Tax Attorney David Potts for the Journal Record: IRS reopens Voluntary Disclosure Program to help businesses

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The Internal Revenue Service (IRS) has announced a second Employee Retention Credit (ERC) Voluntary Disclosure Program (VDP), which will run until November 22, 2024. The reopening of the VDP allows businesses with questionable claims to self-report and correct improper payments at a 15% discount and avoid future audits, penalties and interest.

This new program only applies to ERC claims for the 2021 tax year and does not cover credits for the 2020 year.

A variety of ERC recipients can apply for the second VDP. Any employer who already received the ERC for a tax period in 2021 for which it was not entitled can apply if the following are also true:

- The employer has not already applied to the first ERC Voluntary Disclosure Program for the same tax periods. The IRS is still processing applications from the first program. Taxpayers should not reapply for the same periods.
- The employer is not under criminal investigation.
- The employer is not under an IRS employment tax examination for the tax period for which it is applying to the VDP.
- The employer has not received a Letter 6577-C, ERC Recapture, or an IRS notice and demand for repayment of part or all of its ERC claim.
- The employer has not already filed an amended return to eliminate its ERC.
- The IRS has not received information from a third party or directly from an enforcement action that the taxpayer is not in compliance.

To apply for the VDP, employers must file Form 15434, Application for Employee Retention Credit Voluntary Disclosure Program, available on IRS.gov. Employers are expected to repay their full ERC, minus

the 15% reduction allowed through the VDP.

To underscore the importance of participating in the VDP, the IRS also announced it plans to mail up to 30,000 new letters to reverse or recapture potentially more than $1 billion in improper ERC claims. Thousands more mailings on additional questionable payments will be made in the fall. It is highly advisable for employers to participate in the VDP if ERC was claimed and received to which the employer was not entitled. If you do not participate in the VDP to correct improper filings, you risk detection by the IRS, which could lead to substantial interest and penalties and increase the risk of criminal investigation and prosecution.

Attorneys

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