

House Gaming Caucus Seeks Slot Jackpot Retune on Super Bowl Eve

by Doug Sword

The co-chairs of the Congressional Gaming Caucus are asking IRS Commissioner Daniel Werfel to heed advisers who say it's time for a major raise in the 47-year-old reporting threshold for slot machine jackpot winners.

The \$1,200 slot machine winnings reporting threshold was set by Treasury in 1977 and can be reset to account for inflation by regulation — as opposed to legislation — as well, according to a February 5 letter from the Gaming Caucus's co-chairs, Reps. Dina Titus, D-Nev., and Guy Reschenthaler, R-Pa., along with 24 other members of the bipartisan group.

The increasingly outdated threshold has led to a dramatic increase in reportable jackpots, according to the November 2023 report of the Internal Revenue Service Advisory Council (IRSAC). Overall, 21.2 million Forms W-2G, "Certain Gambling Winnings," were filed in 2022, which the Gaming Caucus said is causing "increasing compliance burdens on taxpayers and significant operational costs for casinos that are providing family-sustaining jobs in our states."

In its report, IRSAC noted that if the \$1,200 jackpot reporting threshold were adjusted for inflation, it would increase to \$5,839. The council recommended that the threshold be raised to \$5,000, which is the amount proposed in a bill (H.R. 3135) introduced by Titus in May 2023.

The lawmakers noted that unlike with other tax information reporting forms, the Form W-2G captures a single event and doesn't reflect a taxpayer's overall taxable gain or loss. IRSAC noted that increasing the threshold would "enable the IRS to focus its enforcement resources on those taxpayers most likely to have year-end net slot winnings."

The ask from the House members is well timed, considering America's gambling attention will be focused on Las Vegas as it plays host to the February 11 Super Bowl. Reports say the gambling mecca expects 450,000 visitors and an economic impact of more than \$1 billion from the big game.

And probably quite a few Form W-2G filings. ■

Legislation to Sunset ERC Prompts Rush to File Claims

by Lauren Loricchio and Nathan J. Richman

Tax legislation that would bring the employee retention credit program to an abrupt end has caught advisers off guard and has left some scrambling to get claims in before the cutoff.

Under the bipartisan tax agreement released January 16, claims for the ERC would have to be submitted the same day that the bill was passed by the House — January 31 — a change that the lawmakers said would save more than \$70 billion to help pay for other parts of the bill.

"Tax professionals were surprised at how quickly that deadline was set, given that the bill was just proposed," said Mary E. Wood of Meadows, Collier, Reed, Cousins, Crouch & Ungerman LLP. "It's not a lot of time to give notice to the public for taxpayers who have legitimate ERC claims."

Under current law, 2020 claims for the ERC can be filed until April 15, 2024, and 2021 claims can be filed until April 15, 2025.

The ERC was created by the Coronavirus Aid, Relief, and Economic Security Act to help businesses struggling to stay afloat during the COVID-19 pandemic by establishing a refundable credit against employer taxes, but it has cost much more than expected and has been the target of fraud and aggressive marketing.

Initially, the Congressional Budget Office predicted the ERC would cost \$55 billion. The estimate was later adjusted to \$85 billion. As of September 2023, a total of approximately \$230 billion in ERC claims had been paid by the IRS, which did not provide an updated figure by press time.

Wood said she expects tax professionals will pay close attention to whether the date is enacted as proposed or extended to provide more time. "If there is additional time, maybe you see some taxpayers who rush to get those claims filed," she added.

However, any extension of the date would require lawmakers to find additional ways to offset tax cuts proposed in the legislation because there will be more claims to pay out.

'A Busy Two Weeks'

It has been "a busy two weeks" since the legislative proposal to cut off the ERC on January 31 came out, according to Daniel Mayo of Withum Smith+Brown PC. He added that although the bill isn't law yet, his firm operated on the assumption that it would pass because the ERC changes are paying for other changes in the bill.

"We never want to be in a position of having to tell a client that its valid ERC claim cannot be filed because a filing deadline has passed. I suspect all accounting firms operated under this same assumption, and the IRS will be flooded with claims in the next few days," Mayo said.

Justin Elanjan of Stout Risius Ross LLC said he hasn't seen a rush of new ERC claims since the release of the cutoff proposal. Instead, he said, businesses are rushing to complete in-process claims. However, Elanjan noted that a new inquiry came in just hours before talking with *Tax Notes* on February 1.

Many of the taxpayers with claims still in process had started drafting their claims but hadn't yet furnished the required information to their providers, Elanjan said.

