taxnotes federal

Volume 184, Number 1 ■ July 1, 2024

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Reprinted from *Tax Notes Federal*, July 1, 2024, p. 41

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Hale E. Sheppard is a shareholder in the tax controversy section of Chamberlain, Hrdlicka, White, Williams & Aughtry in Atlanta.

In this article, Sheppard explores recent government approaches to employee retention credit issues, focusing on executive actions that include prolonging audit periods and imposing penalties.

I. Introduction

What began as an initiative to help businesses keep workers on the payroll during the COVID-19 pandemic has become a quagmire. The processing of new employee retention credit claims is on hold, guidance is often dense and retroactive, legislation is in limbo, and audits and investigations are starting in earnest. Convinced that billions of dollars in ERC claims were improper, and concerned that employers will file more of those claims if it does not do something drastic soon, the government has initiated several actions. The IRS, Congress, and even the commander-in-chief have gotten in on the act.

II. Glance at Four Laws

The ERC began with the Coronavirus Aid, Relief, and Economic Security Act, which applied to the second, third, and fourth quarters of 2020.[1] The CARES Act generally provided that an eligible employer could get an ERC against certain employment taxes equal to 50 percent of the qualified wages it paid to each employee.[2]

To be eligible, an employer must have been carrying on a trade or business and met at least one of two tests. First, the operations of the employer must have been partially or fully suspended during a quarter because of an order from an appropriate governmental authority that limited commerce, travel, or group meetings for commercial, social, religious, or other reasons attributable to COVID-19. Second, the employer must have suffered a significant decline in gross receipts during a specific quarter. The CARES Act imposed some limits. For instance, qualified wages for any one employee could not exceed $10,000 for all applicable quarters combined. The result was that the maximum ERC per employee for all of 2020 was $5,000.[3]

Congress next passed the Taxpayer Certainty and Disaster Tax Relief Act.[4] That law expanded the period during which eligible employers might benefit, allowing claims for the first and second quarters of 2021. Eligible employers could also get

[1] Joint Committee on Taxation, "Description of the Tax Provisions of Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security ('CARES') Act," JCX-12R-20 (Apr. 23, 2020); *see also* Notice 2021-20, 2021-11 IRB 922; and CARES Act, section 2301(m).

[2] CARES Act, section 2301(a).

[3] *Id.*, section 2301(b)(1); JCT, *supra* note 1, at 38.

[4] Consolidated Appropriations Act, 2021, division EE, section 207; JCT, "Description of the Budget Reconciliation Legislative Recommendations Relating to Promoting Economic Security," JCX-3-21 (Feb. 8, 2021); *see also* Notice 2021-23, 2021-16 IRB 1113.

more ERCs because the percentage of qualified wages on which they could be claimed increased from 50 to 70, and the amount was calculated per quarter, not per year.[5]

The American Rescue Plan Act followed.[6] It codified the ERC, making it section 3134. ARPA further expanded the ERC, permitting benefits for the third and fourth quarters of 2021.[7] It also created another category of eligible employer, the so-called recovery start-up business. That was an employer that began operating after February 15, 2020, had average annual gross receipts of $1 million or less during the relevant period, and did not otherwise qualify as an eligible employer.[8]

Things ended when Congress passed the Infrastructure Investment and Jobs Act.[9] That law retroactively shortened the relevant periods: Except for recovery start-up businesses, eligible employers could not solicit ERCs for the fourth quarter of 2021.

III. Administrative Actions

As the front-line enforcer of tax law, the IRS has taken several major actions already, including the following:

- placing improper ERC claims on the "Dirty Dozen" list;
- sending notices to financial institutions identifying "red flags" to assist them in detecting, preventing, and reporting suspicious transactions related to ERC abuse;
- training several hundred revenue agents to focus on ERC issues;
- issuing regulations allowing the IRS to subject ERC claims to the normal audit, assessment, appeal, and collection procedures;
- enlisting the Office of Professional Responsibility to publish an alert to tax professionals, warning them of their duties and possible punishments concerning questionable ERC claims;
- publishing guidance making it difficult for employers to obtain ERCs based on supply chain problems;
- disseminating additional guidance rendering it impossible for employers to get ERCs solely by adhering to communications from the Occupational Safety and Health Administration;
- imposing a moratorium on new ERC claims starting in September 2023;
- initiating "enhanced compliance reviews" of all pending claims as of September 2023;
- starting many civil audits, criminal investigations, and promoter investigations;
- introducing a withdrawal program under which employers can retract unprocessed ERC claims on a no-harm-no-foul basis;
- offering a specialized voluntary disclosure program permitting taxpayers to retain 20 percent of the ERC benefits and avoid penalties;
- sending rejection letters for 20,000 claims that failed to meet basic qualification criteria;
- conducting a series of "educational sessions" for several hundred companies that made "significant ERC filings," with the goal of getting them to encourage their clients to participate in the withdrawal or voluntary disclosure program;
- launching thousands of correspondence audits to dispense with cases quickly;
- sending letters demanding the return of excessive ERCs from certain employers;
- directing summonses to taxpayers under audit, as well as to third parties, when data solicited by the IRS is not voluntarily supplied by taxpayers in response to information document requests; and
- releasing a memo clarifying the liability of third-party payers (such as section 3504 agents, professional employer organizations, and certified professional employer organizations) for employment

