

IRS COMMISSIONER DESCRIBES THE “TERRIBLE SCENARIO” UNFOLDING INVOLVING EMPLOYEE RETENTION CREDIT FRAUD

(IRS IDENTIFIES “WILDLY AGGRESSIVE
SUGGESTIONS” FROM ERC
MARKETERS)

By Mike Batts, CPA

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In yet another in a series of escalating warnings, the IRS has sounded the alarm in a big way about fraudulent and improper Employee Retention Credit (ERC) claims in its Information Release 2023-135 (the IR) issued yesterday.¹ In the IR, IRS Commissioner Danny Werfel was quoted as saying, “...the agency has entered a new phase of increasing scrutiny on dubious submissions while reviewing consumer warnings against aggressive marketing.”

Our firm has written extensively and spoken publicly on the problematic issues associated with fraudulent and improper ERC claims.² I have stated that the matter may represent “the greatest tax fraud scandal of all time”³ – a belief I continue to hold.

In a new twist, **Commissioner Werfel mentioned the possibility of the IRS and Treasury Department proposing legislative changes to help deal with the problems. Werfel specifically mentioned the possibility of asking Congress to set an earlier ending date for claiming the ERC – something we predicted in our Alert dated March 8, 2023.**⁴

Werfel’s full comment on that point was:

“This was not how the law was meant to work, and Congress can help with this situation. We will work with Treasury to explore legislative solutions we can share with Congress to help address fraud and error, including potentially putting an earlier ending date for businesses to claim the credit and increase IRS oversight of return preparers.”

In light of the possibility that Congress could soon curtail the time period for filing ERC claims (something I see as likely), organizations that validly qualify for the ERC should file their claims as soon as possible. Under current law, claims for the ERC related to 2020 can be made through April 15, 2024, and claims related to 2021 can be made through April 15, 2025. I find it difficult to believe that Congress will allow the claims period to remain open for that long.

I also expect that Congress will extend the period of time during which the IRS can examine ERC claims.

Werfel also stated,

“A terrible scenario is unfolding that hurts everyone involved – except the promoters.”

The IR noted that the IRS Criminal Investigation Division is working to identify fraud and promoters of fraudulent claims.

In a recent Tax Forum, Werfel told participants the IRS remains deeply concerned about the impact of the ERC on tax professionals who are doing the right thing while their clients are being lured by aggressive marketing claims.

¹ Source: <https://www.irs.gov/newsroom/irs-commissioner-signals-new-phase-of-employee-retention-credit-work-with-backlog-eliminated-additional-procedures-will-be-put-in-place-to-deal-with-growing-fraud-risk>

² Source: <https://nonprofitcpa.com/irs-commissioner-issues-new-stern-warning-about-improper-employee-retention-credit-claims/>

³ Source: <https://nonprofitcpa.com/the-biggest-tax-fraud-scandal-of-all-time-is-happening-now-fraudulent-claims-for-the-employee-retention-credit-erc/>

⁴ Source: <https://nonprofitcpa.com/irs-commissioner-issues-new-stern-warning-about-improper-employee-retention-credit-claims/>

“Hard-working tax professionals who play by the rules see their clients go elsewhere, lured by false promises and wild exaggerations,” Werfel added. “The resulting number of claims prevents the IRS from doing other priority work. But the biggest risk is being taken by the promoters pushing these schemes and businesses filing these claims. This is an area where we urge caution; those improperly claiming the credit could face follow-up action from the IRS.”

The IR also provides warning signs of aggressive ERC marketing, information on how promoters lure victims, and information on how employers can protect themselves from fraudulent ERC promoters. One particularly poignant element of the IRS’s guidance in the IR is its reference to “wildly aggressive suggestions” from ERC marketers. As an agency known more for its subdued tones in communications – even about serious issues – the IRS’s use of such language in an official document illustrates the unique level of concern it has over the problematic issues surrounding fraudulent ERC claims.

What should an employer do if it is concerned that it may have made an invalid or improper claim?

- Have the claim evaluated by an independent, trusted source
- Re-amend returns if necessary – before the initiation of an IRS examination.

The ERC is a Great Source of Aid to Eligible Organizations, and BMWL Can Help

BMWL has helped numerous nonprofit organizations (churches, private schools, charities, etc.) claim significant Employee Retention Credit amounts based on careful analysis of the facts and available guidance. In many cases, our analysis includes consideration of input from legal counsel regarding certain key criteria. We also help our clients document the basis for any ERC claims that we help them make. We have a highly knowledgeable and experienced task force dedicated to assisting clients in addressing the ERC and certain other pandemic-related matters. If you would like to discuss your organization’s ERC eligibility or the validity of your ERC claim, please reach out to our team directly at C19Taskforce@NonprofitCPA.com.

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