Elanjan said he hasn't observed a quality drop-off for claims filed between the initial proposal and the proposed cutoff date, but he did see an increased use of estimates in those claims. The idea is that once the claim is through the door, it can be amended to be more precise, he said.

Michael D'Addio of Marcum LLP said his firm was also working on claims with the assumption that January 31 was the last day to submit them.

Rebecca Sheppard of Frost Law said her firm, which performs ERC calculations for clients, has been working to make sure that professional employer organizations have the documents they need to submit claims. "It's been a really big challenge to get those folks to file these returns," she said.

Professional employer organizations and other payroll services have been "very leery about filing claims," according to D'Addio.

"They're concerned about their own personal liability for submitting a claim that they may not be 100 percent certain is valid, and they're

concerned about being sanctioned or otherwise penalized," D'Addio said.

Elanjan said he finds the proposed cutoff challenging from several perspectives. On the one hand, there are taxpayers supporting the early termination as a prudent move to protect the public fisc in light of reports about the declining quality of claims and emergence of some questionable claim promoters, he said.

"At the same time, there are some challenges with an early cutoff for taxpayers who haven't taken action and had very little notice of the early termination as currently drafted," Elanjan said.

Not only did taxpayers think they'd have at least two and a half more months before the expected April 15 deadline for making 2020 ERC claims, but many businesses only recently realized they were eligible for the credit after misunderstanding rules concerning the Paycheck Protection Program interaction, Elanjan said.

Elanjan said he wouldn't be surprised to see claims continue to arrive in February because the law setting the filing deadline of April 15 hasn't been changed yet.

Legal Challenges?

Whether taxpayers challenge a retroactive cutoff for submitting claims remains to be seen.

Some taxpayers whose claims are timely under current law but would be cut off if the proposed early termination date is passed may consider constitutional challenges if their claims are denied, according to Elanjan.

D'Addio said he thinks Congress is "on fairly solid ground" to pass the bill with a retroactive end date.

However, D'Addio said he thinks provisions in the legislation that would retroactively increase penalties for promoters could face a legal challenge.

The bill includes several off-code provisions addressing penalties for ERC promoters and an amendment to extend the statute of limitations for assessing ERC-related tax deficiencies. Under the bill, promoter penalties for aiding and abetting understatement of a tax liability would increase to \$200,000 or 75 percent of the promoter's gross income related to the ERC, whichever is greater.

Most of the changes come with an effective date tied to the enactment of the CARES Act — March 12, 2020.

The bill defines an ERC promoter — or “COVID-ERTC promoter” — as someone who “provides aid, assistance, or advice with respect to” a claim document if there’s a contingency fee based on the amount of the credit or refund claimed. Promoters are defined as those earning at least half of their gross receipts from providing ERC-claim-related documents or 20 percent of their gross receipts and at least \$500,000 from the practice. Professional employer organizations would be excluded from the definition. ■

Poorer Families, Foreign Investors Win in Tax Bill, Report Says

by Doug Sword

The biggest winners in tax legislation passed by the House would be low-income families with children and foreign investors in companies benefiting from a relaxation in business tax breaks, according to a new analysis from the Institute on Taxation and Economic Policy (ITEP).

In a January 31 vote, the House overwhelmingly passed the Tax Relief for American Families and Workers Act of 2024 (H.R. 7024), a \$79 billion collection of business tax cuts and enhancements to the child tax credit expected to soon be considered by the Senate. The House might also take up the SALT Marriage Penalty Elimination Act (H.R. 7160), which would temporarily double the state and local tax deduction cap to \$20,000 for joint filers and, according to ITEP, cost \$8 billion in federal revenues for 2023.

For the larger bill, the institute’s researchers found that in 2025 — the year the bill’s provisions have their fullest effect — the highest-earning fifth of taxpayers would get a \$110 tax cut, while the lowest-earning fifth would get a \$140 cut. The lowest per-household impact is for the middle fifth of taxpayers, who would average a \$70 cut.

The impact can be more dramatic for some, particularly those with modest incomes and more than one child, according to ITEP. Households in the bottom fifth of income earners — those earning less than \$27,700 per year — and with qualifying children would get an average tax benefit of \$1,070. ITEP estimated that 13 percent of households in the bottom fifth of income earners would get that average benefit.

The bill’s benefits are largely front-loaded. The business tax breaks — mainly a temporary restoration of full research and development expensing, bonus depreciation, and net interest expensing — would cost \$60 billion in 2025 before recording savings once those provisions are again tightened. The enhanced child tax credit would cost about \$11 billion that year, according to a Joint Committee on Taxation estimate (JCX-5-24).

The tax cuts are mostly paid for by an early sunset of employee retention credit claims and a