[5] *Id.* at Section III.D.

[6] ARPA section 9651; *see also* Notice 2021-49, 2021-34 IRB 316.

[7] Notice 2021-49, Section III.A.

[8] *Id.* at Section III.D.

[9] *See also* Notice 2021-65, 2021-51 IRB 880.

taxes and penalties stemming from invalid ERC claims.[10]

The IRS has declared that it is not done yet, though. Its national fraud counsel recently announced that the IRS might soon issue so-called John Doe summonses and enforce them in the courts, as necessary. That would allow the IRS to identify more fully the parties that promoted or facilitated the filing of dubious ERC claims.[11]

IV. Legislative Actions

Maneuvers to ensure the legitimacy of ERC claims have not all been administrative. The legislative branch has contributed with a proposed law.

The Tax Relief for American Families and Workers Act of 2024 (H.R. 7024) was introduced shortly after the IRS commissioner "met with members of the Senate Finance Committee to ask for additional tools for enforcement efforts related to the credit."[12] The head of the IRS also testified before the House Ways and Means Committee, again emphasizing the need for legislative tweaks to assist the IRS in combating improper ERC claims and those endorsing them.[13] The House of Representatives approved the act in January, but the Senate has not yet followed suit.[14]

The act would create a special penalty for "ERC promoters." That is a misnomer, really, because it does not involve promoter penalties under section 6700, but rather aiding and abetting penalties under section 6701. If the act were to pass, the existing penalty would increase for ERC promoters. The current penalty is $1,000 per violation. That figure would swell under the act to the larger of $200,000 or 75 percent of the gross income derived from providing aid, assistance, or advice regarding any ERC document.[15] The term "ERC document" encompasses returns, affidavits, claims, or other documents related to any ERC claim.[16]

The concept of ERC promoter is broad, with three potential categories. First, it covers any person that provides aid, assistance, or advice regarding an ERC document, if that person charges or receives a contingency fee, *and* the aggregate gross receipts related to those services constitute more than 20 percent of the gross receipts of that person for the year the services were provided or the preceding one.[17]

Second, ERC promoter embraces any person that provides aid, assistance, or advice regarding an ERC document, *and* the aggregate gross receipts related to those services constitute more than 50 percent of the gross receipts of that person for the year the services were provided or the preceding one.[18] Lastly, ERC promoter includes any person that provides aid, assistance, or advice regarding an ERC document, *and* the aggregate gross receipts related to those services exceeds 20 percent of the gross receipts of that person for the year the services were provided or the preceding one, *and* those receipts surpass $500,000.[19]

The act would obligate ERC promoters to comply with specific due diligence requirements, too. Those that fail to meet the applicable duties regarding eligibility for, and the amount of, any

[10] *See* Hale E. Sheppard, "A Comprehensive Look at ERC Enforcement Tactics So Far," *Tax Notes Federal*, June 3, 2024, p. 1729; Nathan J. Richman, "Employee Retention Credit Auditors Are Digging Deep," *Tax Notes Federal*, May 20, 2024, p. 1462.

[11] Richman, "ABA Section of Taxation Meeting: Incorrect ERC Claims Grow to $1B in Voluntary Disclosure Program," *Tax Notes Federal*, May 13, 2024, p. 1302.

[12] Doug Sword and Cady Stanton, "Werfel Pitches Senators on Three Legislative Fixes for ERC Fraud," *Tax Notes Federal*, Jan. 15, 2024, p. 527; Lauren Loricchio, "Tax Deal Would Bring ERC Claims to Earlier End and Curb Abuse," *Tax Notes Federal*, Jan. 22, 2024, p. 732.

