

## Too Good To Last? IRS Halts Processing of ERC Claims

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While not as well-known as the Paycheck Protection Program, the Employee Retention Credit (“ERC”) program was another form of Covid relief provided by the federal government to businesses in 2020 and 2021. The ERC program allowed employers to claim refundable payroll tax credits (up to \$10,000 per employee for 2020 and \$10,000 per employee per quarter for 2021) for wages paid to employees in 2020 and 2021 if the employer was subject to a full or partial shutdown order or saw a specified reduction in gross receipts. For example, for the 2020 tax year the requirement was gross receipts less than 50% of gross receipts for the comparable quarter in 2019 if the employer is not subject to a shutdown order.

While we are now in 2023, employers can still get the benefit of ERCs for 2020 and 2021 by filing amended payroll tax returns. This has spurred an industry aggressively marketing to potential clients the possibility of large tax refunds, of which 10-25 percent will be paid over to the ERC promoter once the refund is received. This often seems like easy money to the employer, who is being told that they qualify for the ERCs even if they were not subject to a shutdown order or saw the necessary drop in gross receipts (for example, based on the argument that the employer had to incur increased costs in dealing with the pandemic and that this reduction qualifies even though this is not in the statute).

The IRS is well aware of this growing industry of ERC promoters and has been issuing warnings about “ERC scammers”. Yesterday, the IRS went a step further when IRS Commissioner Danny Werfel announced that he has halted the processing of all ERC claims, at least through the end of 2023. This is quite a step by the Commissioner and we will keep you posted as to any future developments in this area.