

IRS Offers Forgiveness for Erroneous Employee Retention Credit Claims

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The Employee Retention Credit (“ERC”) is a popular COVID-19 tax break that was targeted by some unscrupulous and aggressive tax promoters. These promoters flooded the IRS with ERC claims for many taxpayers who did not qualify for the credit. Now, the IRS is showing mercy and allowing taxpayers to withdraw some ERC claims without penalty.

Many taxpayers were very excited about the ERC, which could refund qualified employers up to \$5,000 or \$7,000 per employee per quarter, depending on the year of the claim. But the requirements are complicated. Some tax promoters seized on this excitement, charged large contingent or up-front fees, and made promises of “risk-free” applications for the credit. Unfortunately, many employers ended up erroneously applying for credits and exposing themselves to penalties, interest, and criminal investigations—in addition to having to repay the credit. For example, the IRS reports repeated instances of taxpayers improperly citing supply chain issues as a basis for an ERC when a business with those issues rarely meets the eligibility criteria.

After months of increased focus, the IRS halted the processing of new ERC claims in September 2023. And now, the IRS has published a process for taxpayers to withdraw their claims without penalty. Some may even qualify for the withdrawal process if they have already received the refund check, as long as they haven’t deposited or cashed the check.

For those who have already received and cashed their refund checks, and believe they did not qualify, the IRS says it will soon provide more information to allow employers to repay their ERC refunds without additional penalties or criminal investigations.

If you need help reviewing or unwinding your ERC claim, Miller Canfield can help you. Please contact your Miller Canfield attorney or the authors of this alert if you wish to discuss the matter further.