

DOJ Announces Largest Employee Retention Credit Fraud Indictment

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Overview

On January 22, 2025, the US Department of Justice (DOJ) [announced the indictment of seven individuals](#) in the largest Employee Retention Credit (ERC) fraud scheme to date. According to the indictment, the defendants filed more than 8,000 refund claims for ERCs and Sick and Family Leave Credits (SFLCs), totaling more than \$600 million.

In Depth

The ERC and SFLC programs were designed to help businesses retain employees on the payroll during the COVID-19 pandemic. Prosecutors allege that the defendants exploited these programs by submitting fraudulent claims on behalf of ineligible businesses, inflating employee numbers, and misrepresenting wages. DOJ asserted that the defendants concealed their involvement by not identifying themselves as preparers on the returns, using virtual private networks and through other means.

ERC fraud has been a top priority of DOJ and the Internal Revenue Service (IRS), and this indictment can be added to a growing list of ERC-related enforcement actions. As of October 2024, the IRS

Criminal Investigation division initiated 504 criminal investigations involving more than \$5.5 billion in ERC claims. There have been more than 45 cases resulting in federal charges, with 27 resulting in convictions. A specialized unit within DOJ, called the “Fraud Strike Force,” has also been initiating investigations into potential ERC fraud, stating that such enforcement will “occupy a substantial portion of DOJ attention for years to come.”

On the civil enforcement front, the IRS has strengthened its efforts to examine and disallow improper ERC claims. The IRS announced in mid-2024 that it had issued approximately 28,000 disallowance notices on claims aggregating \$5 billion. According to the IRS, these claims “showed a high risk of being incorrect.” The IRS described these disallowances as the “first significant wave,” and with at least 1 million claims still outstanding, practitioners expect more disallowances. The IRS has also announced that it will be sending 30,000 “clawback” letters seeking to reclaim ERC funds that have already been paid.

We have seen an aggressive examination campaign from the IRS targeting ERC claims. These exams, numbering into the thousands, have often involved more typical questions of taxpayer eligibility (e.g., number of employees and wages amount) but have also inquired about whether there has been “double dipping” with respect to other COVID-19-era stimuli, such as the Paycheck Protection Program. The IRS is also focused on governmental orders and the effects these orders had on taxpayers’ business operations.

Besides taxpayers, accountants and other tax professionals have also been a target of IRS enforcement activity. The IRS Office of Promoter Investigations “has received hundreds of referrals from internal and external sources” concerning individuals and businesses that it deems as potentially having facilitated fraudulent ERC claims. The IRS has the authority to impose civil penalties on alleged promoters under Internal Revenue Code Section 6700. DOJ may pursue criminal cases against individuals and entities it believes are promoting false ERC claims. This enforcement activity may even target individuals or principals of a firm after it has long ceased operations.

Practice Point: DOJ’s announcement makes clear that ERC fraud remains an enforcement priority for 2025. Taxpayers and tax professionals should prepare now to defend their ERC claims, including by compiling and maintaining substantiation to support each claim, and be ready to take immediate steps should they receive an IRS audit notice, a request for documentation or information, or are otherwise contacted by the government.