

KEY TAX INSIGHTS

IRS EXAMINATION, AUDIT, AND CONTROVERSY NEWSLETTER

EMPLOYEE RETENTION CREDIT SERIES

IMMEDIATE ACTION TO APPLY FOR THE ERC – VOLUNTARY DISCLOSURE PROGRAM

It is important for employers who made questionable claims for the Employee Retention Credit (“**ERC**”) to take immediate action to determine whether the ERC Voluntary Disclosure Program (“**ERC VDP**”) is their best compliance option. Since the ERC required no formal approval process other than the employer to file their employment tax returns or amended employment tax returns, there was huge potential for abuse that promoters heavily marketed. The deadline for an employer to apply for the ERC VDP is **March 22, 2024**.

The ERC was first introduced in March 2020 to help employers retain employees through the COVID-19 pandemic. The Internal Revenue Service (“**IRS**”) has made it a priority to recover wrongly claimed refunds through the ERC. For employers that have received the ERC and are not certain of how they qualify, it is imperative these employers take immediate action to self-assess whether they qualify for the ERC and determine the best corrective action if required.

Employers were eligible to claim certain refundable tax credits for qualified wages of up to \$26,000 in total per employee as long as the employer:

1. Sustained a full or partial suspension of operations due to an order from an appropriate government authority limiting commerce, travel, or group meetings (for certain quarters in 2020 and 2021); or
2. Experienced a significant decline in gross receipts during 2020 or during the first three quarters of 2021; or
3. Were qualified as a recovery startup business for the third or fourth quarters of 2021.



IMMEDIATE ACTION TO APPLY FOR THE ERC – VOLUNTARY DISCLOSURE PROGRAM

Under the ERC VDP, the employer must return 80 percent of the ERC refund to the federal government. The employer will be able to keep the other 20 percent of the ERC refund received even though the employer did not qualify for the ERC. No tax returns have to be amended as the employer is not required to reduce the deduction for employment taxes paid on the employer's income tax returns. That is, the employer gets to keep 20 percent of the ERC refund erroneously received and is not subject to tax on that amount. The ERC VDP also protects the employer from civil penalties. The ERC VDP does not protect the employer against criminal penalties, but it is a longstanding IRS policy to not criminally charge taxpayers who come clean with their tax filing obligations.

For an employer who erroneously received the ERC, the ERC VDP provides an excellent opportunity to become compliant while retaining financial benefit. The requirements to qualify for the ERC are complicated and beyond the capability of most employers to understand. Unfortunately, unscrupulous promoters have heavily marketed the ability for employers to make ERC claims when the employer is in fact not eligible.

For an employer who is not sure how they qualified for the ERC, it is essential the employer immediately retains competent professionals to review the ERC claim and determine whether the employer was in fact eligible. From there, it is important for the employer to quickly determine the best path forward

whether through the ERC VDP or otherwise. These employers must take immediate action as the deadline to apply for the ERC VDP is March 22, 2024, and is not available to employers who are under employment tax audit or criminal investigation. We have experience working with clients in determining whether they qualify for the ERC and the appropriate course of action to be compliant with the IRS.

Notice of Firm Name Change

We have long believed that the firm is larger than any one person and it is time for the name of the firm to reflect this value. In 2024, the name of the firm will transition over time from Klug Counsel PLLC to Basswood Counsel PLLC. The Basswood Tree is known as a symbol of unity, prosperity, versatility, and justice. The Basswood Tree is found all over the world and in some cultures important meetings and outdoor celebrations occur under the shade of a Basswood Tree. Pulling this all together and in line with our firm ideals, Basswood symbolizes that “we have you covered.”

In order for the name change to proceed smoothly it will transition over time. There will be notifications when the official name change occurs with our new contact information. Should you contact us through the Klug Counsel contact information after the name change, we will still receive the messages so there will be no disruption to our clients as a result of the name change.