Bloomberg Tax

Tax Management Memorandum™

September 11, 2025

Employee Retention Credit Rules Are Still Progressively Evolving

Danchai Mekadenaumporn*
KPMG US

Although the Employee Retention Credit expired over three years ago, claims are still being adjudicated, and taxpayers should strategize on how to expeditiously get refunds or handle disallowed claims, says a KPMG practitioner.

The Employee Retention Credit is now over five years old and expired over three years ago, yet its rules are still evolving. The IRS continues to work through its backlog, taxpayers have filed refund suits, and Congress amended the law yet again. While no new claims may be filed at this time, taxpayers should carefully consider their options as they wait for their claims to be processed. In certain circumstances, it may pay to do nothing—at least until the IRS acts. In other cases, taxpayers should carefully consult with their trusted tax advisor to determine the appropriate next steps and what actions will result in the most expeditious refund of a pending or disallowed claim.

Background

In the beginning of the Covid-19 pandemic, Congress included the ERC as part of the relief provided in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, 134 Stat. 281 (2020). Section 2301 of the CARES Act originally provided a limited tax credit for eligible employers (including tax-exempt organizations) that paid qualified wages to employees after March 12, 2020, and before January 1, 2021.

The ERC was modified several times following its initial enactment. In December 2020, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (2020), adopted retroactive amendments and technical changes for calendar quarters in 2020, extended the ERC into the first two calendar quarters of 2021, and made additional technical changes applicable to only the first two calendar quarters of 2021. In March 2021, §9651 of the American Rescue Plan Act of 2021 (ARP Act), Pub. L. 117-2, 135 Stat. 4, enacted §3134 of the Internal Revenue Code , which provided a substantially similar ERC to the 2021 version of §2301 of the CARES Act (as amended by the Relief Act) for the last two calendar quarters of 2021. In November 2021, the Infrastructure Investment and Jobs Act (Infrastructure Act), Pub. L. 117-58, 135 Stat. 429 (2021), amended §3134 of the Code to retroactively terminate the ERC in the fourth quarter of 2021, other than for recovery startup businesses.

* Danchai Mekadenaumporn is a senior manager in KPMG's Washington National Tax, Compensation and Benefits practice. He previously worked on ERC issues at the IRS Office of Chief Counsel and was one of the authors of the various pieces of ERC guidance.

Although the ERC expired after December 31, 2021, eligible employers could still claim the ERC for qualified wages paid during the relevant periods in 2020 and 2021 by filing an adjusted employment tax return (for most employers, the Form 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*) prior to the expiration of the relevant statute of limitations for refund (typically April 15, 2024 and April 15, 2025 for 2020 and 2021 claims, respectively). In response to "fraud concerns" and "aggressive promoters," the IRS instituted a moratorium on the processing of ERC claims in September 2023.

In January 2024, House Ways and Means Committee Chairman Jason Smith and Senate Finance Committee Chairman Ron Wyden announced The Tax Relief for American Families and Workers Act of 2024 (H.R. 7024) that included provisions to cut off ERC claims filed after January 31, 2024, and provided the IRS with promoter enforcement tools. Ultimately, the tax plan was not enacted, but the ERC cut-off provisions continued to be introduced in Congress. In August 2024, the IRS announced a shift in the moratorium and began processing a limited number of claims that were filed between September 14, 2023, and January 31, 2024. The IRS accelerated processing of additional claims in October 2024. Finally, the One Big Beautiful Bill Act (OBBBA), Pub. L. 119-21, 139 Stat. 72, enacted July 4, 2025, included a version of the ERC cut-off provisions and promoter enforcement tools first introduced in January 2024.

OBBBA Updates

Section 70605(d) of the OBBBA provides that "[n]otwithstanding section 6511 of the Internal Revenue Code of 1986, no credit under section 3134 of the Internal Revenue Code of 1986 shall be allowed, and no refund with respect to any such credit shall be made, after the date of the enactment of this Act, unless a claim for such credit or refund was filed by the taxpayer on or before January 31, 2024."

The OBBBA only cuts off claims for the third and fourth calendar quarters of 2021 (due to §3134 of the Code) that (i) have not been processed and paid as of July 4, 2025; and (ii) were filed after January 31, 2024. The OBBBA allows claims related to 2020 or the first two calendar quarters of 2021 (which fall under §2301 of the CARES Act) to be made against the employer's share of social security tax, rather than against the employer's share of Hospital Insurance (Medicare) tax (as allowed under §3134 of the Code).

