a recently updated Form 907 (Rev. 1-2026)—for taxpayers who want more time to resolve a disallowed ERC claim before they lose the right to sue.

The new process is genuinely useful, but it does not eliminate the “Two-Year Trap.” Rather, it gives taxpayers a chance to escape it if they do everything right and if the IRS agrees and countersigns in time.

A Quick Refresher: The Two-Year Trap

When the IRS disallows an ERC refund claim by sending the taxpayer a Letter 105C (full disallowance) or Letter 106C (partial disallowance), it starts a two-year clock to file a refund suit in federal court under Internal Revenue Code § 6532(a). Filing a protest with the IRS Independent Office of Appeals does not stop the clock. And under I.R.C. § 6514, any refund paid after that two-year period expires is “erroneous” and “void”—which is why the IRS will not pay a refund once the period lapses, even if Appeals later concludes the taxpayer was right all along.

These provisions are statutory under the law. That means they are not waivable by the IRS, and courts generally cannot fix a missed deadline through equitable

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tolling, estoppel, or any similar doctrine. So if the clock expires, there is no overtime allowed for taxpayers.

Important New Details from the IRS

In IR-2026-58, the IRS announced a streamlined way for certain ERC claimants to request more time using Form 907, Agreement to Extend the Time to Bring Suit. Eligible taxpayers may now submit a completed Form 907 through the IRS Document Upload Tool (DUT) by selecting "CP320B" from the drop-down menu at [IRS.gov/DUTReply](https://www.irs.gov/DUTReply). The IRS is also proactively sending Notice CP320B to taxpayers it has identified as eligible to ask for more time. Importantly, taxpayers who believe they meet the conditions but did not receive a Notice CP320B can still use the process.

Who Can Ask for More Time

Eligibility is narrow. To use the new document upload process for Form 907, the taxpayer must satisfy both of the following:

1. The taxpayer is waiting for the IRS to consider the taxpayer's response to a Letter 105-C or 106-C disallowing an ERC refund claim in whole or in part; and
2. The taxpayer has six months or less remaining before the two-year appeals period expires.

In other words, this scenario applies for the taxpayer who has protested the disallowance and is awaiting consideration by Appeals, but the Two-Year Trap is closing in. ERC disallowances unrelated to Letters 105C or 106C, or claims with more than six months remaining on the clock, must go through ordinary IRS channels and may not use the new document upload process.

Why This Is More Than a Simple Document Upload

This is the part that matters most, and it is where well-meaning taxpayers can get into serious trouble. Filing Form 907 through the DUT is not a button you press to buy yourself time. It is a request for a written agreement that does not exist until the IRS countersigns it. Simply submitting a Form 907 signed by the taxpayer does not protect you unless the IRS takes action on the form as well. The agreement is not effective until an authorized IRS official signs on behalf of the Commissioner, and the taxpayer should be prepared to bring a legal suit in court, if desired, at any time before that happens.

An Understanding your CP320B notice page at [IRS.gov](https://www.irs.gov) repeats the warning in plainer language: "The extension is not valid until the IRS signs it."

To make the process work, at least four things have to be true:

1. **Use the right version of the form.** Use the January 2026 revision of Form 907. Older versions of the form are still floating around the internet. Submitting an old version risks delay or rejection at the worst possible moment.
2. **Complete all required fields.** The IRS has identified the most common observed problems when filling out the Form 907: a missing Taxpayer ID Number, taxpayer name, address, expiration date, period ended, kind of tax (employment), amount of tax (refund claim), and the date of the notice of disallowance (letter date). Each of these is a reason the IRS may bounce the form as incomplete, and every day spent fixing a defective submission is a day burning off the two-year clock.





3. **Sign with wet-ink signatures.** Form 907 must be signed in original ink. Electronic and digital signatures by the taxpayer are not acceptable for this form. A representative signing on the taxpayer's behalf must hold a Form 2848 with Line 5a specifically authorizing execution of Form 907. A copy of the power of attorney must be included with the document upload submission. Be sure to include an appropriate title where corporate officers are signing also.

4. **The IRS must countersign before the original two-year deadline expires.** This is the point most likely to be misunderstood. Uploading a properly executed Form 907 does not extend anything. Until the IRS countersigns, the original I.R.C. § 6532(a) clock is still running. If the deadline passes before the IRS signs—for any reason, including an IRS processing backlog—the taxpayer is time-barred under the rules. And if for some reason a refund check arrives later, legally it is considered “erroneous” under I.R.C. § 6514.

The IRS Is Not Required to Provide Extra Time

It is also worth noting that the IRS announcement is silent on one big issue: the Service is not required to agree to an extension at all, and the agency is not required to grant the full period the taxpayer requests. Form 907 is a consensual mechanism, and Congress's actual remedy for a disallowed refund claim is a lawsuit under I.R.C. § 7422 within the § 6532(a) two-year window. The extension being offered by the IRS is a courtesy, not an entitlement to the taxpayer.

That matters more right now than it might in normal times. The IRS is processing an unusually high volume of ERC disallowances driven by aggressive promoter activity and the agency's uneven examination practices, which is complicated by the Independent Office of Appeals operating with significantly reduced staffing. More taxpayers need

extensions; fewer IRS personnel are available to negotiate, execute, and countersign them. The new document upload process is a sensible response to that pressure, but it does not change the underlying legal architecture.

If the Deadline Is Approaching and the IRS Hasn't Signed

If a taxpayer is closing in on the I.R.C. § 6532(a) two-year deadline without a countersigned Form 907 by the IRS in hand, the options narrow quickly:

- **Reach out to Appeals.** If the case is already with Appeals or in an Appeals queue, the Appeals Officer is usually the most direct path to getting the form moved and countersigned. Documentation, follow-up, and persistent communication matter.
- **Engage the IRS Taxpayer Advocate Service.** TAS exists precisely to address situations where IRS processing delays threaten taxpayer rights. A statute about to expire on a Form 907 the IRS has not yet signed is exactly the kind of issue TAS will take seriously.
- **File suit to preserve rights.** As a last resort, filing a refund suit before the deadline preserves the taxpayer's right to recover the refund. But this step has real costs. Once a suit is filed, authority over the case transfers from the IRS to the Department of Justice. The variance doctrine may also limit the issues and arguments available in court to those fairly raised in the administrative refund claim. This scenario can be a disadvantage to a taxpayer who never got a full opportunity to develop the record with the IRS.

The Bottom Line: Understand the Process, Get Help if Needed





The new Form 907/CP320B process is a welcome option from the IRS, and it is worth using for taxpayers who meet the conditions. But the process is not self-executing, and it is not a safe harbor. Taxpayers should use the right version of the form and complete every field. Sign in ink and verify that the IRS has countersigned before your two-year deadline. If the deadline is close and the IRS has not signed, do not assume it will work out. The non-waivable character of legal provisions under I.R.C. §§ 6514 and 6532 mean that if the IRS drops the ball, a court is unlikely to step in and fix it.

Frost Law has worked with hundreds of businesses on ERC issues, and the firm's team understands the intricacies of the IRS and these new processes. If you have received a Letter 105-C, Letter 106-C, or Notice CP320B, and you are unsure where you stand on the two-year clock, contact our team at **(410) 497-5947** or **[schedule a confidential consultation](#)**. The cost of getting this wrong could be the entire refund.

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