

continue to have 45 days to supplement credit refund claims that are incomplete.

In October 2021 the IRS announced changes to requirements for research credit refund claims alongside field attorney advice (FAA 20214101F) outlining the changes. Under the new requirements, taxpayers must include detailed information — in some cases, broken down by business component — about their refund claims. The claims that fail to meet the requirements are considered invalid, the IRS said.

For a section 41 refund claim to be valid, the IRS says taxpayers must provide the following five batches of information when applying for research credit refunds:

- all the business components that form the factual basis for the section 41 research credit for the claim year;
- all research activities performed by business components; and
- total qualified employee wage expenses, supply expenses, and contract research expenses.

This is the fourth time the grace period for section 41 refund claims has been extended. The IRS originally provided taxpayers with a one-year transition period that was set to expire on January 10, 2023, but it extended the relief for an additional year into 2024. It pushed the grace period out a second time in November 2023. The most recent delay was in December 2024. ■

Alarm Rises as Employee Retention Credit Claims Continue to Lag

by Trevor Sikes

The IRS's continuing unresponsiveness to appeals of employee retention credit disallowances is a growing concern for employers, especially amid a flood of new ERC examinations, tax professionals say.

ERCs, offered as COVID-19 pandemic relief to qualifying businesses that continued to pay their employees, faced a pause in claims processing because of promoters filing a litany of potentially fraudulent claims, causing a substantial backlog.

After the pause began to lift, the IRS issued a multitude of disallowances on ERC claims, and some tax professionals have recently seen a spike in audits of claims.

But the IRS has been unresponsive to appeals of disallowances, causing exasperation among employers as they approach deadlines and have yet to have their claims processed, employer advocacy groups told Congress.

"Clients have frustrations with the slow response times from the IRS," Stephen Kenney of Ogletree Deakins told *Tax Notes*. "I feel like I'm constantly trying to lower expectations in many ways to try to head off that type of frustration."

"The IRS says to wait at least 30 days before hearing a response after uploading documents in response to an ERC audit, and it's been 30 days since we've addressed our first ERC audit," Kenney said. "I've been trying to get answers from the IRS about this process, and it's been radio silence."

The two-year statute of limitations on appealing an ERC disallowance is a growing concern, according to Rebecca Sheppard of Frost Law. "Not only do you have two years to go to court after a disallowance, but the IRS also only has two years to pay that claim unless you get a Form 907 countersigned by the government," she said.

A Form 907, "Agreement to Extend the Time to Bring Suit," allows an extension for the IRS to pay out a refund claim after the two-year statute of limitations has run.

The first large batch of ERC disallowances went out in June 2024, which means they're

almost 18 months old, and it will take some time to get the Forms 907 signed, Sheppard said.

“How is the government going to practically do this?” Sheppard asked. “It’s going to be a really challenging effort for a lot of taxpayers, because people are going to try to start getting the 907s in the next six months.”

Alternatively, employers will have to file a Form 911, “Request for Taxpayer Advocate Service Assistance,” on each individual claim, Sheppard said.

Increasing Backlogs

The government shutdown is adding to the worry that employers already have about the IRS’s lack of response, Sheppard said. Taxpayers must still meet filing deadlines, “which means when the shutdown ends — in October or even November — the IRS is going to have just stacks of backlogs because people haven’t been working,” she said.

Sheppard said that some of her clients’ requests for extensions to respond to the ERC audits have been granted, but only for seven days. “By the time we receive the extension grant, that seven days has already passed,” she said.

Heather Posey of Frost Law said one of her requests for a 30-day extension was granted, but she didn’t receive the IRS response letter until about five days after the due date had passed.

“I was able to get ahold of an IRS employee since we began processing the ERC audits that came in July, but only once,” Posey said. “I sent in a request for an extension on August 1, and I received a phone call back about it on September 15. . . . By that time, we had already submitted our response and a supplementary response to the audit.”

Posey said she doesn’t know whether the audits are going through standard procedures or if the IRS is approving some and leaving the rest to the response and appeal process.

But if it ends up being an appeal of a disallowance, “then it goes onto the stack of claims that were already disallowed last summer that still haven’t had appeals conferences,” Posey said.

Tax professionals have suggested that more litigation may be on the horizon as ERC claims have continued to go unaddressed.

“People are going to get tired of waiting, and they’re going to be forced into refund litigation,” Sheppard said. “People are going to be more inclined to not deal with the protest and just go straight to court, in which case the Department of Justice is going to get backed up.” ■