[13] Sword and Stanton, "Mixed Reviews for Werfel on ERC, 1099-K Reporting, and More," *Tax Notes Federal*, Feb. 19, 2024, p. 1498.

[14] Efforts to attach the act to separate, unrelated legislation to reauthorize the Federal Aviation Administration failed in early May. *See* Stanton, "Wyden to File Tax Bill as Amendment to FAA Reauthorization," *Tax Notes Federal*, May 13, 2024, p. 1273.

[15] Tax Relief for American Families and Workers Act of 2024 (H.R. 7024), section 602(a)(1). The figure decreases from $200,000 to $10,000 when the ERC promoter is an individual instead of an entity.

[16] *Id.*, section 602(f).

[17] *Id.*, section 602(e)(1)(A). It is interesting to note that the act, in its original form, did *not* contain language about a revenue threshold or percentage; simply doing ERC-related work in exchange for a contingent fee sufficed. *See* JCT, "Description of the Chairman's Amendment in the Nature of a Substitute to H.R. 7024, the 'Tax Relief for American Families and Workers Act of 2024,'" JCX-4-24, (Jan. 18, 2024); JCT, "Description of H.R. 7024, the 'Tax Relief for American Families and Workers Act of 2024,'" JCX-2-24, at 69 (Jan. 17, 2024).

[18] Tax Relief for American Families and Workers Act, section 602(e)(1)(B)(i).

[19] *Id.*, section 602(e)(1)(B)(ii). What is particularly interesting is that the act expressly carves out certified professional employer organizations from the definition of ERC promoter. *See id.*, section 602(e)(2).

ERC claim would face a penalty of $1,000 per violation.[20]

The act also provides that, in situations involving ERC promoters, ERC claims generally would be treated as "listed transactions," and the ERC promoters would be considered material advisers thereto.[21] Those characterizations could trigger many negative consequences for ERC promoters, such as the need to file Forms 8918, "Material Advisor Disclosure Statement," with the IRS, recordkeeping duties, and penalties for transgressions.

The act also contains important rules that are *not* specific to ERC promoters. For instance, it would significantly extend the assessment period, from three years to six years. This gets worse when one reads the language closely: The act specifies that the six-year clock would not even start ticking against the IRS until the date on which the relevant Form 941, "Employer's Quarterly Federal Tax Return," is actually filed, when the Form 941 is deemed to have been filed, or when the credit or refund regarding the ERC "is made," whichever occurs later.[22] Given the ultra-slow manner in which the IRS has processed ERC claims, which has been exacerbated lately by the moratorium and "enhanced review process," employers might be susceptible to IRS audits for many years under the act.

Another critical rule in the act, not directed toward ERC promoters, is that the IRS would not allow any ERC credit or refund unless the claim was filed on or before January 31.[23]

V. Executive Actions

The current presidential administration released its budget proposal for 2025 (green book).[24] It contained several suggestions for "improving tax compliance," three of which center on ERC matters.

A. Expanding Penalties to Employment Taxes

Under section 6676, the IRS can assert an "erroneous refund or credit" penalty against taxpayers in some situations. If a taxpayer makes a claim for refund or credit regarding income tax (but not employment tax or other types of tax) for an excessive amount, he generally will be liable for a penalty equal to 20 percent of that amount.[25] The penalty will not apply, however, if "reasonable cause" for the claim exists.[26] Moreover, the penalty has no place when any portion of the excessive refund or credit is already subject to other sanctions, such as accuracy-related, reportable transaction, or civil fraud penalties.[27]

The green book argues that Congress should expand section 6676 to cover claims related to employment taxes, in addition to income taxes, for two main reasons. First, empowering the IRS to impose penalties against taxpayers filing improper claims for employment tax refunds or credits, including those deriving from ERCs, would "support sound tax administration" and "provide parity" with excessive claims involving income taxes.[28]

Second, broadening the scope of the penalties would discourage many types of egregious ERC claims that the IRS has already seen, such as those filed by entities that did not exist or did not have any employees during the periods for which they sought tax benefits.[29] The green book advocates extending the penalty to erroneous claims for refund or credit of employment taxes and applying it to any claims, including ERC claims, whose assessment period has not expired when Congress enacts the amendment.[30]

[20] *Id.*, section 602(c)(1) and (2) (referencing due diligence requirements found in section 6695(g)). Noncompliance with the due diligence standards would also constitute a determination that the ERC promoter knew that the ERC claim would result in a tax understatement by another person for purposes of the third prong of section 6701(a). *See id.*, section 602(b).

