



# Understanding Letter 105-C, Disallowance of the Employee Retention Credit

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Businesses that claimed the Employee Retention Credit may have received IRS Letter 105-C if we identified the claim as ineligible. This page can help you understand what Letter 105-C means and what to do if you disagree with our decision to disallow your credit.

## What Letter 105-C means for your Employee Retention Credit

Letter 105-C means we disallowed, or denied, the [Employee Retention Credit](#) that you claimed either as a refund or as a reduction of the tax you owed for the tax period. Letter 105-C is your legal notice that we are not allowing the Employee Retention Credit you claimed. Generally, Letter 105-C includes:

- Reason for our decision.
- Date of the decision.
- Tax year or period for which the claim is denied.
- Appeal rights.
- Timeframe in which you must file suit if you wish to challenge our denial in court.

If you received Letter 105-C, you're not eligible for either:


- The [second ERC Voluntary Disclosure Program](#), which is for businesses that received the credit and need to repay it.

- The [claim withdrawal program](#), which is for businesses with claims that haven't entered processing yet.

If you received a Letter 105-C about a credit other than the Employee Retention Credit, follow the instructions in that letter.

## Check ERC eligibility

Before you dispute your disallowance letter, be sure to check these IRS tools and resources about eligibility rules for the Employee Retention Credit.

- [ERC Eligibility Checklist](#) (interactive version and [printable guide](#) )
- [Signs of incorrect ERC claims](#)
- [Frequently asked questions about the ERC](#), including links to examples and definitions

## Next steps

If you **agree with us** disallowing your claim, you don't need to do anything else.

If you **don't agree with us** disallowing your claim, you need to respond to the letter with additional documentation to support your eligibility and claim amount.

We generally ask that you dispute the disallowance within 30 days to help protect your two-year timeline to request an appeal or file suit. For details see [What to send the IRS if you disagree](#) and [Two-year timeline](#), below.

If you don't agree, you **also** have the right to:

- Appeal the disallowance to the IRS Independent Office of Appeals. You can request an appeal when you send additional information. You can also request an appeal at any time within two years of the disallowance letter. Because the timeline to resolve the claim and receive the payment from the IRS is two years from the date of the disallowance letter, it's best to request an appeal earlier in this timeline. For details see:
  - [What to send the IRS if you disagree with the disallowance](#)
  - [What happens next](#)
- File suit with the U.S. District Court that has jurisdiction or with the U.S. Court of Federal Claims. For details see [Two-year timeline](#) below.

## Two-year timeline

Generally, you have two years from the date of Letter 105-C (your original claim disallowance) to file suit. Requesting an appeal doesn't extend this time.

By law, we can't issue a refund or allow a credit after the two-year period unless you file suit during that period. If the end of the two-year period is approaching and a decision hasn't been made on your appeal (or if a favorable decision was made but the refund hasn't been paid yet), you can file suit or discuss extending the two-year period with us to protect your ability to receive a refund.

If you don't file suit within the two-year period or sign an agreement with the us extending the two-year period to file suit, you may lose your ability to receive a refund, even if Appeals has already made a favorable decision about your claim.

The IRS and a taxpayer may extend the time to file suit by written agreement ([Form 907, Agreement to Extend the Time to Bring Suit](#) [PDF](#)), which needs to be done before the two-year period expires.

## What to send the IRS if you disagree with the disallowance

First, **provide an explanation and documentation addressing the initial reason** your claim was disallowed.

For example, if your Letter 105-C said:

"The Employee Retention Credit is only available for eligible employers that paid qualified wages to employees between March 13, 2020, and Dec. 31, 2021. Our records show that your business did not file Forms W-2, Wage and Tax Statement, for tax years ending Dec. 31, 2020, or Dec. 31, 2021, reporting the payment of any wages to employees,"

then you need to provide documentation to support that you had employees, filed W-2s, paid qualified wages, etc.

