

IRS SHEDS SOME LIGHT ON ITS PROCESSING OF ERC CLAIMS AND FUTURE EXAMINATIONS

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In an IRS Information Release issued on June 20, 2024, the IRS provided an update on the status of its work in processing and investigating Employee Retention Credit (ERC) claims.¹ As we have outlined in prior Special Alerts, the IRS announced a moratorium on processing new ERC claims effective September 14, 2023, prompted by growing concerns regarding fraud and aggressive marketing by third-party promoters.²

The June 20 Information Release indicates that the IRS will continue to keep the processing moratorium in effect on ERC claims submitted after September 14, 2023.

IRS Commissioner Danny Werfel stated that the IRS “decided to keep the post-September moratorium in place because we continue to be concerned about the substantial number of claims coming in so long after the pandemic.” Werfel further indicated that the IRS will use the moratorium to consult with Congress to seek additional help, “including potentially closing down new claims entirely and seeking an extension of the statute of limitations to allow the agency more time to pursue improper claims.”

For claims submitted before September 14, 2023, but not yet processed, the Information Release indicates that if there are no eligibility warning signs, “the IRS will begin judiciously processing more of these claims.”

The IRS anticipates that some of the first payments for claims that fall in this category will go out later this summer but that the claims will be processed “at a dramatically slower pace.” The IRS will also be employing additional review measures in connection with the processing of these claims.

The Information Release also highlights the IRS Withdrawal Program for organizations with unprocessed ERC claims that they (the applicant organizations) now believe to be invalid.³ Additionally, the IRS is considering reopening a new version of its Voluntary Disclosure Program for employers who previously made claims and received refunds but later concluded that their claims were invalid (effectively an amnesty program, which previously expired on March 22, 2024).⁴ The IRS indicated that any new Voluntary Disclosure Program would be less favorable than its initial program.

The IRS also noted in the Information Release that a very high percentage of ERC claims submitted appear to be “high-risk” claims that warrant special attention. We at BMWL believe that the IRS’s previous and contemplated Voluntary Disclosure Programs, together with Commissioner Werfel’s statements about asking Congress to extend the time for ERC examinations, are strong indicators of the IRS’s desire and intent to examine a significant number of previously made ERC claims that it believes are questionable or invalid.

What should an employer do if it is concerned that it may have made an invalid or improper claim?

- Have the claim evaluated by an independent, trusted source.

¹ Source: <https://www.irs.gov/newsroom/irs-enters-next-stage-of-employee-retention-credit-work-review-indicates-vast-majority-show-risk-of-being-improper>

² Source: <https://nonprofitcpa.com/irs-announces-moratorium-on-processing-of-new-erc-claims-amid-widespread-fraud/>

³ Source: <https://nonprofitcpa.com/irs-announces-withdrawal-process-for-employee-retention-credit-claims/>

⁴ Source: <https://nonprofitcpa.com/irs-announces-new-voluntary-disclosure-program-for-employers-who-received-employee-retention-credit-payments-for-which-they-did-not-qualify/>

- If your claim has not yet been processed, and you don't believe your claim to be proper, consider withdrawing your claim.
- If your claim has been processed, and you don't believe your claim to be proper, consult with your tax counsel regarding a recommended course of action and consider entering into the IRS Voluntary Disclosure Program if it becomes available again.

BMWL Can Help

BMWL has helped numerous nonprofit organizations (churches, private 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.

Additionally, BMWL has formed a team to represent nonprofits in IRS Employee Retention Credit Audits. Nonprofit organizations that have been notified of an IRS inquiry or examination in connection with an ERC claim can reach the BMWL IRS ERC Audit Representation Team at ERCAuditTeam@NonprofitCPA.com.

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