[21] *Id.*, section 602(d)(1) and (2).

[22] *Id.*, section 602(i).

[23] *Id.*, section 602(h).

[24] Treasury, "General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals" (Mar. 11, 2024).

[25] Section 6676(a). The term "excessive amount" means the amount by which the claim for refund or credit surpasses the amount of that claim allowable. *See* section 6676(b) and ILM 200747020.

[26] Section 6676(a). Any excessive amount attributable to a transaction lacking economic substance will not be treated as attributable to "reasonable cause." *See* section 6676(c).

[27] Section 6676(d).

[28] Treasury, *supra* note 24, at 205.

[29] *Id.*

[30] *Id.*

B. Prolonging Audit Periods for ERCs Claims

Eligible employers solicited ERCs on timely Forms 941 or Forms 941-X, "Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund," for various quarters in 2020 and 2021.

A taxpayer normally must file a refund claim, including a Form 941-X, within three years after filing the relevant Form 941, *or* within two years after paying the relevant taxes, whichever period expires later.[31] Importantly, filing a refund claim does not create a new assessment period, and it does not extend the existing assessment period related to the original Form 941.[32] The IRS has clarified that point, explaining that "filing an amended Form 940 or [Form 941-X] does *not* affect the period of limitations for assessment."[33] The IRS has further stated that the assessment period "generally does not restart upon the filing of an amended return," such as Form 941-X.[34]

The IRS generally has three years from the date on which a tax return is filed (or deemed filed) to identify it as problematic, conduct an audit, and propose changes.[35] Thus, the normal assessment period for any quarter of 2020 expired on April 15, 2024, while the standard assessment period for 2021 will not end until April 15, 2025.[36]

The rules are different when it comes to the third and fourth quarters of 2021.[37] ARPA granted the IRS more time to audit taxpayers that might be misbehaving. That law gives the IRS five years (instead of three years) from the date on which the relevant Form 941 is actually or deemed filed to challenge an ERC claim.[38] For example, if an eligible employer filed a timely Form 941 for third quarter 2021 claiming ERCs, it is deemed filed on April 15, 2022, and the assessment period will stay open until April 15, 2027.

In summary, for ERC claims relating to the second, third, or fourth quarter of 2020, the assessment period expires April 15, 2024. For claims linked to the first or second quarter of 2021, the period runs April 15, 2025. Finally, for claims pertaining to the third or fourth quarter of 2021, the extended period ends April 15, 2027.

The green book wants to give the IRS more time to challenge ERC claims when it comes to earlier quarters. Why? It offers three justifications. The green book suggests that having a consistent rule regarding assessment periods "would assist with IRS compliance and enforcement efforts." It also explains that many ERC claims were made on Forms 941-X long after the relevant quarter, and taxpayers continue to file Forms 941-X with additional ERC claims. Finally, the fact that filing a Form 941-X does not serve to restart the assessment period "makes it difficult for the IRS to ensure compliance," especially when it believes that many recent ERC claims were improper.[39]

The green book proposes that the assessment period for *all* ERC claims (for both 2020 and 2021) be five years, as opposed to three years. On a related note, the green book recommends extending the assessment period for the IRS to impose additional income taxes against taxpayers that filed ERC claims but failed to make the corresponding decrease to their wages-paid deduction on their income tax returns, such as Form 1120, "U.S. Corporation Income Tax Return," or Form 1065, "U.S. Return of Partnership Income."[40]

C. Enlarging Penalties for and Coverage of ERC Claim Preparers

Understanding the real focus of the third proposal in the green book requires some backstory. The OPR, which has jurisdiction over various tax professionals, issued an alert in 2023 about ERC claims.[41] Why did the OPR think such an announcement was necessary? It explained that "with tax filing season in full swing, tax professionals are requesting guidance to ensure

[31] Section 6511(a); reg. section 301.6511(a)-1(a); section 6511(b)(1); reg. section 301.6511(b)-1(a).

[32] *Badaracco v. Commissioner*, 464 U.S. 386, 393 (1984); IRS, "Employment Tax Returns: Examinations and Appeal Rights," Publication 5146, at 6 (revised Mar. 2017).

[33] *Id.*

[34] Treasury, *supra* note 24, at 203.

[35] Section 6501(a).

[36] Reg. section 301.6501(b)-1(b).

[37] Notice 2021-49, Section III.G.

[38] ARPA section 9651(a); Notice 2021-49, Section III.G.

