

KEY TAX INSIGHTS

IRS EXAMINATION, AUDIT, AND CONTROVERSY NEWSLETTER

EMPLOYEE RETENTION CREDIT SERIES

ERC – VOLUNTARY DISCLOSURE PROGRAM OVERVIEW

The Internal Revenue Service (“**IRS**”) provided details for a Voluntary Disclosure Program (“**ERC VDP**”) for employers who received erroneous Employee Retention Credit (“**ERC**”) refunds for tax years 2020 and 2021. Under the ERC VDP, employers will only be required to repay 80 percent of the erroneously received ERC refunds. Employers have until March 22, 2024 to apply for the ERC VDP so time is of the essence for employers to assess their situation and if necessary, determine the best compliance option.



The ERC was first introduced in March 2020 to help employers retain employees through the Covid-19 pandemic. The 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.

The ERC VDP is for employers who claimed the ERC and have received a refund or credit but were ineligible and must repay the ERC. To be eligible for the ERC VDP, the employer must meet the following requirements:

- Have claimed the ERC on their employment tax return which has been processed and the employer received a refund that was deposited or paid in the form of a credit;
- Believe they are no longer entitled to the ERC refund;
- Are not under employment tax audit or criminal investigation by the IRS;
- Have not been notified by the IRS of a reversal or intent to reverse the employer’s ERC claim to \$0;
- The employer has not reversed their ERC to \$0 by filing an amended employment tax return;
- The employer has not already been reported to the IRS for noncompliance by a third party; and
- The IRS did not have information directly to the employer’s ERC noncompliance from an enforcement action.

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The ERC VDP provides employers an important opportunity to come into compliance with the IRS without penalty. Even better, if the employer meets the criteria above, the employer can come into compliance with the IRS and keep 20 percent of the erroneously claimed ERC refund. Since the ERC VDP has a hard deadline of March 22, 2024 to apply, it is important that the employer quickly assess their situation and determine the best path forward, if the ERC VDP is the best option it will be important that the deadline to apply has not passed.

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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