

Because . . . We Said So: Congressional Taxwriters Propose Tax Deal Including Significant Modifications to Employee Retention Credit Rules

Article By:

Jeffrey B. Tate

Evgeny Magidenko

Rachel Scott

Yesterday, the chairmen of the Senate Finance Committee and the House Ways and Means Committee introduced The Tax Relief for American Families and Workers Act of 2024 (the Act), which proposes changes to the child tax credit, the low-income housing credit, the deductibility of research and development expenditures, 100% bonus depreciation, and the employee retention credit (ERC), among others.

This alert addresses only the significant ERC proposals.

ERC Claims Barred After January 31, 2024

Generally, under current law, a taxpayer may submit an amended return to claim an ERC for 2020 until April 15, 2024, and for 2021 until April 15, 2025. The Act proposes to bar additional ERC claims after January 31, 2024. In effect, this would require that all ERC claims for any calendar quarter in 2020 and 2021 be made in the next two weeks. Taxpayers that have not yet filed a claim for the ERC — and believe that they have a valid one — should consider filing such a claim this month in case the proposed January 31 deadline is enacted into law.

Extension of the ERC Statute of Limitations

The general statute of limitations on ERC claims are as follows: April 15, 2024, for all quarters in 2020; April 15, 2025, for the first and second quarter of 2021; and April 15, 2027, for the third and fourth quarter of 2021. The former two are calculated based on a three-year statute of limitations and

the latter is calculated based on a five-year statute of limitations.

The Act proposes to extend the statute of limitations to six years, although, as of this alert going to press, it is not clear whether this would apply to only the third and fourth quarters of 2021 or to all quarters in 2020 and 2021.

Increase in Promoter Penalties and Compliance Requirements

The Act also proposes to increase the penalty for aiding and abetting the understatement of tax liability by an ERC promoter to the greater of (1) \$200,000 (reduced to \$10,000 in the case of an individual) or (2) 75% of the gross income of the promoter derived from providing aid, assistance, or advice with respect to a taxpayer's ERC claim. Further, the Act proposes to impose additional due diligence requirements and disclosure requirements on ERC promoters. For purposes of the Act, an ERC promoter would be any individual or entity that assists with or advises on a refund, claim, or other document relating to the ERC, if that person charges fees based on the amount of the credit or meets a gross receipts test in relation to income received from ERC-related work.

For our prior coverage on ERC matters, please see the following client alerts:

- [*We Can Work It Out: IRS Unveils ERC Voluntary Disclosure Program \(January 2, 2024\)*](#)
- [*Can You Take Me Back? IRS Unveils Employee Retention Credit Withdrawal Program \(October 24, 2023\)*](#)
- [*Everybody's Got Something to Hide Except Me and My Monkey: IRS Issues Moratorium on Processing New Employee Retention Credit Claims \(September 25, 2023\)*](#)
- [*Happy Birthday, Employee Retention Tax Credit: Congress's Gift to Cash-Strapped Employers Extended Through December 31 \(March 12, 2021\)*](#)

© 2025 ArentFox Schiff LLP

National Law Review, Volume XIV, Number 17

Source URL: <https://natlawreview.com/article/because-we-said-so-congressional-taxwriters-propose-tax-deal-including-significant>