

IRS Halts Processing of ERC Claims Citing Extensive Fraud and Abuse



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In an extraordinary development, the IRS has halted its processing of Employee Retention Credit (“ERC”) refund claims as it struggles to keep up with the massive number of claims filed within the last several months. The moratorium is expected to last until at least December 31, 2023.

The IRS attributes the stoppage to a surge in aggressive claims and the continued aggressive marketing of the credit to potentially ineligible taxpayers. The IRS will continue to process ERC claims received before September 14, but the agency’s increased scrutiny of the claims will result in longer processing times.

Congress established the ERC as part of the Coronavirus Aid, Relief, and Economic Security Act to help affected businesses pay their employees during the COVID-19 pandemic. The ERC applies to a limited time frame: March 13, 2020, through December 31, 2021. Eligible taxpayers have until 2025 to amend their payroll tax—and affected income tax—returns to claim the credit.

Earlier this year, the IRS listed aggressive ERC promotions among the so-called “Dirty Dozen” tax schemes warranting IRS scrutiny. IRS has established an enforcement campaign on these aggressive claims, which includes both civil and criminal investigations. The campaign will also include opportunities for taxpayers who have submitted claims that haven’t yet been processed to withdraw their claims if they feel they were misled by aggressive promoters. And, for those who have already received ERCs that they now believe were improper, the campaign will include a settlement program wherein taxpayers can repay the improper credit amounts and, in turn, may avoid penalties. One significant issue to address in such programs is the fact that many promoters required an upfront fee based on a percentage of the credit received which could be as much as 30% of the credit. IRS will publish more details on these programs later this year.

The new moratorium creates many collateral issues that require attention, including, inter alia, preserving statutes of limitations on pending refund claims and confronting IRS collection actions on payroll taxes due on original returns. The attorneys at Lippes Mathias can assist practitioners and taxpayers in navigating these complex waters to achieve the best possible resolution. Contact the firm’s [tax controversy practice team](#) at 716-565-1100 if you have any questions.

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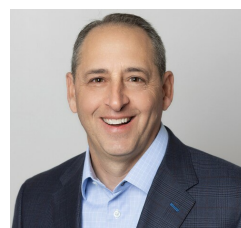
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