

# IRS ISSUES YET ANOTHER WARNING TO NONPROFITS ABOUT THE EMPLOYEE RETENTION CREDIT

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## IRS Issues Yet Another Warning to Nonprofits About the Employee Retention Credit

By Kaylyn Varnum, CPA & Mike Batts, CPA

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The IRS continues to issue stern warnings about improper Employee Retention Credit (“ERC”) claims. As we have previously communicated, the IRS has issued numerous communications alerting employers about the risks associated with aggressive ERC schemes that often result in improper or fraudulent ERC claims.<sup>1</sup> Even before the IRS escalated its warnings on the topic, BMWL published an article by managing partner Mike Batts,<sup>2</sup> noting that improper claims being made by employers for the ERC may very well represent the “biggest tax fraud scandal of all time.”

In its most recent Information Release on the topic, the IRS doubled down on these warnings and specifically included reference to tax-exempt (nonprofit) organizations:<sup>3</sup>

***“The IRS has stepped up audit and criminal investigation work involving these claims. Businesses, tax-exempt organizations, and others considering applying for this credit need to carefully review the official requirements for this limited program before applying. Those who improperly claim the credit face follow-up action from the IRS...This is an ongoing priority area in many ways, and the IRS continues to increase compliance work involving ERC. The IRS has trained auditors examining ERC claims posing the greatest risk, and the IRS Criminal Investigation division is working to identify fraud and promoters of fraudulent claims.”***

The IRS communication went on to highlight signs of aggressive ERC marketing that often lead to improper claims, including:

- unsolicited calls or advertisements that mention an easy application process;
- statements that ERC eligibility can be determined within minutes;
- large upfront fees to claim the credit;
- fees based on a percentage of the refund amount of the ERC claimed;
- claims from the ERC promoter that your organization qualifies before any discussion of the organization’s specific tax situation; and
- claims from the ERC promoter like “there is nothing to lose.”

The IRS also stated that employers, including tax-exempt organizations, who improperly claim the ERC must pay it back, possibly with penalties and interest.

The ERC can be a great source of financial support for eligible organizations. At the same time, it is imperative that employers, under the advice of experienced and knowledgeable tax counsel, carefully consider the eligibility criteria based on a detailed analysis of the facts and available guidance. Our firm has published multiple resources, including this article,<sup>4</sup> in our effort to disseminate quality, accurate, and professional information to nonprofit leaders about the ERC and its potentially very significant financial benefits for eligible organizations.

### BMWL Can Help

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](mailto:C19Taskforce@NonprofitCPA.com).

<sup>1</sup> Source: <https://nonprofitcpa.com/irs-commissioner-issues-new-stern-warning-about-improper-employee-retention-credit-claims/>

<sup>2</sup> Source: <https://nonprofitcpa.com/the-biggest-tax-fraud-scandal-of-all-time-is-happening-now-fraudulent-claims-for-the-employee-retention-credit-erc/>

<sup>3</sup> Source: <https://www.irs.gov/newsroom/irs-alerts-businesses-tax-exempt-groups-of-warning-signs-for-misleading-employee-retention-scams-simple-steps-can-avoid-improperly-filing-claims>

<sup>4</sup> Source: <https://nonprofitcpa.com/the-employee-retention-credit-a-potential-source-of-sizable-federal-aid-for-qualifying-nonprofits/>

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