[39] Treasury, *supra* note 24, at 203.

[40] *Id.* at 203-204.

[41] 31 U.S.C. section 10.2(a)(5); 31 U.S.C. section 10.3; OPR, "Professional Responsibility and the Employee Retention Credit," Issue No. 2023-02 (Mar. 7, 2023).

they are meeting their Circular 230 professional responsibilities and the standards required to prepare and sign original tax returns, amended returns, or claims for refunds relating to" ERCs.[42] The alert also insinuated that many parties, playing different roles, were misinforming taxpayers. It stated the following on that score:

> If a practitioner has reason to believe that a client's excessive ERC claim is owing to the client's *reliance on erroneous or improper advice from another practitioner, tax return preparer, or other third party*, the practitioner should, consistent with Circular 230 and the guidance [in the alert], advise the client of the overstated claim and any additional tax and penalties that could apply and, if requested, competently assist the client in correcting or mitigating the problem. [Emphasis added.][43]

The OPR alert made three main points. First, it admonished practitioners that they must make reasonable inquiries of a taxpayer to confirm its eligibility for, and the correct amount of, ERCs. It stated, specifically, that "if the practitioner cannot reasonably conclude . . . that the client is or was eligible to claim the ERC, then the practitioner should not prepare an original or amended return that claims or perpetuates a potentially improper credit."

Second, the alert told practitioners that all tax positions must have at least a reasonable basis, and that the practitioners should tell clients that previously filed unwarranted ERC claims about the option of filing Forms 941-X to rectify the situation. Third, the alert warned practitioners that they might not be able to rely on opinions, reports, analyses, or similar documents prepared by others when it came to making ERC claims. It explained that if the previous adviser had a conflict of interest with the taxpayer because of the amount or type of fee charged (for example, a prohibited contingency fee), the practitioner might not be able to rely on the documents from the adviser.[44]

The OPR has jurisdiction over various parties, among them "registered tax return preparers."[45] This term can be broken down into two critical parts. First, a tax return preparer is any person who prepares for compensation, or who employs other persons to prepare for compensation, any tax return or claim for refund, or a "substantial portion" thereof.[46] It encompasses "signing preparers" — that is, individuals who are primarily responsible for the overall substantive accuracy of a return or claim. It further covers nonsigning preparers, meaning individuals, other than signing preparers, who prepare all or a substantial portion of a return or claim.[47] A person can be a tax return preparer, regardless of educational qualifications or professional status.[48] The examples in the regulations build on these notions, lending support to the idea that the role of tax return preparer entails far more than just the individuals who actually sign Forms 941 or Forms 941-X seeking ERCs:

> Attorney A, an attorney in a law firm, provides legal advice to a large corporate taxpayer regarding a completed corporate transaction. The advice provided by A is directly relevant to the determination of an entry on the taxpayer's return, and this advice leads to a position(s) or entry that constitutes a substantial portion of the return. A, however, does not prepare any other portion of the taxpayer's return and is not the signing tax return preparer of this return. A is considered a nonsigning tax return preparer.[49]

Second, a registered tax return preparer is one who meets qualification requirements and has a valid preparer tax identification number from the IRS.[50]

The OPR has the power to punish a practitioner over whom it has authority when he is found incompetent or disreputable, violates

[42] *Id.*; Loricchio, "IRS Again Warns About Employee Retention Credit Schemes," *Tax Notes Federal*, Mar. 13, 2023, p. 1804.

[43] OPR, *supra* note 41.

[44] *Id.*

[45] 31 U.S.C. section 10.2(a)(5); 31 U.S.C. section 10.3.

[46] 31 U.S.C. section 10.2(a)(6); section 7701(a)(36)(A).

[47] Reg. section 301.7701-15(b)(1) and (2).

[48] Reg. section 301.7701-15(d).

[49] Reg. section 301.7701-15(b)(2)(ii), Example 1.

[50] 31 U.S.C. section 10.3(f); 31 U.S.C. section 10.4(c).

any relevant standard, or willfully misleads a current or potential client.[51] Punishments vary depending on the conduct, but they can consist of a temporary suspension, permanent disbarment, public censure, or a large monetary penalty.[52]

Also, the IRS generally can penalize a return preparer in the following circumstances involving understatements of tax liabilities. First, if the position on the return causing the tax understatement relates to a tax shelter or a reportable transaction, and it was not reasonable for the preparer to believe that that position would "more likely than not" be upheld if the IRS were to challenge it. Second, if the position does not involve a tax shelter or reportable transaction, but was not properly revealed to the IRS and it lacked "substantial authority."

