



If Kwong Is Right, the ERC Deadline May Be Wrong

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As April 15, 2025, came and went, most businesses, tax professionals, and even Internal Revenue Service insiders believed the window for Employee Retention Credit (ERC) refund claims had finally closed. But in an odd turn of events, that assumption may have been premature.

A recent decision by the U.S. Court of Federal Claims in *Kwong v. United States* has introduced uncertainty into what had been well understood expectations regarding federal tax filing and payment deadlines. Frost Law recently published an [article](#) explaining the court's opinion in *Kwong* regarding implications for penalties and interest and other additions to tax. The significance of the case may, however, extend much further—potentially reshaping the timeline for ERC filing deadlines.

To be clear, there's a lot of uncertainty around this case and the potential implications stemming from it. And an appeal by the government feels inevitable. But the unusual circumstances bear watching for accountants and the wider tax community. Huge amounts of money could potentially be at stake.

Here's a closer look at the details behind this ruling through the lens of ERC.

What's Behind the Court's Interpretation of Section 7508A(d)

In relevant part, the *Kwong* court interpreted section 7508A(d) of the Internal Revenue Code as requiring an extension of all federal tax deadlines until 60 days after the conclusion of a disaster—in this case the COVID-19 pandemic. Under that reading, deadlines for certain federal tax obligations were not merely relaxed or administratively deferred, they were postponed by operation of law until July 11, 2023, because the national emergency did not officially end until May 10, 2023.





The court's interpretation suggests that all federal tax deadlines falling within the period the disaster declaration was operable, including the deadlines to file employment tax returns during 2020 and 2021. These were the means by which eligible employers claimed the Credit, and the court's interpretation suggests these deadlines may also have been legally postponed as a result.

Why Postponed Due Dates Matter for ERC

Form 94X series employment tax returns are among the "time-sensitive acts" described in section 7508(a)(1). These returns served as the primary mechanism through which employers claimed ERC. If the statutory due dates for those returns were postponed to July 11, 2023, then the timing rules governing refund claims tied to those returns may shift as well. This is important because the interplay between several statutory provisions may result in the deadline to file amended employment returns extended well beyond the previously understood dates.

Section 6513(c) provides that employment tax returns and the taxes reported on them are deemed filed and paid on the statutory due date of the return. And the Code measures certain limitation periods not by when the taxpayer files, but by when the return is deemed filed based on its due date. If the statutory due date itself changes, the deemed filing date should change with it.

Once the deemed filing date shifts, the statute of limitations governing refund claims follows. Section 6511(b)(2)(A) generally allows a taxpayer three years from the filing of a return to submit a claim for refund. Connecting these provisions, if employment tax returns affected by the pandemic were legally postponed and deemed filed later

than previously assumed, taxpayers could argue that the deadline for ERC refund claims extends significantly into the future—potentially to July 11, 2026, and perhaps even as far as April 15, 2027.

The conclusion feels counterintuitive precisely because the tax community has largely operated under a different understanding of the ERC timeline. Yet statutes of limitation are governed by statutory anchor dates, not industry expectations. If those anchor dates moved, the calendar moves with them.

Practical and Litigation Considerations

The government generally—and the Service specifically—are unlikely to acquiesce to this interpretation without challenge. And any taxpayers who seek refunds in reliance on this theory should expect they will need to pursue those claims in litigation. Moreover, the government retains the ability to appeal the decision in *Kwong*; therefore, this issue is far from settled law. Even where the text of the Code appears clear, the Federal Circuit might be concerned with the practical implications of the ruling in *Kwong* and overturn the decision of the lower court.

Looking Ahead: The Tax Community Should Watch Closely

For now, taxpayers as well as tax professionals and practitioners should proceed cautiously but thoughtfully. The potential extension of ERC refund claim deadlines is neither guaranteed nor implausible; it depends on whether courts ultimately accept that the statutory due dates themselves were postponed rather than merely subject to administrative relief. Hanging in the balance could be a





sizable financial impact for certain taxpayers and businesses, not just involving ERC but other issues including underpayment of penalties and interest between 2020 and 2023.

The analysis in this article applies only to claims for Employee Retention Credit refunds for wages paid on or before June 30, 2021, and does not apply to the calendar quarters affected by the retroactive and accelerated filing deadline enacted by Congress in Public Law 119-21, commonly referred to as the One Big Beautiful Bill Act.

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