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ERC Delays and Expiring Deadlines: The Case of Filing Protective Claims Now

Leo Unzeitig Discusses IRS' Delays in Processing the Employee Retention Credit Claims, Need for Protective Claims

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In a recent Texas Society of Certified Public Accountants' article, Leo Unzeitig, shareholder in Chamberlain Hrdlicka's San Antonio tax controversy and tax planning practices, discusses the ongoing delays in processing Employee Retention Credit (ERC) claims by the IRS and their impact on taxpayers' ability to timely amend their tax returns to reverse wage expense, should their claim be denied.

Unzeitig notes that in most cases, the statute of limitations for amending or adjusting the income tax return expires three years from the date the return was filed or two years from the date the tax was paid—whichever comes later. Thus, for the typical 2021 return, its statute of limitations will run out in 2025.

Unzeitig recommends that taxpayers file a protective claim for refund, to reverse a wage expense reported on an ERC claim, should such claim be denied.

"A protective claim can freeze the statute of limitations and preserves the taxpayer's right to go back and fix their income tax return once the IRS finally gets around to resolving their ERC claim," said Unzeitig.

To read the full article, go to:

<https://tscpafederal.typepad.com/blog/2025/02/erc-delays-and-expiring-deadlines-the-case-of-filing-protective-claims-now>