The Senate's Byrd rule does not allow changes to social security in reconciliation bills; while the original version of the provision cut off all claims, the Senate likely modified the provision to comply with the Byrd rule. The statute does not require the IRS to recapture claims that were filed after January 31, 2024, but paid out prior to the enactment of the OBBBA. Additionally, the statute does not cut off any claims that were filed prior to January 31, 2024.

While the OBBBA does not require the IRS to recapture claims that were filed after January 31, 2024, but paid out prior to , the Act provides the IRS with an even longer statute of limitations for assessment. Section 3134(l) of the Code originally provided the IRS with five years (as opposed to the typical three years) to assess any amount attributable to the ERC claimed in the third and fourth calendar quarters of 2021; §70605(e) the OBBBA extends the statute of limitations for assessment to six years from the date on which the refund claim was made for assessments made after enactment of the OBBBA.

Section 2301(e) of the CARES Act and §3134(e) of the Code both included a provision requiring eligible employers to reduce the amount of wage expense/deduction by the amount of the credit claimed. The extended statute of limitations for assessment raised concerns that should the IRS determine that a taxpayer improperly received the ERC and make an assessment, the taxpayer would not be able to amend their income tax return to deduct wage expenses they were entitled to because the statute of limitations for refund would have expired. The OBBBA alleviates such concerns by extending the statute of limitations for credit or refund (§6511 of the Code) to the same six years, but only with respect to a deduction for wage expenses that were reduced because the taxpayer claimed the ERC.

Section 70605(a) of the OBBBA imposes a penalty of $1,000 on a "COVID-ERTC promoter" for each failure to comply with due diligence requirements imposed by the Secretary of the Treasury with respect to an ERC claim under §3134 of the Code. A COVID-ERTC promoter is a person who either (i) charges a contingent fee and derives more than 20% of

their aggregate gross receipts from providing aid, assistance, and advice with respect to ERC claims, (ii) derives more than 50% of their aggregate gross receipts from providing aid, assistance, and advice with respect to ERC claims, or (iii) derives more than 20% of their aggregate gross receipts from providing aid, assistance, and advice with respect to ERC claims and such gross receipts exceed $500,000. Certified professional employer organizations (as defined in §7705 of the Code) are not COVID-ERTC promoters under the new law. These provisions will likely have minimal impact on most taxpayers and practitioners since the statute of limitations for refund has expired, and the penalty provisions only apply prospectively to aid, assistance, and advice provided after the enactment of the OBBBA.

Section 70605(f) of the OBBBA amends §6676(a) of the Code and imposes a 20% civil penalty on claims for refund or credit for income tax that are made for an excessive amount. The OBBBA amended the penalty by striking "income tax" and inserting "income or employment tax". This provision was not in the original tax plan from January 2024; however, it was included as a proposal in Treasury's 2025 Green Book of Tax Proposals released in March 2024. The application of this amendment is also prospective and only applies to credits or refunds (not limited to ERC) after the date of enactment of the OBBBA. While application to ERC claims may be limited given the expiration of the statute of limitations for refund, the amendment could have implications should Congress pass additional employment tax credits in the future.

IRS Guidance—Updates to Income Tax Treatment

On March 20, 2025, the IRS released a set of FAQs to address the income tax effects of claiming the ERC that was previously addressed in section III.L. of Notice 2021-20, 2021-11 IRB 922, and section IV.C. of Notice 2021-49, 2021-34 IRB 316. In the Notices, taxpayers were generally advised to reduce their wage expense or deduction on their income tax return by the amount of the ERC claimed in the tax year in which the qualified wages were paid or incurred. The new FAQ/A-1 under 'Income tax and ERC' on the IRS website reiterates this position.

Most ERC claims were made on an adjusted return (i.e., the Form 941-X) in a later year; Notice 2021-49 advised taxpayers that they should file an amended federal income tax return or administrative adjustment request (AAR) to correct any overstated deductions in such situations. However, because of the influx of paper Forms 941-X and long processing times of the ERC, taxpayers may have been reticent to amend their income tax returns to increase the amount of tax they owed without knowledge of whether their ERC claims would be allowed, only to receive the ERC in a later year. Others may have amended their income tax returns only to later find that their claims were disallowed and the statute of limitations to seek a refund on the income tax paid had expired.

