



SCWA Legislative/Regulatory Update

April 10, 2023



Boozman, Thune Lead Effort to Permanently Repeal Death Tax

U.S. Senators John Boozman (R-AR) and John Thune (R-SD), along with Republican Leader Mitch McConnell (R-KY), Ranking Member of the Senate Finance Committee Mike Crapo (R-ID) and dozens of their Senate Republican colleagues, introduced legislation to permanently repeal the federal estate tax, more commonly known as the death tax.

The *Death Tax Repeal Act* would end this purely punitive tax that has the potential to hit family-run farms, ranches and businesses as the result of the owner's death.

“The Death Tax hangs over too many family agriculture operations and small businesses as a potential destroyer of generations worth of work and investment. They deserve the opportunity to pass down what they've dedicated their lives to with the peace of mind that it can continue on. I remain committed to ending this detrimental, disincentivizing threat against families in Arkansas and across the country in the interest of fairness and sound economic policy,” Boozman said.

The legislation is cosponsored by U.S. Sens. John Barrasso (R-WY), Marsha Blackburn (R-TN), Mike Braun (R-IN), Katie Britt (R-AL), Ted Budd (R-NC), Shelley Moore Capito (R-WV), John Cornyn (R-TX), Tom Cotton (R-AR), Kevin Cramer (R-ND), Mike Crapo (R-ID), Ted Cruz (R-TX), Steve Daines (R-MT), Joni Ernst (R-IA), Deb Fischer (R-NE), Lindsay Graham (R-SC), Chuck Grassley (R-IA), Bill Hagerty (R-TN), Josh Hawley (R-MO), John Hoeven (R-ND), Cindy Hyde-Smith (R-MS), Ron Johnson (R-WI), John Kennedy (R-LA), James Lankford (R-OK), Mike Lee (R-UT), Cynthia Lummis (R-WY), Roger Marshall, M.D. (R-KS), Jerry Moran (R-KS), Markwayne Mullin (R-OK), Pete Ricketts (R-NE), Jim Risch (R-ID), Mike Rounds (R-SD), Marco Rubio (R-FL), Eric Schmitt (R-MO), Rick Scott (R-FL), Tim Scott (R-SC), Thom Tillis (R-NC), Tommy Tuberville (R-AL) and Roger Wicker (R-MS).

Senate Republicans have persistently fought to end the estate tax, including through the *Tax Cuts and Jobs Act* (TCJA) in 2017.

Although the final version of the TCJA did not repeal the death tax, the law effectively doubled the individual estate and gift tax exclusion to \$10 million (\$12.9 million in 2023 dollars) through 2025, which prevents more families and generationally-owned businesses from being affected by it. The increased exclusion expires at the end of 2025, which increases uncertainty and planning costs for family-owned businesses, farms and ranches.

The bill is supported by SCWA.



IRS Opens 2023 Dirty Dozen with Warning about Employee Retention Credit Claims; Increased Scrutiny Follows Aggressive Promoters Making Offers too Good to be True

In a further warning to people and businesses, the Internal Revenue Service added widely circulating promoter claims involving Employee Retention Credits as a new entry in the annual Dirty Dozen list of tax scams.

For the start of the annual Dirty Dozen list of tax scams, the IRS spotlighted Employee Retention Credits following blatant attempts by promoters to con ineligible people to claim the credit. Renewing several earlier alerts, the IRS highlighted schemes from promoters who have been blasting ads on radio and the internet touting refunds involving Employee Retention Credits, also known as ERCs. These promotions can be based on inaccurate information related to eligibility for and computation of the credit.

"The aggressive marketing of these credits is deeply troubling and a major concern for the IRS," said IRS Commissioner Danny Werfel.

"Businesses need to think twice before filing a claim for these credits. While the credit has provided a financial lifeline to millions of businesses, there are promoters misleading people and businesses into thinking they can claim these credits. There are very specific guidelines around these pandemic-era credits; they are not available to just anyone. People should remember the IRS is actively auditing and conducting criminal investigations related to these false claims. We urge honest taxpayers not to be caught up in these schemes."

The IRS is stepping up enforcement action involving these ERC claims, and people considering filing for these claims – only valid during the pandemic for a limited group of businesses – should be aware they are ultimately responsible for the accuracy of the information on their tax return. The IRS Small Business/Self-Employed division has trained auditors examining these types of claims, and the IRS Criminal Investigation Division is on the lookout for promoters of fraudulent claims for credits.

Abusive ERC promotions highlight day one of the IRS annual Dirty Dozen campaign – a list of 12 scams and schemes that put taxpayers and the tax professional community at risk of losing money, personal information, data and more.

