

TAX LAW

INFORMATION MEMO

JULY 10, 2024

ERTC Claims Moving Again: IRS to Begin Processing Some Employee Retention Tax Credit Claims This Summer

In the wake of the COVID-19 pandemic, Congress passed the Employee Retention Tax Credit (“**ERTC**”) in an effort to help struggling businesses keep their employees on payroll throughout the pandemic. However, the Internal Revenue Service (“**IRS**”) has found that, in its few short years of existence, the ERTC program has been rife with fraud and abuse due in large part to third-party “promoters” that have misled business owners into filing ERTC claims for which they are not eligible in order to collect a percentage of the claim as a fee—an issue that we have discussed in a prior [information memorandum](#). Unfortunately, many of these ERTC claims have been erroneously paid and the IRS has been diligently pursuing recovery of the same. To date, the IRS has recovered approximately \$2 billion in improperly paid ERTC credits and intends to continue its efforts through new initiatives.

Most recently, in an effort to prioritize the processing of ERTC claims and deliver relief to small business owners who have filed legitimate claims, the IRS instituted a processing moratorium on ERTC claims, effective September 14, 2023, followed by a detailed review of approximately one million of its unprocessed ERTC claims, representing more than \$86 billion, and, as a result of the review, has now announced plans to categorize claims into three groups and either process, deny or conduct further review of those claims accordingly.

Specifically, in its review of the approximately one million unprocessed ERTC claims, the IRS found that, first, between 10% and 20% of the claims filed did not exhibit any eligibility warning signs and these claims are expected to be processed immediately with the first payments expected in late summer 2024. Second, the IRS found that between 60% and 70% of the claims filed showed an unacceptable level of risk—enough to not process the claim, but not enough to outright deny the claim. The IRS will be conducting an additional review of these claims before making a final determination. Finally, the IRS found that between 10% and 20% of the claims filed exhibited clear eligibility warning signs, and these claims are expected to be denied immediately.

At this point in time, business owners who have pending ERTC claims do not need to take any action and should await notification from the IRS. It is important to note that only ERTC claims filed prior to the IRS’s September 14, 2023 processing moratorium will be categorized and either processed or denied at this time. Claims filed after the September 14, 2023 processing moratorium will remain in queue.

The IRS has asked for patience as it works through its ERTC claim backlog but, in the meantime, encourages business owners who have pending ERTC claims to review the ERTC guideline checklist on the [IRS’s website](#) and talk to trusted legal and tax professionals to confirm whether they are in fact

eligible for the ERTC. The IRS also encourages business owners to use the special [IRS withdrawal program](#) if, after review, eligibility for the ERTC is questionable or worse. The IRS's withdrawal program allows business owners to both request that the IRS not process an ERTC claim for any tax period that has not yet been paid and return an ERTC check that has been received but not yet cashed or deposited and withdraw the claim as though it had never been filed—both of which can avoid the imposition of penalties and interest. The IRS is also considering reopening its ERTC Voluntary Disclosure Program (“**VDP**”), which we have discussed in a prior [information memorandum](#), at a reduced rate. A decision is expected in the coming weeks.

For any questions about the information presented in this memo, please contact [Frank C. Mayer](#), [Jessica M. Blanchette](#), any attorney in Bond's [tax law practice](#) group, or the Bond attorney with whom you are regularly in contact.

