

IRS COMMISSIONER ISSUES NEW STERN WARNING ABOUT IMPROPER EMPLOYEE RETENTION CREDIT CLAIMS

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In a dramatic escalation of communications, Acting IRS Commissioner Doug O'Donnell issued yesterday the IRS's strongest warning yet about employers making improper claims for the Employee Retention Credit (ERC). In an IRS Information Release, O'Donnell was quoted as saying:¹

While [the ERC] is a legitimate credit that has provided a financial lifeline to millions of businesses, there continue to be promoters who aggressively mislead people and businesses into thinking they can claim these credits. Anyone who is considering claiming this credit needs to carefully review the guidelines. If the tax professional they're using raises questions about the accuracy of the Employee Retention Credit claim, people should listen to their advice. The IRS is actively auditing and conducting criminal investigations related to these false claims. People need to think twice before claiming this.

The Information Release also stated, "The IRS and tax professionals continue to see third parties aggressively promoting these ERC schemes on radio and online. These promoters charge large upfront fees or a fee that is contingent on the amount of the refund."

In a recent Alert, I noted that improper claims being made by employers for the ERC may very well represent the "biggest tax fraud scandal of all time."² It seems that the IRS may agree.

As I mentioned in my previous Alert on the topic, the amount of money being claimed by employers for the ERC nationwide is mind-numbingly staggering. Given the unfathomable amounts of money involved, and the apparent magnitude of fraudulent claims, **I predict the following ramifications:**

[Note – these are predictions...these are not actions that have been officially taken or announced.]

- The IRS will target "ERC mills" – companies involved in aggressively marketing their ERC services, helping organizations make improper ERC claims, and charging significant percentage-based fees for doing so.
- The IRS will pursue criminal charges against those that help employers make fraudulent ERC claims.
- The IRS will examine ERC claims filed by every client of the ERC mills found to be helping their clients make improper ERC claims. It will require refunds of improper claims and assess penalties and interest.
- The IRS will likely issue new guidance clarifying the types of "government orders" that must have applied to an employer in order for an employer to qualify for the credit based on a full or partial suspension of operations.
- Congress will likely take some kind of action to curtail the massive fraud that is occurring. My best guess is that Congress will put an early end to claiming the credit. 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.

¹ Source: <https://www.irs.gov/newsroom/irs-issues-renewed-warning-on-employee-retention-credit-claims-false-claims-generate-compliance-risk-for-people-and-businesses-claiming-credit-improperly>

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

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

BMWL has helped numerous nonprofit organizations (churches, 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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