This annual list of schemes and scams is aimed at helping raise awareness to protect honest taxpayers from aggressive promoters and con artists. These schemes put people at financial risk and increase the chances people could become victims of identity theft. Some items on the Dirty Dozen list are new and some make a return visit. While the list is not a legal document or a formal listing of agency enforcement priorities, it is intended to alert taxpayers and the tax professional community about various scams and schemes at large.

"Businesses should be wary of advertised schemes and direct solicitations promising tax savings that are too good to be true," Werfel said. "They should listen to the advice of their trusted tax professional. Taxpayers should remember that they are always responsible for the information reported on their tax returns. Improperly claiming this

credit could result in taxpayers having to repay the credit along with potential penalties and interest.”

When properly claimed, the ERC is a refundable tax credit designed for businesses that continued paying employees while shut down due to the COVID-19 pandemic or that had a significant decline in gross receipts during the eligibility periods. The credit is not available to individuals.

Beware of ERC promotions

While many eligible employers claimed and have already received the ERC, some third parties continue to widely advertise their services targeting taxpayers who may not be eligible for the ERC. Unfortunately, these advertisements, along with the increased prevalence of websites touting how easy it is to qualify for the ERC, lend an air of legitimacy to abusive claims for refund.

Tax professionals have reported receiving undue pressure from clients to participate and claim the ERC, even when the tax professional believes the client is not entitled to the credit. The IRS encourages the tax professional community to continue to advise clients not to file ERC claims when the tax professional believes they do not qualify.

The IRS has been warning about this scheme since last fall, but there continue to be attempts to claim the ERC during the 2023 tax filing season.

The IRS Office of Professional Responsibility sent a special bulletin to tax professionals on March 7 outlining core responsibilities for ERC claims under Circular 230.

Third party promoters of the ERC often don't accurately explain eligibility for and computation of the credit. They may make broad arguments suggesting that all employers are eligible without evaluating an employer's individual circumstances.

For example, only recovery startup businesses are eligible for the ERC in the fourth quarter of 2021, but these third-party promoters fail to explain this limitation. In addition, some third parties do not inform employers that they cannot claim the ERC on wages that were reported as payroll costs in obtaining Paycheck Protection Program loan forgiveness.

Additionally, some of these advertisements exist solely to collect the taxpayer's personally identifiable information in exchange for false promises. The scammers then use the information to conduct identity theft.

The IRS reminds all taxpayers that the willful filing of false information and fraudulent tax forms can lead to serious civil and criminal penalties.

Properly claiming the ERC

Eligible taxpayers can claim the ERC on an original or amended employment tax return for qualified wages paid between March 13, 2020, and Dec. 31, 2021. However, to be eligible, employers must have:

1. Sustained a full or partial suspension of operations due to orders from an appropriate governmental authority limiting commerce, travel or group meetings because of COVID-19 during 2020 or the first three quarters of 2021,

2. Experienced a significant decline in gross receipts during 2020 or a decline in gross receipts during the first three quarters of 2021, or
3. Qualified as a recovery startup business for the third or fourth quarters of 2021.

Reporting tax-related fraud and scams

Employers should report instances of fraud and IRS-related phishing attempts to the IRS at phishing@irs.gov and to the Treasury Inspector General for Tax Administration at 800-366-4484.

Besides the promotion of ERC claims to employers who are not eligible for the credit, there are many other scams and schemes the IRS is warning individuals, businesses and tax professionals about in this year's annual Dirty Dozen campaign.

As part of the Dirty Dozen awareness effort, the IRS encourages people to report tax-related, illegal activities relating to ERC claims, as well as individuals who promote improper and abusive tax schemes and tax return preparers who deliberately prepare improper returns.

To report an abusive tax scheme or a tax return preparer, people should mail or fax a completed Form 14242, Report Suspected Abusive Tax Promotions or Preparers and any supporting materials to the IRS Lead Development Center in the Office of Promoter Investigations.

Mail:

Internal Revenue Service Lead Development Center
Stop MS5040
24000 Avila Road
Laguna Niguel, California 92677-3405
Fax: 877-477-9135

Alternatively, taxpayers and tax practitioners may send the information to the IRS Whistleblower Office for possible monetary reward.

For more information, see Abusive Tax Schemes and Abusive Tax Return Preparers.

The Dirty Dozen is a collaboration with the Security Summit initiative.

Working together as the Security Summit, the IRS, state tax agencies and the nation's tax industry have taken numerous steps over the last seven years to warn people to watch out for common scams and schemes during tax season.