In addition, you need to include documentation supporting **at least one** of these three eligibility factors **for each quarter** you claimed ERC:

- If your operations were **fully or partially suspended due to an order from an appropriate governmental authority due to COVID 19**, include all of the following documents for **each quarter** you believe you're eligible:
  - A copy of each government order that you believed caused a suspension of your operations, with the specific provision(s) highlighted. The order must be due to COVID-19 and must be a government order, not recommendations, guidance, statements or policies that didn't mandate a full or partial suspension of your business operations. Review all questions in the [qualifying government orders FAQs](#) and [supply chain FAQs](#) for definitions and common areas of misunderstanding.
  - A written explanation of how each government order [fully or partially suspended your business operations](#) during the quarter you believe you're eligible for ERC.
  - Documents supporting your contention that a government order caused a full or partial suspension of your business operations, including business records that discuss or demonstrate that the government order you relied upon fully or partially suspended your business operations. Examples: board minutes, meeting minutes, emails to employees, letters to customers, clients or vendors
- If you experienced the **required decline in gross receipts** during the calendar quarter for which you claimed the ERC, include all of these items for **each quarter** you believe you're eligible:
  - A written explanation of how you determined that you meet the [decline in gross receipts](#) test, including how you determined whether you were or were not part of an aggregated group.

- Business records (gross receipts documentation) for all quarters within the tax year claimed for ERC reconciliation purposes.
- Business records (gross receipts documentation) for all quarters of the comparison tax year (generally 2019). (Summary records will not be accepted.)
- If you were a **recovery startup business** during the calendar quarter for which you claimed the ERC, include documentation that you're eligible as a [recovery startup business](#), meaning you:
  - Began carrying on a trade or business after Feb. 15, 2020, **and**
  - Had average annual gross receipts of \$1 million or less for the three years preceding the quarter for which you're claiming the ERC.

You also must **include all** of these items to support ERC eligibility:

- A written explanation of why you believe you're entitled to the ERC.
- A description and summary of your trade or business operations.
- Copies of worksheets you used to compute the ERC.
- A statement that confirms your ERC calculation doesn't include any of these items - they are **not qualified wages** for the ERC:
  - Wages paid to [related individuals](#).
  - Wages already reported for purposes of [Paycheck Protection Program \(PPP\) loan forgiveness](#).
  - Amounts paid to employees providing services if you are a [large eligible employer](#).

If your calculation incorrectly included any of these items, revise your calculation to exclude them and provide a new worksheet along with your previous one.

## Other forms you may need to include

To have someone represent you, such as your tax professional or attorney, complete and send [Form 2848, Power of Attorney and Declaration of Representative](#), or similar written power of attorney, with your written statement and other documentation.

If you want to request an appeal, include the forms required to request an appeal. For more details on how to request an appeal, including the requirements for your written statement, see [Preparing a request for Appeals](#).

## What happens next

The next steps regarding your response depend on whether you requested an appeal when you responded.

If you **request an appeal**, we will first consider your explanation and documents before sending your request to the IRS Independent Office of Appeals (Appeals).

The next step depends on whether we agree that your explanation and documents support a change to the disallowance.

- If we agree that **your response supports a change** to the amount of ERC you're allowed, we'll process the claim without sending the case to Appeals.
- If we believe **your response doesn't support the ERC you claimed**, we'll forward your case to Appeals for their office to decide if our disallowance is correct. We'll send Letter 86-C to let you know your case has moved to Appeals. Then, Appeals will contact you separately when they receive your case. Appeals will independently decide if the IRS should allow your claim in whole or in part, or if the disallowance is proper.

If your response **doesn't request an appeal**, and we conclude that the information you submitted does not support your ERC claim, we won't forward your case to Appeals. We'll either request more information using Letter 3064-C or send Letter 916-C advising you that the initial disallowance stands.

If the disallowance or any changes result in a balance due, we'll send you a notice about the tax you owe. You should pay the amount you owe by the due date on the notice. If you need payment options, see [Paying your taxes](#).

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