

KEY TAX INSIGHTS

IRS EXAMINATION, AUDIT, AND CONTROVERSY NEWSLETTER

EMPLOYEE RETENTION CREDIT SERIES

EMPLOYEE RETENTION CREDIT

The Employee Retention Credit (“**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. Given the ERC required no formal approval process other than for the employer to file their employment tax returns or amended employment tax returns, there was huge potential for abuse. For employers that have received the ERC and are not certain of how they qualify, it is imperative these employers act now to self-assess whether they qualify and determine the appropriate corrective action to take if needed.

Given the potential penalties, it is important for those who have claimed the ERC understand the requirements and their options if they made erroneous ERC claims. This series will review the requirements to claim the ERC, substantiation requirements, promoter issues, potential penalties, the requirements of the ERC Voluntary Disclosure Program, the Withdrawal Option, and potential criminal implications.

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.

Claiming the ERC is *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.

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This exposes the employer to potential civil and criminal liability.



The scams were rampant and lead to the IRS releasing several warnings about the scams and as of September 14, 2023 placed a moratorium on processing new ERC claims filed after September 13, 2023. In a November 22, 2023 FinCEN News Release, it was announced the scams have resulted in 323 investigations involving more than \$2.8 billion of potentially fraudulent ERC claims.

If an employer is not sure whether they qualify for the ERC it is important they take immediate action. If the employer received but was not entitled to the ERC, there are options available to come into compliance with the IRS. Unfortunately, some of the options will expire in the near future and are not available if the employer is under examination or audit.

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.

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