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ERC voluntary disclosure program reopens, with minor changes

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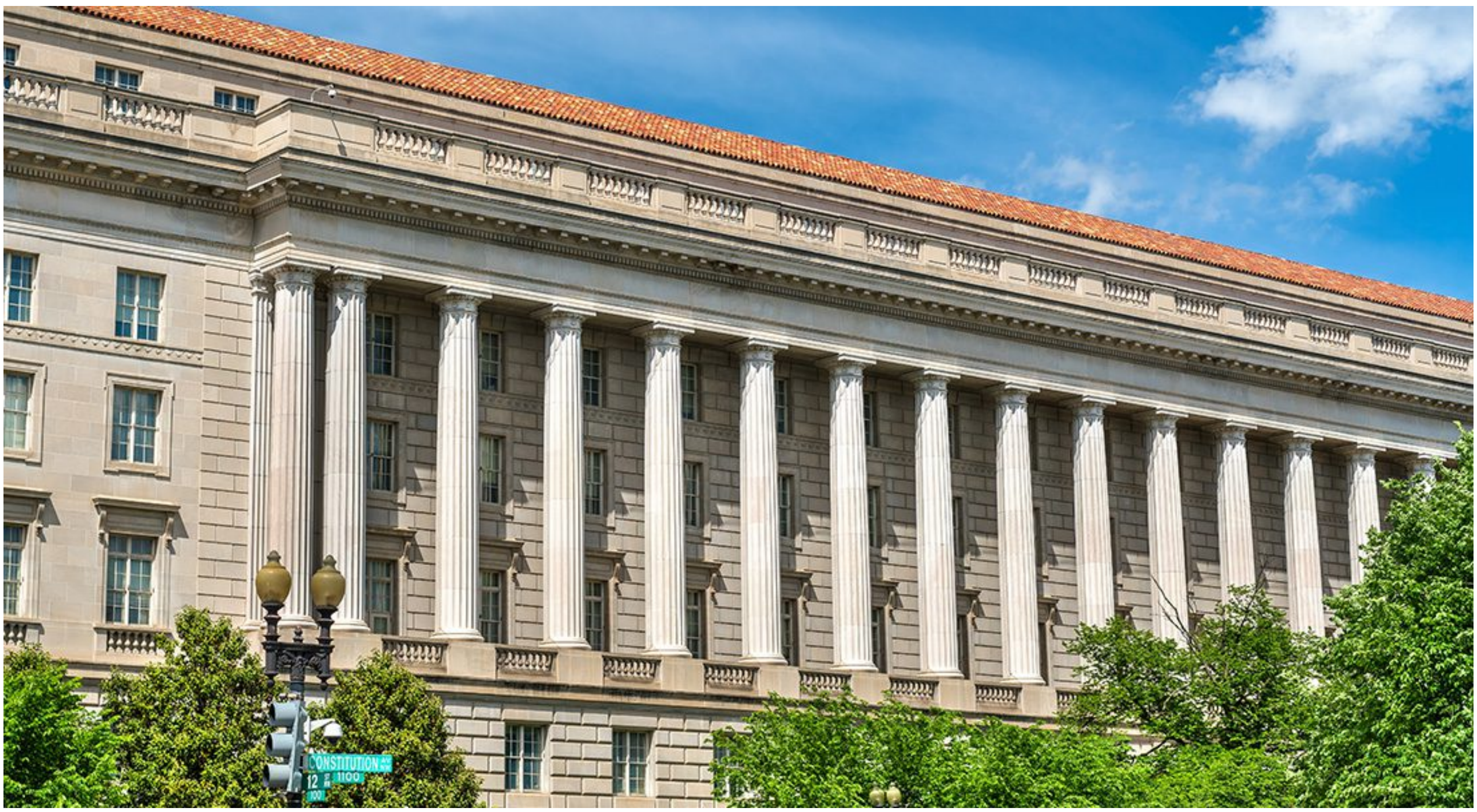

The IRS recently announced the reopening of the Employee Retention Credit Voluntary Disclosure Program that will run through Nov. 22. The IRS first offered the disclosure program on December 21, 2023, to allow employers who received questionable Employee Retention Credits (ERC) to pay them back to the IRS at a discounted rate and avoid significant penalties. That program ended on March 22.

The primary difference between the first version of the disclosure program and the reopened program is the amount employers are required to repay. In the first version of the program, employers were only required to pay back 80% of the claims received and kept the remaining 20%. However, in the latest version of the program, employers are required to pay back 85% of the claims received and keep only 15%.

Employers accepted into the Employee Retention Credit Voluntary Disclosure Program will avoid future IRS audits, penalties and interest.

The ERC was established as part of the CARES Act to help employers retain their employees during the COVID-19 Pandemic. ERC is a refundable tax credit that employers can apply against their payroll taxes. This generous program increasingly became the target of aggressive marketing – potentially predatory in some cases – well after the pandemic ended. Some of the more aggressive promoters helped employers apply for the ERC even though they likely would have failed to meet the ERC qualification requirements.

Beyond the reopening of the Employee Retention Credit Voluntary Disclosure Program, businesses still have other options to correct ERC claims, such as the ERC Claim Withdrawal Program. The IRS is urging employers with pending, unpaid ERC claims to consider this program, which allows employers to remove an ERC claim before it is processed by the IRS. If an employer timely removes its claim, the IRS will treat the claim as if it was never filed. Furthermore, the IRS will not impose penalties or interest. This program has led to more than 7,300 entities withdrawing $677 million worth of ERC claims.

If you are a business that filed for and received ERC tax credits and still unsure of whether the claims received were permitted, please contact me or any member of our Tax and Tax Controversy Group.

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