

Whistleblowers and the Employee Retention Credit (ERC)

The Employee Retention Credit (ERC) was created during the COVID-19 pandemic as a lifeline for struggling businesses. Designed to help companies retain employees, the ERC has been a critical tool in preventing layoffs and keeping the economy stable. The program's complexity, however, has made it a target for fraudulent activity. Some companies and so-called "consultants" have been exploiting the ERC, filing illegitimate claims to improperly obtain taxpayer funds.

To combat this fraud, the IRS Whistleblower Program allows individuals to come forward and report these illegal activities. And by doing so, these individual whistleblowers can help recover misused funds and may be eligible for a financial reward.

The Rise of Fraudulent ERC Claims

The ERC is part of the CARES Act, which pumped billions of dollars into the economy during the pandemic in order to help stabilize the economy. And with so much money available, there were bound to be some shady characters determined to illegally exploit the system.

Not surprisingly, the IRS has seen an influx of fraudulent Employee Retention Credit claims. Many businesses, lured by unscrupulous advisors and consultants, have submitted claims without meeting the eligibility requirements. These advisors often guarantee large refunds or push companies to file for credits without thoroughly verifying their qualifications.

Some common forms of ERC fraud include:

- **False eligibility:** Businesses claiming the ERC credit despite not meeting the "revenue reduction" or "government shutdown" criteria.
- **Inflated wages:** Businesses exaggerating the amount of wages paid to employees or including non-qualifying wages.
- **Misrepresentation by third parties:** Consultants or advisors misleading businesses into filing fraudulent claims, often in exchange for a percentage of the refund.

In response to the surge in fraudulent claims, the IRS has increased its focus on stopping fraudulent filings and has ramped up enforcement against bad actors. It has taken action to ensure only valid claims are processed. According to a recent report, the IRS is currently reviewing more than 400,000 ERC claims, worth approximately \$10 billion.

The IRS Whistleblower Program: A Path to Report Fraud

The IRS Whistleblower Program is a vital tool for identifying and stopping fraud within the ERC program. Whistleblowers – those with information about fraudulent activity – can report misconduct to the IRS and help recover improperly claimed funds. In exchange, the IRS offers financial rewards to whistleblowers whose tips lead to the recovery of substantial amounts of money.

Here's how it works:

- **Whistleblower eligibility:** Any individual with credible information about tax fraud, including ERC-related fraud, can file a claim. This could include employees, tax professionals, or consultants who have witnessed improper behavior.
- **Filing a claim:** Whistleblowers need to submit IRS Form 211, Application for Award for Original Information. This form asks the whistleblower to provide detailed information about the fraud. The IRS then evaluates the submission and determines if it warrants further investigation.
- **Rewards:** If the whistleblower's information leads to the collection of unpaid taxes, penalties, or other recoveries, the whistleblower may receive an award. The award typically ranges from 15% to 30% of the amount the IRS recovers.

Why Whistleblowers Are Key to Stopping ERC Fraud

Whistleblowers are critical in uncovering fraudulent ERC claims. Very often, and not surprisingly, fraudulent activity is hidden or difficult to detect from the outside. But insiders – those involved in the claims process or with direct knowledge of the misrepresentations – have the unique ability to bring these schemes to light. By reporting fraud, whistleblowers help ensure that taxpayer dollars are used as intended and help prevent further misuse of the ERC program.

The IRS Whistleblower Program not only offers a chance to make a difference, but also provides financial incentives for individuals who expose tax fraud. In ERC cases, the potential rewards can be significant: the amounts being abused in the ERC program are large, and the government's interest in recovering these monies is serious.

Whistleblower Protections

Coming forward as a whistleblower can be intimidating. This is especially true when the fraud involves powerful businesses or individuals. Fortunately, the IRS Whistleblower Program includes protections against retaliation. Those who report ERC fraud are protected from retaliation. Further, the IRS works to keep the identity of whistleblowers confidential throughout the process, protecting individuals from potential backlash.

Conclusion

The Employee Retention Credit was designed to provide crucial relief to businesses during the pandemic, but fraudulent claims are undermining the integrity of this program. If you have knowledge of false or inflated ERC claims, now is the time to take action. By coming forward through the IRS Whistleblower Program, you can help the government recover funds that were wrongly claimed—and potentially receive a significant reward for your efforts.

The IRS has already begun accelerating its efforts to process legitimate ERC claims and crack down on fraud. And it is very receptive to whistleblowers. Your role as a whistleblower could be instrumental in recovering millions of dollars, and holding bad actors accountable. And as an extra incentive, you can be rewarded for doing good.