

The guidance also explains the relationship between the Form 1099-K information reporting rules and Executive Order 14254, signed by President Trump in March, which seeks to ensure that ticket scalpers in the entertainment industry comply with the tax code. ■

IRS Addresses Tax Bill's Effect on Retention Credit Compliance

by Trevor Sikes

The IRS has released a set of answers to FAQs regarding the One Big Beautiful Bill Act's impact on the employee retention credit, including refund eligibility, claim filing, timing, and disallowance appeals.

In an October 22 fact sheet (FS-2025-7), the IRS issued FAQs that expand on the timing and compliance provisions for ERC claims for the third and fourth quarters of 2021 that were filed after January 31, 2024.

"I was surprised to see this," Guinevere M. Moore of Moore Tax Law Group LLC told *Tax Notes*, adding, "I appreciate that the Service issued the guidance, especially during the shutdown."

ERCs, offered as part of the IRS's COVID-19 pandemic-relief program under section 3134, allowed a refundable credit against employer taxes for certain tax-year quarters to help struggling businesses pay their employees.

The OBBBA (P.L. 119-21) took aim at the ERC with a bipartisan goal to bring an early end to the credit. The ERC has been subject to controversy — both for potential fraud and abuse and for the IRS's backlog and delay of claims processing.

"I think the analysis in these FAQs is incomplete and, as acknowledged in the preamble, likely to be reviewed by the courts," Peter Haukebo of Frost Law told *Tax Notes*. "There are already cases pending in the courts seemingly prepared to challenge whether Congress had the authority to make this retroactive change."

Guidance on OBBBA's Impact

Section 70605(d) of the OBBBA "prevents the IRS from allowing or refunding ERCs after July 4, 2025, for the third and fourth quarters of 2021 if those claims were filed after January 31, 2024," according to the FAQs.

However, only new ERC claims filed after January 31, 2024, are subject to the OBBBA restrictions. If an ERC claim was filed after that date and the claimant received their refund before July 4, 2025, they won't receive a bill from the IRS, the FAQs clarify.

“I’m disappointed that these [FAQs] didn’t address the statute of limitations as to the third quarter of 2021, as well as for recovery startup businesses in the fourth quarter of 2021,” Moore said.

“There are a lot of questions surrounding statute of limitations, and I hope that the IRS will, in future rounds of issuing FAQs on the ERC, clarify that,” Moore said. “It’s the first question we get from many clients, which is, trying to understand what the statute of limitations is.”

The FAQs explain that the OBBBA restriction doesn’t apply to an amended return filed after January 31, 2024, withdrawing an ERC claim for the third or fourth quarter of 2021.

“I don’t believe I’ve seen a return processed under the ERC withdrawal program referred to as an amended return,” Haukebo said. He said he wonders if, because it’s amended, it’s not “new” and therefore can be processed.

“The inverse of this is also before the courts. If a taxpayer files a refund claim for one of these quarters both before and after January 31, 2024, shouldn’t it also be treated as a single claim — and therefore not new — allowed to be refunded?” Haukebo said.

The OBBBA provisions also impose penalties against ERC promoters that fail to meet due diligence requirements, according to the FAQs.

“I think it would be a really helpful piece of guidance if they said what due diligence obligations look like,” Moore said.

If an ERC claim is disallowed, other items on a return may still be processed, and the claimant will receive a letter from the IRS explaining that its decision can be appealed, the FAQs say.

“It’s encouraging to see that the Service intends to send taxpayers notices of disallowance because it wasn’t clear that would be the case,” Haukebo said. ■

IRS Issues IT Contract to Aid Release of New Energy Tax Rules

by Tyrah Burris

The IRS has awarded a \$3.95 million contract for services that include designing, updating, and maintaining IT systems needed for the administration of new rules for clean energy tax credits and deductions enacted in the One Big Beautiful Bill Act (P.L. 119-21).

The IRS sought approval to award a fixed-price contract to FedTec LLC through a “limited-sources justification” to provide continuous contractor support for the administration of the clean energy tax credit provisions based on an “urgent and compelling need,” according to a document posted on SAM.gov.

A limited-sources justification provides the justification, reasoning, and evidence for an agency to make an offer to a single vendor that can meet its needs. The IRS said initiating a full bidding process would require several months of procurement lead time that it said would be “unacceptable” to its mission.

The contract was awarded September 22 and runs through March 21, 2026. The contract replaces two contracts that expired September 21 to ensure that operations continue, according to the partially redacted document.

The IRS said its need for FedTec LLC to be the sole contractor is based on circumstances that include the accelerated termination of several clean energy tax credits, which requires enforcement of the new expiration dates, and Notice 2025-42, 2025-36 IRB 351, which redefined the construction rules for sections 45Y and 48E applicable to projects starting on or after September 2.

The IRS said those developments were outside the agency’s control and created the urgent need for uninterrupted contractor support. The agency said any lapse in service would result in taxpayers being unable to comply with statutory provisions.

According to the contract, FedTec LLC will update and design IRS platforms to reflect the new requirements, including payment elections, transferability of credits, and pre-filing registration numbers.