Third, if the position does not implicate a tax shelter or reportable transaction and was correctly disclosed, but there was no "reasonable basis" for it.[53] The penalty is $1,000 or 50 percent of the income that the preparer derived (or will derive) regarding the relevant tax return or refund claim, whichever amount is larger.[54] The penalty increases, of course, when the preparer willfully attempts to understate a liability or intentionally disregards the applicable authorities. It increases to the larger of $5,000 or 75 percent of the income earned.[55]

Many in the know, such as the former director of the OPR, indicate that this body might be limited under the present rules when it comes to regulating and disciplining some parties involved in promoting improper ERC claims. This is because the courts in two cases from a decade ago held that the IRS lacked authority to make return preparers register with the IRS or meet the ethical rules found in Circular 230.[56] The former director said that "simply advising a taxpayer on making a refund claim, as many of the professionals pitching ERC claims are doing, wouldn't rise to the level of practice before the IRS subject to Circular 230 and within the OPR's jurisdiction."[57] She cautioned, though, that if the professionals start defending ERC claims before the IRS during audits, they will be exposed to OPR oversight.[58]

That is because, according to Circular 230, the concept of practicing before the IRS, and thus triggering scrutiny by the OPR, includes "representing a client at conferences, hearings, and meetings" and "all matters connected with a presentation to the [IRS] relating to a taxpayer's rights, privileges or liabilities."[59] The IRS commissioner built on those thoughts, explaining that he planned to work with the IRS to develop legislative solutions to the ERC situation, "which may include asking for more authority to regulate return preparers."[60]

The green book does not specifically mention ERC claims when it proposes new rules for paid return preparers, but the connection is apparent, especially when one considers the comments by the former OPR director and the current IRS commissioner. The green book divides matters into two segments.

First, it proposes the escalation of several penalties related to return preparation, including those for returns and refund claims triggering tax understatements. The basic sanction would go from $1,000 or 50 percent of the income derived by the preparer to $5,000 or 50 percent. The higher sanction, for situations involving willful or intentional misconduct, would jump from $5,000 or 75 percent to $10,000 or 100 percent of the income.[61] Why the enhanced financial sting for wrongdoing by return preparers? Well, the green book says that bad behavior by return preparers hurts taxpayers because it leads them to noncompliance. It also reduces confidence in the tax system, which relies on public cooperation to function. The green book concludes that penalty

[51] 31 U.S.C. section 330(b); 31 U.S.C. section 10.50.

[52] 31 U.S.C. section 330(b); 31 U.S.C. section 10.50; Notice 2007-39, 2007-1 C.B. 1243.

[53] Section 6694(a)(1); section 6694(a)(2).

[54] Section 6694(a)(1).

[55] Section 6694(b)(1) and (2).

[56] Loricchio and Richman, "IRS May Face Constraints in Quest to Curb ERC Abuse," *Tax Notes Federal*, July 31, 2023, p. 839.

[57] *Id.*

[58] *Id.*

[59] 31 U.S.C. section 10.2(a)(4).

[60] Loricchio and Richman, *supra* note 56.

[61] Treasury, *supra* note 24, at 210. The green book also contains revised penalties for reasons other than tax understatements, as well as new penalties for failure to disclose use of a paid preparer or appropriation of a PTIN.

levels are too low and "do not adequately promote voluntary compliance."[62]

Second, the green book suggests granting the IRS authority to govern all paid return preparers, including those who are unregistered. Grounds for this expanded supervision are as follows:

> The current lack of authority to provide oversight on [unregistered] paid tax return preparers results in greater non-compliance when taxpayers who use . . . preparers who engage in unscrupulous conduct become subject to penalties, interest, or avoidable costs of litigation due to the poor-quality advice they receive. . . . Regulation of paid tax return preparers, in conjunction with diligent enforcement, will help promote high quality services from paid tax return preparers, will improve voluntary compliance, and will foster taxpayer confidence in the fairness of the tax system.[63]

VI. Conclusion

Governmental actions to identify improper ERC claims that have already been filed, stop the submission of questionable claims in the future, and punish those supposedly facilitating misconduct are numerous. Taxpayers and their advisers probably know about some maneuvers, but their awareness of current actions, as well as several additional ones on the horizon, is less likely. They say that knowledge is power, and that is certainly true when it comes to the evolving ERC rules and enforcement methods. ■

[62] *Id.* at 207.

[63] *Id.* at 207-208.