IRS

If you receive Letter 106-C about the Employee Retention Credit

Letter 106-C, Claim Partially Disallowed, is your legal notice that we partially disallowed, or denied, your claim for the tax period stated in the letter. You may receive a Letter 106-C for your Employee Retention Credit claim because we either:

- Disallowed **part** of your ERC.
- Disallowed **all** of your ERC but allowed something else on your return.

On this page, find out what to do if you receive Letter 106-C stating we are disallowing **part** of your Employee Retention Credit. If you received a Letter 106-C that disallows your Employee Retention Credit **in full**, but allows other changes to your return, go to Understanding Letter 105-C, Disallowance of the Employee Retention Credit, to find out what you need to send us if you disagree with the full disallowance of ERC.

If you received a Letter 106-C for any other reason, follow the instructions in that letter.

On this page

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What Letter 106-C means for your Employee Retention Credit

Letter 106-C is your legal notice that we partially 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 106-C means the IRS has determined the amount of ERC you claimed exceeds the credit limits:

- For 2020, the most you can claim for each employee is $5,000. That's because the qualified wages are limited to 50 percent of up to $10,000 of wages (including qualified health care expenses) paid to each employee for all calendar quarters combined.
- For 2021, the most you can claim for each employee is $7,000 per quarter. (If your business was a recovery startup business, you're subject to an additional limitation on the total amount you can claim.) That's because qualified wages are limited to 70 percent of up to $10,000 of wages (including qualified health care expenses) paid to each employee during the first three calendar quarters.

Find more details in the Employee Retention Credit 2020 v. 2021 comparison chart.

Generally, Letter 106-C includes:

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

If you received Letter 106-C, you're not eligible for the claim withdrawal program for the tax periods covered in the letter. The claim withdrawal program is for businesses with claims that haven't been processed yet. You could still be eligible to withdraw a claim for other tax periods.

If you agree with the letter

You don't need to take any action.

If you don't agree with the letter

You can dispute the partial disallowance.

If you don't agree with us disallowing your claim in part, you need to respond to the letter with additional documentation to support that you qualify for the amount claimed.

You also have the right, within two years of the date on Letter 106-C, to:

- Appeal the disallowance to the IRS Independent Office of Appeals (Appeals). You can do this when you send your dispute or as soon as possible within two years.
- File suit with the U.S. District Court that has jurisdiction or with the U.S. Court of Federal Claims.

Send your dispute within 30 days to help protect the two-year timeline.

If someone is representing you

If a tax professional or attorney is representing you in your dispute, complete and submit 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

You can request an appeal when you send your dispute or after. It's best to request an appeal earlier in the two-year timeline.

Find how to request an appeal.

What to send with your dispute

If you received a Letter 106-C disallowing your Employee Retention Credit **in full**, go to Understanding Letter 105-C, Disallowance of the Employee Retention Credit, to find out what you need to send us if you disagree with the disallowance of ERC.

If you received a Letter 106-C disallowing your Employee Retention Credit **in part**, for each quarter you disagree with the disallowance, provide a written explanation and documentation that addresses the specific reasons your claim was partially disallowed.

For example, if your Letter 106-C said the following, then you need to provide documentation to support your calculation and the number of employees.

The amount of Employee Retention Credit (ERC) you claimed exceeds the maximum amount of qualified wages (including qualified health care expenses) you are entitled to claim per employee.

You need to include:

- An explanation and documentation showing your ERC claim did not exceed the limits per employee.
- Details on how you calculated your claimed ERC, including any worksheets used to compute the amount of ERC for each quarter.
- Statement confirming your calculations did not include wages paid to related individuals or wages used for Paycheck Protection Program loan forgiveness purposes. 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.

If you're considered a large employer, you will also need to provide proof that your ERC is claimed for wages paid to only those workers who were not performing services for each quarter ERC was claimed. Large eligible employers are those that averaged:

- More than 100 full-time employees in 2019 and claimed ERC for 2020 tax periods.
- More than 500 full-time employees in 2019 and claimed ERC for 2021 tax periods.

What happens next

The next steps depend on whether you requested an appeal with your dispute.

If you request an appeal

We'll first consider your explanation and documents before we send your request to Appeals.

Then we'll take one of these steps:

- **If we agree that your response supports a change** to the amount of ERC you're allowed, we'll process the disallowed portion of the ERC claim without sending the case to Appeals.
- **If we believe your response doesn't support the disallowed portion of 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, Referring Taxpayer Inquiry/Forms to Another Office, 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.

You may need to resolve income tax matters related to your ERC. See the instructions in the Income tax and ERC section if you're affected by one of these situations:

- You didn't reduce your wage expense on your income tax return and your claim was allowed.
- You reduced your wage expense but your claim was fully or partially disallowed.

If you didn't request an appeal with your dispute

If we conclude that the information you submitted doesn't support your ERC claim, we won't forward your case to Appeals. We'll either:

- Request more information by phone or with a Letter 3064-C
- Advise you with Letter 916-C 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. Pay the amount you owe by the due date on the notice or set up a payment plan. Find payment options.

Two-year timeline

Generally, you have two years from the date of Letter 106-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 potential refund.

If you don't file suit within the two-year period or sign an agreement with 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 signed by the taxpayer and the authorized IRS representative before the two-year period expires.

How to extend the two-year period

If you responded to your ERC disallowance notice and are awaiting a reply, and there are 6 months or less remaining in the two-year period to file suit, **you can protect your rights to receive a potential refund or credit, if determined eligible**, or bring suit by following the steps detailed below:

To request an extension*:

1. Download Form 907, Agreement to Extend the Time to Bring Suit PDF
2. Complete all required fields (see example below) and sign the form.
3. Submit your documents using the Document Upload Tool, selecting notice 'CP320B' from the drop-down menu.
4. Wait for the IRS to review and return a countersigned copy of the agreement. **The extension is not valid until the IRS signs it.**

***NOTE: If you have requested an appeal with the Independent Office of Appeals and know your assigned Appeals Officer, please contact them directly to request an extension of your time to file suit. If you do not know your assigned Appeals Officer, you may submit your extension using the Document Upload Tool as described above.**

You may have received Notice CP320B from the IRS. The notice was sent to taxpayers identified as eligible for this new Form 907 submission method. These instructions are available at IRS.gov/cp320b. Taxpayers may be eligible even if they don't receive CP320B.

An example Form 907 is provided below:

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