



February 13, 2023

The Honorable Douglas O'Donnell, Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20220

Dear Acting Commissioner O'Donnell,

We are writing to express the concerns of the National Association of Tax Professionals (NATP) and the National Society of Accountants (NSA) about the need for immediate guidance for tax professionals as they are required to file amended income tax returns to reflect the Employee Retention Credits (ERC).

NATP and NSA represent thousands of tax practitioners across the United States. Without guidance, we have tax professionals preparing amended income tax returns to reflect the ERC credit (a credit they did not prepare) and potentially exposing themselves to penalties under Circular 230 and Title 26 and losing clients.

The ERC is an extremely complicated calculation with varying rules for 2020 and 2021. Some tax preparers are well-versed in ERC; some have chosen not to do ERC credits and are unfamiliar with how ERC works. This fact only raises more questions and concerns about how our members handle ERC within their practices this filing season.

While the IRS has issued numerous ERC filing warnings, including Covid Tax Tip 2022-170, these are directed at employers, taxpayers, and employees, not tax professionals.

On behalf of our members, we are asking for specific guidance for tax professionals this filing season in the following areas:

- What is our due diligence in preparing the affected income tax return when we did not prepare the ERC filings?
- What is our due diligence if we do not agree that the client qualified for ERC or discover improper ERC filings?
- What is our responsibility when relying on what the IRS refers to as "Third parties," not tax professionals, for ERC filings?
- What questions should our members be asking their clients?
- What is the tax professional's exposure to Circular 230, or even Title 26, tax preparer penalties?



Thank you in advance for considering our request and answering our questions. Representatives from our organizations can further discuss specifics with you or other appropriate IRS staff at your convenience. We look forward to providing updated information to our tax preparer members, so they can accurately and expertly continue to serve the American taxpayers.

Sincerely,

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