

# IRS COMMUNICATION & GUIDANCE

## WE ARE AWAITING GUIDANCE ON ERC FROM IRS; MEANWHILE, IRS IS SENDING CONFUSING NOTICES

We are contacting you with a short update related to the Internal Revenue Service (IRS). We are expecting additional guidance from the IRS on how companies that are newly eligible may claim Employee Retention Credits (ERC) and will work to process credits for your business as soon as we have instructions from the IRS. One other item that has come up related to the IRS is the fact that they have been sending notices to employers warning they will seize their assets due to unpaid taxes that are actually not unpaid taxes but rather FFCRA credits. Please read on for more information.

### **Awaiting Guidance on ERC**

Earlier in January, we sent out an article explaining changes that have been made to ERC by the recent stimulus package, the Consolidated Appropriations Act. For reference, here is a link to that article, which includes a brief overview of ERC, eligibility requirements, changes regarding the Paycheck Protection Program (PPP), and a high-level explanation of how to claim credits: [ERC Updates](#).

In advance of the imminent tax deadline for filing Forms 941 (January 31), we wanted to update you on this topic. Unfortunately, the IRS has not yet issued guidance on how newly-eligible employers who received a PPP loan may claim ERC. We are expecting further guidance from the IRS, which has been specifically requested by the AICPA and other organizations. Among some of the questions is how to reconcile between payroll that was used for PPP forgiveness and that which is available for the ERC.

We are also still working through the process for calculating the ERC consistent with the language in the law as currently written as well as with the logistics of the calculations themselves. At this point in order to keep you in compliance, we are filing Forms 941 without ERC because the guidance will not come in time ahead of the January 31 deadline. Therefore, your 2020 ERC will be requested in arrears once IRS guidance has been released, so we can finalize our process. We will file the Q4 returns without any ERC. Once we have guidance, our plan will be to amend the necessary 2020 quarterly returns using the calculations for the year from 3/13/20-12/31/20 less the PPP payroll costs.

We anticipate handling ERC for applicable quarters in 2021 the same way to ensure the business was eligible each quarter.

We will be following up as we know more.

## IRS Warning Letters

The IRS has been sending out letters warning of penalties and, in some cases, the intent to seize company accounts and property due to unpaid taxes. The notices we have seen are related to “unpaid taxes” as interpreted by the IRS. In fact, these unpaid taxes are tied to the FFCRA credits. Currently, the IRS system is not reading electronically-filed returns correctly, and, due to the COVID-19 pandemic, very few people are physically working at the IRS service centers either to identify these issues or to handle incoming questions from employers who have received these letters.

Given the notices, it appears the IRS is not recognizing credits when they cross quarters. This is causing the IRS to send refund letters for Q2, followed by letters indicating the company is underpaid by the same amount in Q3 and is now required to pay. Correspondence with the IRS is limited to written communication, so resolutions take much longer than in the past.

If you receive a similar letter, please provide our team with a copy. We will send the IRS a letter explaining the situation and instructing them how to apply the funds.

As for seizures, we have learned from one revenue agent that the IRS cannot freeze an account or seize funds before an agent visits with you in person at your office. He said those letters are designed to “get your attention.” The visit is mandatory, and they go through your records and compare them to theirs to determine if the money is owed. If it is, they get your agreement on the amount owed, and they try to work out a payment plan. If you fail to pay, the next step is requiring you to pay your taxes via a cashier's check and hand deliver it to the agent the day before the payroll is actually paid to employees. If you miss that, you get another visit from the IRS agent and an FBI agent to serve you with legal documents showing a federal court order to seize your funds.

We will work to resolve the matter with the IRS in your favor before a visit is required.

## For More Information

We expect more guidance will be released from the IRS and will continue to monitor this situation and release updates. For more information or assistance, please contact our Payroll team at **210-293-6620**, toll-free at **1-888-757-2104**, or [PayrollServices@BFGonline.com](mailto:PayrollServices@BFGonline.com).



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