

ERC Refund Claims Are Running Out of Time: Why Waiting on the IRS Could Cost Businesses Their Credit

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The Employee Retention Credit may be closed to new filings, but the controversy surrounding unpaid and disallowed claims is very much alive. For many businesses, the real risk in 2026 is no longer just whether the IRS will eventually act. The real danger is that waiting too long may eliminate a taxpayer's ability to force action and recover the refund at all.

That risk is becoming acute.

The IRS's own ERC disallowance guidance states that once a Letter 105C is issued, the taxpayer generally has two years from the date of that letter to file suit. Requesting an administrative appeal does not extend that deadline. In other words, a protest can sit comfortably in the IRS administrative queue while the clock on your right to sue keeps ticking away.

This is not a theoretical concern. In its Annual Report to Congress, the National Taxpayer Advocate warned that the IRS issued roughly 28,000 ERC disallowance notices during the summer of 2024. By the time the report was published, many of those taxpayers had fewer than six months remaining on the two-year period to file suit.

That should get the attention of any business with an unresolved ERC dispute.

The practical message is straightforward. A taxpayer cannot assume that "waiting on appeals" preserves the claim. It does not.

Nor can a taxpayer assume that the IRS will affirmatively safeguard the deadline. And while TAS has reportedly set up a universal email address where taxpayers and practitioners can send Form 907s that need immediate attention, there is no clear definition of what "immediate" means or how submissions will be prioritized. That is *if* you can get one signed. Practitioners have widely reported that the IRS has a directive to deny any requests for extensions. For businesses stuck in the administrative process or waiting out IRS inaction, that is not encouraging news.

Just as troubling is the disconnect between official reporting and what many practitioners are seeing on the ground.

The Government Accountability Office ("GAO") reported in February 2026 that the IRS told GAO it had closed all ERC claims, except for the 41,000 still in examination or appeal. BUT the IRS did not provide documentation for that figure, did not define what it meant by a "closed" claim, and had not publicly updated ERC processing status since October 2024.

That lack of transparency matters. A claim that the IRS internally considers "closed" may not feel closed at all to the business that has received no payment, no final resolution, no meaningful movement in the administrative process, and no clear explanation of what happens next. And practitioners, who have direct knowledge about how many ERC claims remain unresolved or pending for their clients, are scratching their heads at the IRS's numbers.

When the government's statistics and the real-world experience of taxpayers diverge this sharply, the problem usually isn't arithmetic. It's visibility.

The disconnect could be driven by resource constraints. The IRS is attempting to manage complex amended return inventories, controversy matters, and operational changes at the same time its workforce has shrunk significantly. According to the National Taxpayer Advocate's 2026 report, the IRS workforce fell from 102,113 to 75,702 over the prior year, with major reductions in taxpayer services, small business and self-employed functions, and information technology. A workforce reduction of that magnitude inevitably affects how quickly and effectively disputes are resolved.

All of this to say: businesses should not treat delay as harmless.

Put differently, this is not an environment in which a company should confidently assume its case will be resolved through the ordinary administrative process before a limitations problem arises. When the statute of limitations is involved, time does not merely fly, it sprints.

For businesses with ERC claims, 2026 should be treated as a decision year, not a waiting year.

If your claim has been denied, you should determine the date on the denial letter and calculate the two-year suit deadline now. Many businesses will find that deadline is coming this July.

If your protest is pending, you should evaluate immediately whether the statute is still running and whether action is necessary to preserve your rights.

If your claim remains unresolved after prolonged inaction by the IRS, you should assess whether court action is appropriate rather than assuming the administrative process will eventually resolve itself.

Businesses that filed ERC claims in good faith should not lose their recovery rights because the IRS process is slow, opaque, and under-resourced. They should not lose a legitimate tax credit simply because a handful of aggressive promoters created skepticism around the program. Yet that is precisely the position many taxpayers now face.

One of the important nuances of filing for a refund is that it takes it out of the hands of the Office of Chief Counsel (IRS in-house attorneys) and thrusts it into the arms of the DOJ. At a time when the DOJ has defunded its tax division and spread its specialized attorneys amongst its various criminal and civil litigation divisions, perhaps an abundance of filings creating pressure will cause the DOJ to push the IRS into action and resolution. Who knows. But there's only one way to find out.

Either way, the window to act is narrowing, particularly for taxpayers who received ERC disallowance letters in the summer of 2024 and assumed their protest would preserve the claim. It may not.

If your company has an unpaid ERC claim, a pending protest, or a disallowance letter that has been sitting for months, now is the time to review the file, confirm the applicable deadlines, and determine whether litigation or other protective action is necessary. You still have options today, but that may not be true for long. Waiting for the IRS to move first may be the very thing that costs you the chance to recover.