

### Concerns With ERC Claims Filed by Your PEO

By Brittany Schuette, Esq.

Business owners who claimed the Employee Retention Credit (ERC) through certain Professional Employer Organizations (PEO) are finding themselves in increasingly precarious situations. Numerous lawsuits have been filed against PEOs alleging mishandling of ERC claims and misappropriation of funds.

#### Limited Access to Information and IRS Communication Barriers

A disturbing trend among certain PEOs is their refusal to provide customers with concrete proof of ERC filings. The IRS is unable to provide specific claim details to individual business owners because the Form 941-X, the tax form used for filing ERC claims, is submitted under the PEO's Employer Identification Number (EIN). Therefore, a customer of a PEO has no way to communicate directly with the IRS to confirm the status of their claim(s).

Compounding the issue, some PEOs provide only vague, general updates about ERC claims rather than specific details relevant to individual businesses. This may lead to businesses being left in the dark regarding when their claim was filed, whether it was received by the IRS, and if any further action is required.

This can be concerning as some PEOs have represented that they filed ERC claims for their customers, yet they did not file or only partially filed what was represented. Additionally, it has been alleged that there have been instances where claims were filed incorrectly and therefore, they are not processable by the IRS. If a 2020 claim is deemed non-processable, it is past the statute of limitations to correct that claim. The statute of limitations to file or correct a 2021 claim is April 15, 2025.

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### Issues Regarding the Disbursement of Refunds

The lack of transparency may extend beyond the filing process. Several PEOs have been accused of collecting IRS refunds on behalf of their customers and retaining the funds for extended periods—sometimes months or even years—before remitting the money owed. This may be in part due to PEOs being jointly liable for any underpayment of employment taxes and therefore, a PEO may seek additional documentation from their customers before disbursing the ERC refunds. Businesses should be prepared to furnish information relating to their entitlement to the credit to their PEO to expedite the process.

We have also observed some PEOs failing to remit the statutory overpayment interest that the IRS includes with the refunds, in whole or in part, effectively shortchanging their customers. In most instances, the interest amounts to 15% or more of the total ERC credit.

### Take Action: Protect Your Business

If you filed your ERC claim through a PEO for, it is crucial to ensure that your claim was properly filed, documented and that you receive the full amount owed to you. Given the mounting allegations against PEOs, now is the time to take proactive steps to protect your business.

At Frost Law, we have experience in helping businesses navigate ERC-related disputes and obtaining the amount of the refunds they're entitled to. Contact us today at [\(410\) 431-2629](tel:4104312629) or [schedule a confidential consultation](#).

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