

IRS ANNOUNCES MORATORIUM ON PROCESSING OF NEW ERC CLAIMS AMID WIDESPREAD FRAUD

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In an Information Release issued on September 14, 2023, IRS Commissioner Danny Werfel announced that the IRS has implemented a moratorium, effective immediately, through at least December 31, 2023, on processing new claims for the Employee Retention Credit (ERC).¹ BMWL has long expressed concerns about rampant fraud in ERC claims...we have stated that we believe it represents the biggest tax fraud scandal of all time.²

Werfel indicated that the moratorium was implemented following “growing concerns inside the tax agency, from tax professionals as well as media reports, that a substantial share of new claims from the aging program are ineligible and increasingly putting businesses at financial risk by being pressured and scammed by aggressive promoters and marketing.”

The IRS Commissioner continued his pattern of escalating warnings about ERC fraud. The IRS's brazen commentary in this latest Information Release includes information about numerous past, current, and expected future criminal prosecutions for ERC fraud...complete with information about the average prison sentence for convicted fraudsters (21 months).

“The IRS is increasingly alarmed about honest small business owners being scammed by unscrupulous actors, and we could no longer tolerate growing evidence of questionable claims pouring in,” Werfel said. “The further we get from the pandemic, the further we see the good intentions of this important program abused. The continued

aggressive marketing of these schemes is harming well-meaning businesses and delaying the payment of legitimate claims, which makes it harder to run the rest of the tax system. This harms all taxpayers, not just ERC applicants.”

The Information Release encourages organizations that have not yet filed a claim to carefully review the guidelines under the advice of trusted tax professionals before filing one.

On a related note, our firm continues to expect that Congress will end the ERC claim period early as a matter of law...and that the termination date could come sooner rather than later. (Absent Congressional action, ERC claims related to 2020 can generally be made through April 15, 2024, and claims for 2021 can be made through April 15, 2025.) Additionally, we expect Congress to extend the period during which the IRS can initiate examinations of ERC claims. We also believe it is possible that Congress will create statutory incentives for employers who have made improper claims to retract them, along with enhanced penalties for making improper claims that are not retracted. The IRS is already working on a “settlement program,” as mentioned below, which will likely have some such characteristics.

The Information Release also indicates that the IRS will continue to work through previously filed ERC claims (received prior to the September 14, 2023 moratorium date) but indicated that processing times would be extended due to increased, stricter compliance review processes being implemented. Werfel indicated that the enhanced compliance review of in-process claims “is critical to protect against fraud but also to protect the businesses from facing penalties or interest payments stemming from bad claims pushed by promoters.”

Additionally, the Information Release indicates that the IRS is developing new initiatives to help victims of aggressive ERC promoters, including what sounds

¹ Source: <https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>

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

like an amnesty-type program for repayments of improper ERC amounts. The Information Release describes a “settlement program” that will allow organizations to avoid penalties and future compliance actions by repaying ERC funds improperly obtained. The IRS says it will release more details on the settlement program this fall.

The IRS is also finalizing a process for organizations to withdraw previously filed ERC claims that have not yet been processed.

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.
- If your claim has not yet been processed, and you don't believe your claim to be proper, consider withdrawing your claim.
- If your claim has been processed, and you don't believe your claim to be proper, consider entering into the IRS settlement program when it becomes available.

BMW Can Help

BMW 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.

Additionally, BMW has formed a team to represent nonprofits in IRS Employee Retention Credit Audits. Nonprofit organizations that have been notified of an IRS inquiry or examination in connection with an ERC claim can reach the BMW IRS ERC Audit Representation Team at ERCAuditTeam@NonprofitCPA.com.

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