

false, if unchecked. That makes proving a criminal tax case much easier, she said.

Fort said the checkbox is most useful for taxpayers who want to comply. In the criminal tax context, it's best for obtaining a conviction, rather than for finding more cases to investigate, he said.

Cryptocurrency investigators often discuss the importance of off-ramps — the transactions in which a taxpayer turns digital assets into real-world cash or assets, like a \$3.7 million house.

Fort and Enstrom agreed that off-ramps like Ahlgren's home purchase present useful starting points for cryptocurrency tracing investigations.

On September 16 Judge Robert Pitman of the U.S. District Court for the Western District of Texas scheduled Ahlgren's sentencing for December 12.

A plea agreement was filed on September 3, but at press time was unavailable electronically on PACER. Ahlgren faces up to three years in prison.

Ahlgren's counsel declined a request to comment.

The defendant in *United States v. Ahlgren*, No. 1:24-cr-00031 (W.D. Tex. 2024), is represented by Joshua D. Smeltzer of Gray Reed and Dennis G. Kainen of Weisberg Kainen Mark. ■

Employee Retention Credit Uncertainties Prompt Taxpayer Litigation

by Caitlin Mullaney

Some taxpayers still awaiting responses to employee retention credit claims have started down the path of refund lawsuits in the hope of securing their claims from the IRS.

The IRS's moratorium on processing ERC claims has caused "widespread uncertainty," Peter Haukebo of Frost Law told *Tax Notes*. "Decision-makers at companies with pending refund claims are asking a lot of questions about these cases as they evaluate what's best for them," he said.

Haukebo represents the Kenjya-Trusant Group, a government contractor that filed a lawsuit on September 6 seeking a refund of nearly \$3.6 million in employment taxes and interest related to ERCs for the first three quarters of 2021.

The complaint alleges that Kenjya experienced a significant decline in gross receipts during the period when it was eligible to receive the credit. For 2021 qualified employers can meet eligibility requirements for the ERC when their gross receipts are less than 80 percent of the same quarter in 2019. Kenjya states that in 2021 its gross receipts were between \$4.6 million and \$6.6 million per quarter, about 62 percent of its \$7.4 million to \$10.6 million per quarter in 2019.

Kenjya added that it didn't receive any Paycheck Protection Program loan forgiveness and that it paid qualified wages for up to 192 employees during the 2021 eligibility period.

According to the complaint, on or about January 31, 2024, Kenjya filed its refund claims for ERCs through its professional employer organization, which it also used to file and pay employment taxes.

"Plaintiff is legally entitled to that money, yet Defendant nonetheless has failed to process Plaintiff's ERC claims for more than 6 months," the complaint states.

Haukebo noted that Kenjya "had been working with the third-party payer for many, many months before this finally happened." He added that Kenjya's filing for its refund claims through its professional employer organization is "the unique feature of this litigation, and to my knowledge, it's the first of its kind."

In September 2023 the IRS instituted a moratorium on processing ERC claims, but on August 8 it announced that it would adjust the moratorium to include claims filed through January 31 and that it had begun payment processing for more than 50,000 refunds for claims filed before the moratorium.

Haukebo explained that Kenjya wasn't directly affected by the moratorium because of the timing of its filing, "but the Service's approach of processing pending returns on a first-in, first-out basis will certainly affect the company."

In July a federal district court rejected a tax advisory firm's request for injunctive relief requiring the IRS to lift the moratorium. In May the petitioner — Stenson Tamaddon LLC — filed a complaint in a district court arguing that the moratorium was unlawful and requesting that the IRS be compelled to process ERC claims. ■

Soroban and IRS Square Off on Self-Employment Functional Test

by Kristen A. Parillo

The IRS and a New York hedge fund have submitted final arguments to the Tax Court on whether the fund's limited partners qualify for the exclusion from self-employment tax under a functional analysis.

The parties in *Soroban Capital Partners LP v. Commissioner* are briefing Tax Court Judge Ronald L. Buch on the functional analysis issue after agreeing to submit the case for decision without a trial under Tax Court Rule 122.

Soroban Capital Partners LP asserted in its September 13 brief that "the undisputed facts in this case demonstrate that each of the Limited Partners should be respected as 'a limited partner, as such' under a functional analysis test that is true to the Code and its legislative history."

The IRS's brief, filed the same day, countered that "the record and case law indicate that the Principals earned their distributive shares by acting in the manner of self-employed persons."

The briefing follows the Tax Court's November 2023 precedential opinion, 161 T.C. No. 12 (2023), in *Soroban* regarding the application of section 1402(a)(13) to state law limited partners.

The provision, enacted in 1977, excludes from the calculation of net self-employment earnings subject to Self-Employment Contributions Act (SECA) tax the distributive share of income or loss of a "limited partner, as such," other than guaranteed payments made to that partner as remuneration for services rendered to or on behalf of the partnership. The statute doesn't define a limited partner, an omission that has led to a decades-long debate over the term's meaning.

In its November 2023 opinion, the Tax Court agreed with the IRS that the limited partner exception doesn't apply to partners who are limited "in name only" and that only those who function as passive investors are eligible for the exception. A functional analysis is therefore required to determine whether a partner in a state law limited partnership is a limited partner for purposes of section 1402(a)(13), the court held.

In rejecting Soroban's argument that the term "limited partner" means a state law limited partner, the Tax Court reasoned that if Congress