

# IRS Dirty Dozen List for 2022 (plus one extra)

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For more than 20 years, the IRS has published an annual list of its “Dirty Dozen” tax scams and potentially abusive tax avoidance arrangements. According to IRS Commissioner Chuck Rettig, “Taxpayers should stop and think twice before including these questionable arrangements on their tax returns. Taxpayers are legally responsible for their return, promoters making promises and charging high fees are not. Taxpayers can help stop these arrangements by relying on reputable tax professionals they know they can trust.”

The Dirty Dozen is broken down into three types of transactions or scams: Potentially abusive transactions that are heavily promoted; consumer targeted fraud and pandemic-related scams, and abusive or fraudulent tax avoidance strategies mostly used by high net-worth individuals. Here we’ll discuss all 12 on the IRS list – plus add one that’s *not* on their list (but should be).

## Potentially Abusive Transactions that are Heavily Promoted

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- 1 – Use of Charitable Remainder Trust (CRAT) to Eliminate Taxable Gain**
- 2 – Maltese (or Other Foreign) Pension Arrangements Misusing Treaty**
- 3 – Puerto Rican and Other Foreign Captive Insurance**
- 4 – Monetized Installment Sales**
- 6 – Offer in Compromise Mills**
- 7 – Suspicious communications designed to fool someone into responding before thinking**
- 8 – Spear phishing**

## One Additional

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- 13 – Employee Retention Credit Mills**

One of the more significant relief provisions in pandemic-related legislation was the Employee Retention Credit (ERC), designed to help businesses that stayed open and kept their employees on the payroll during periods of shutdown. The rules for eligibility for the ERC have been widely misinterpreted and in some cases largely disregarded. As a result,

some taxpayers are claiming this refundable credit when they do not actually qualify because their business was not shut down due to a government order, or for other reasons are not eligible.

Some third-party consulting firms performing calculations for taxpayers are taking very aggressive positions on ERC and making claims about eligibility that are improper. For example, it is accepted that CDC and OSHA guidelines are not “government orders” for purposes of claiming the credit, but some of these credit mills are taking that position. Another position that is difficult to support is where supply chain disruptions are involved. The IRS has stated this is a major area of focus for enforcement. The statute of limitation for the IRS to audit the ERC claims can be as long as 5 years, and it may well be that these credit mills will disappear before the IRS shows up.

## What To Do Now

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Taxpayers who have encountered any of these tax scams should carefully consider the potential consequences and consult independent, competent tax advisors. They may not be able to claim the purported tax benefits on a tax return. Taxpayers who have already claimed tax benefits for any of the abusive transactions described above should consider taking corrective steps, such as filing an amended return and seeking professional advice, since the IRS is very likely to challenge these arrangements. Besides having to repay the tax benefits claimed (plus interest), the IRS may assert accuracy-related penalties ranging from 20% to 40% of the underpaid tax, or a civil fraud penalty of 75% of the underpayment.

If you'd like to discuss any of these topics further, please [contact us](#) to see how we can help.

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