



June 2026 ERC Fireside Chat - Still Burning 🔥 🔥 🔥



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Rebecca Sheppard is a Partner at Frost Law with extensive experience representing clients before the IRS and state taxing authorities. She advises on audits, appeals, and tax litigation, with a focus on employment tax and the Employee Retention Credit. Rebecca is known for her practical, innovative approach to controversy work and her ability to translate complex tax issues into actionable guidance for practitioners. She regularly speaks on tax procedure and controversy topics to professional audiences. She is a member of the Maryland State Bar Association Taxation Section Council.



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Peter Haukebo is a tax controversy attorney and Partner at Frost Law, where he represents clients in complex federal and state tax disputes. His practice includes handling IRS audits, appeals, and litigation with a particular focus on employment tax controversies and the Employee Retention Credit. Peter frequently presents to national audiences on tax procedure and controversy topics, blending technical insights with practical strategies. He is admitted to practice in Maryland and before the United States Tax Court, Court of Federal Claims, and several District Courts. Peter previously taught in the Low Income Taxpayer Clinic at the University of Maryland School of Law and served as the Chair of the Taxation Section of the Maryland State Bar Association.



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Where are the Claims?

- Unfiled(?)
- Compliance
- Examination
- Independent Office of Appeals
- Appeals Judicial Approach and Culture Project (AJAC)
- Alternative Dispute Resolution
- Refund Claim Litigation (IRS)
- Commercial Litigation (TPP)

Third Party Payors

- Third Party Payors
 - Schedule R: Section 3504 Agent, Professional Employer Organization, and Certified Professional Employer Organization
 - NOT: Payroll Service Provider or Reporting Agent
- Audits by IRS
 - Best practice: Redacted IDR and comprehensive response, not just what company representative is requesting
- Protest & Appeals posture
 - Opportunity to engage directly with Revenue Agent
- Representation without IRS review/refunds received by third-party payor

Two-Year Trap

- I.R.C. § 6514(a)(1) - “refund . . . shall be considered erroneous” & “credit . . . shall be considered void”
- I.R.C. § 6532(a) - “after the expiration of 2 years from the date of mailing by certified mail or registered mail . . . a notice of disallowance”
- Form 907, *Agreement to Extend the Time to Bring Suit*
- IR-2026-58 (April 27, 2026) - “streamlined” procedure
- Triage: I.R.S. is processing according to the statutory deadline and not FIFO
- Role of the Taxpayer Advocate Service

ERSED and Counterclaims by D.O.J.

- I.R.C. § 7405(a) - erroneous refunds “within the meaning of section 6514, may be recovered by civil action”
- I.R.C. § 7405(b) - erroneous refunds not “considered as erroneous under section 6514[] may be recovered by civil action”
- I.R.C. § 6532(b) -
Recovery of an erroneous refund by suit under section 7405 shall be allowed only if such suit is **begun within 2 years after the making of such refund**, except that such suit may be brought at any time **within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.**
- *Plastic Film, LLC v. United States et al.*, Civil No. 5:25-cv-30 (SDMS)
 - Plaintiff’s Motion for Judgment on the Pleadings as to Defendant’s Counterclaim

ADR: Post-Appeals Mediation

- Overview
 - Request at the conclusion of an unsuccessful Appeals proceeding
 - There is no right to mediation; the parties must agree
 - The goal is resolution within 60-90 days
 - Not binding
- IR-2025-100 (October 1, 2025) - two-year pilot program to make PAM “more attractive to taxpayers.”
- Rev. Proc. 2014-63 & I.R.M. Part 8.26.5
- Should taxpayers hire a second mediator?

The Good and the Bad of May 28, 2026

- ***Tri-State Memorial Hospital v. United States***, 2:25-cv-181 (EDWA)
 - Court denied the government's Motion to Dismiss
 - General agreement - "due to" means "because of"
 - *JSmith Civil, LLC v. United States*
 - *JPM Restaurant, LLC v. United States*
 - "Plaintiff states that 'because of' required only a but-for causation requirement."
 - The government argued "due to" includes a proximate cause requirement
 - The Court recognizes that "due to" requires only "but-for" causation:
"Defendant's interpretation improperly adds words into the statute. It asks us to add words to the law to produce what is thought to be a desirable result."

The Good and the Bad of May 28, 2026

- ***Northeast Health Services, LLC v. United States***, No. 24-2096T (CFC)
 - “Courts have grappled with the meaning of “due to” and characterized it as an ambiguous phrase, with definitions ranging from but-for cause (or contributing factor), to proximate cause, to even sole cause.”
 - “Accordingly, entitlement to the ERC under the suspension-of-business prong is limited to businesses that can show that a qualifying governmental order was both the factual and proximate cause of a full or partial suspension.”

I.R.C. §§ 7508A(d) (2019) & 7508(a)(1)(A)

- Disaster period: “ending on the date which is 60 days after the latest incident date so specified, shall be disregarded”
 - (January 20, 2020 - May 11, 2023) + 60 = July 10, 2023
- *Abdo v. Commissioner*
 - 162 T.C. No. 7 (2024)
 - I.R.C. § 7508A(a)(1)(C) - filing a petition with the Tax Court
 - I.R.S. Action on Decision: AOD 2026-1
- *Kwong v. United States*
 - Notice of Appeal, April 15, 2026
 - I.R.C. § 7508A(a)(1)(F) - bringing suit upon any such claim
- *Theory of the case*
 - I.R.C. § 7508A(a)(1)(E)
 - And disregarded due date + I.R.C. § 6511(a) = July 10, 2026
 - How does I.R.C. § 6513(c) apply?

Question & Answer Session



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Schedule a
Meeting

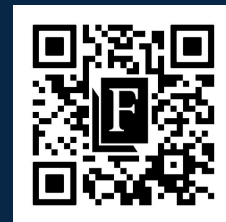




KEEP IN TOUCH WITH US



LEAVE A REVIEW



SCHEDULE A MEETING



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