

IRS Announces Denials of Employee Retention Credit

December 8, 2023

As described in our October 24 article "**IRS Offers Forgiveness for Erroneous Employee Retention Credit Claims**" the IRS has increased scrutiny on claims for the Employee Retention Credit ("ERC"). The IRS halted processing claims for the ERC in September, and announced a withdrawal program under which taxpayers who had applied for the ERC could withdraw their application without penalty.

Consistent with this posturing, the IRS announced on December 6, 2023, that it has begun mailing over 20,000 notices to taxpayers denying ERC claims for either not having a business during the covered period or having no paid employees at that time. These letters allow for an administrative process to appeal the denied ERC and provide steps for such appeal.

Taxpayers may also still avail themselves of the withdrawal program, though it is uncertain how long it will remain available. The IRS has indicated that the program will sunset at some point and has only committed to keeping it open through the end of 2023. While it may be unlikely that the IRS will end the withdrawal program after only 2.5 months, it is unknown how far beyond the end of this calendar year it might continue.

The advantage of promptly evaluating an ERC claim is that withdrawal under the IRS program avoids penalties if the claim is difficult to defend.

If you receive an IRS notice denying an ERC claim, or 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.