ERC Voluntary Disclosure Program

We apologize for the many ERC related emails this year, but we feel the many IRS pronouncements on this issue are important to our readers. Here is another one.

IRS Announcement 2024-3 announces a Voluntary Disclosure Program for employers to resolve erroneous claims for credit or refund involving the Employee Retention Credit (ERC).

Taxpayers who filed for and erroneously received the ERC face enforcement action from the IRS and are subject to assessment and collection procedures. IRS believes it would prevail in litigation to recover ERC monies and that imposition of appropriate penalties and interest would be upheld by a court. The announcement states "For efficient tax administration reasons, however, the IRS is offering employers an opportunity to resolve their civil tax liabilities under this Voluntary Disclosure Program and avoid potential civil litigation, penalties, and interest."

This Voluntary Disclosure Program permits eligible taxpayers to:
- 1) Repay 80% of the ERC,
- 2) Pay no interest as long as the 80% is paid timely, and
- 3) Not to have to adjust the wages/health expense by the original ERC credit.

Eligible taxpayers for this program are those that meet the following conditions:
- 1) The taxpayer is not under criminal investigation AND has not been notified that IRS intends to commence a criminal investigation,
- 2) IRS has not received information from a third-party alerting IRS to the taxpayer's noncompliance, nor has IRS acquired information directly related to the noncompliance from an enforcement action,
- 3) The taxpayer is not under an employment tax examination by IRS for any tax period for which the taxpayer is applying for this Voluntary Disclosure Program, and,
- 4) The taxpayer has not previously received notice and demand for repayment of all or part of the claimed ERC.

Terms of the agreement include:
- 1) The taxpayer is not eligible for, or entitled to, any ERC for the tax periods at issue,
- 2) The taxpayer will pay back to the Department of Treasury 80% of the claimed ERC (including both the refundable and nonrefundable portions); this payment must be made through EFTPS,
- 3) The taxpayer will not be required to repay any overpayment interest the taxpayer previously received, nor will the taxpayer be charged any underpayment interest as long as the full payment of the 80% is made prior to executing the closing agreement,

- 4) The taxpayer is not required to reduce the wage/health expense with respect to any of the previously claimed credit that falls under this Voluntary Disclosure Program,
- 5) The taxpayer is not required to show any income because of only having to repay 80% of the credit amount,
- 6) The taxpayer must disclose the name, address, and phone number of any return preparer or advisor who assisted or advised the taxpayer with any portion of the claim for credit or refund, and must provide a description of the services provided by the preparer/advisor,
- 7) IRS will not assert civil penalties related to the underpayment of employment tax attributable to the claimed ERC that falls under this Voluntary Disclosure Program, and
- 8) The taxpayer will execute a closing agreement.

The agreement is applied for by filing a Form 15434, Application for Employee Retention Credit Voluntary Disclosure Program, on or before 11:59 pm local time on March 22, 2024. The Form 15434 and any required attachments must be filed electronically via the Document Upload Tool at irs.gov/DUT.

More information on the documents and completion of Form 15434 can be found in Announcement 2024-3.

This text has been shared courtesy of: David & Mary Mellem, EAs & Ashwaubenon Tax Professionals, 920-496-1065, fax 920-496-9111, ataxprof.com.

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