



SCWA Legislative Update

May 9, 2022



IRS Reminds Employers of Penalty Relief Related to Claims for the Employee Retention Credit

The Department of the Treasury and the Internal Revenue Service have received requests from taxpayers and their advisors for relief from penalties arising when additional income tax is owed because the deduction for qualified wages is reduced by the amount of a retroactively claimed employee retention tax credit (ERTC), but the taxpayer is unable to pay the additional income tax because the ERTC refund payment has not yet been received.

Treasury and the IRS are aware that this situation may arise, in part, due to the IRS's backlog in processing adjusted employment tax returns (e.g., Form 941-X) on which the taxpayers claim ERTC retroactively. Based on applicable law, IRS guidance provides that an employer must reduce its income tax deduction for the ERTC qualified wages by the amount of the ERTC for the tax year in which such wages were paid or incurred. Taxpayers that claimed the ERTC retroactively and filed an amended income tax return reducing their deduction for the ERTC qualified wages paid or incurred in the tax year for which the ERTC is retroactively claimed have an increased income tax liability, but may not yet have received their ERTC refund.

This release reminds taxpayers that, consistent with the relief from penalties for failure to timely pay noted in Notice 2021-49, they may be eligible for relief from penalties for failing to pay their taxes if they can show reasonable cause and not willful neglect for the failure to pay.

In general, taxpayers may also qualify for administrative relief from penalties for failing to pay on time under the IRS's First Time Penalty Abatement program if the taxpayer:

1. Did not previously have to file a return or had no penalties for the three prior tax years,
2. Filed all currently required returns or filed an extension of time to file and
3. Paid, or arranged to pay, any tax due.

For general information, visit the [Penalty Relief page](#) on IRS.gov.