New FAQ/A-2 and -3 were released to resolve the issues arising from these situations. Under FAQ/A-2, taxpayers are advised that if they did not reduce their wage expense but receive the ERC in a subsequent year, they should simply include the amount as gross income in the year of receipt. The FAQ explains that under the tax benefit rule, the previously deducted amount should be included in income because a later event occurs that is fundamentally inconsistent with the premise on which the deduction is based. The FAQ also notes that if the wages were capitalized or the taxpayer did not otherwise experience a reduction in tax liability for the overstated wage expense, the taxpayer may instead need to make other adjustments, like a reduction in basis for capitalized wages.

Under FAQ/A-3, a taxpayer is allowed to increase the wage expense by the amount of disallowed ERC in the year the claim disallowance is final (meaning the taxpayer is not contesting the disallowance or has exhausted their remedies to argue the disallowance). The FAQ explains that the special statutory rules for the ERC (§2301(e) of the CARES Act and §3134(e) of the Code) treat the claimed ERC as a right or reasonable expectation of reimbursement for the qualified wage expense. If the expected reimbursement isn't received, then it is treated the same as any other failure to receive a reasonably expected reimbursement that prevented the taxpayer from deducting a business expense in the year paid or incurred.

Litigation Updates

Up until this point, there has been little case law on the ERC itself. In the past few months, however, opinions favoring the government's position in ERC cases have begun to trickle out, with at least one case discussing the merits of a party's

ERC claim. Taxpayers considering filing refund suits to compel the government to issue their refunds should heed the lessons shown in the following cases.

In re: JSmith Civil, LLC

In the first case to interpret the provisions of one of the ERC's eligibility tests, the US Bankruptcy Court in the Eastern District of North Carolina issued a memorandum opinion granting summary judgment to the government in *In re: JSmith Civil, LLC*, No. 23-02734-5-JNC, 2025 BL 279083 (Bankr. E.D.N.C. Aug. 7, 2025). In an adversary proceeding, plaintiff JSmith Civil, LLC, a construction company based in North Carolina, sought turnover and recovery of ERC claims totaling more than $1 million. The US contended that plaintiff was not fully or partially suspended due to a governmental order due to COVID-19 because the relevant shutdown order exempted construction companies.

Under §2301(c)(2)(A)(ii)(I) of the CARES Act, an eligible employer's trade or business must have been "fully or partially suspended…due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to [COVID-19]" (the "Suspension Test"). In reviewing the statute, the Bankruptcy Court noted that some provisions of the CARES Act, like the Economic Impact Payments under §2201, were "presumption-in" statutes that were intended to provide widespread relief and includes everyone unless an exception "knocks them 'out'." The ERC, on the other hand, was a "presumption-out" statute, "where everyone starts outside of eligibility for the stated relief, and claimants must show why they fit within and satisfy applicable statutory definitions to get "in" and qualify for the relief." *Id.* at *3.

The Bankruptcy Court interpreted the ERC's statutory language based on its ordinary meaning and found that in order to qualify under the Suspension Test, an employer must establish:
1. it was subject to a compulsory governmental mandate limiting commerce, travel, or group meetings that was issued because of the pandemic;
2. it stopped a meaningful portion of its operations during the relevant quarter; and
3. the reason it stopped operating was that the governmental mandate directly required it.

Plaintiff first relied on North Carolina Executive Order 121, which required all non-essential businesses to close, to establish eligibility for the second calendar quarters of both 2020 and 2021. However, because Executive Order 121 specifically exempted construction companies, and because it was not *required* to suspend its operations (even if plaintiff had suspended them), the Bankruptcy Court found plaintiff was not entitled to rely on Executive Order 121. The Bankruptcy Court found similarly with respect to subsequent executive orders.

Plaintiff also relied on documents from various other federal and state government agencies, including the Centers for Disease Control , the Occupational Safety and Health Administration, the US Department of Labor, and the North Carolina Department of Labor (the "NCDOL"). The Bankruptcy Court sidestepped the question of whether CDC guidance and OSHA regulations were orders and noted that even if they were, plaintiff had not shown any of the documents fully or partially suspended plaintiff's operations as required under the CARES Act. The Bankruptcy Court took a similarly dim view of the value of a NCDOL complaint that alleged plaintiff failed to implement policies and procedures to prevent to the spread of COVID-19; in addition, the complaint was dated as of November 9, 2022, which was well after the quarters at issue.

Finally, the plaintiff pointed to generalized workplace disruptions caused by sick employees, quarantined employees, and supply chain issues to establish eligibility. While the Bankruptcy Court accepted these situations as true for purposes of summary judgment, the Court nevertheless found that they were not caused by government orders as required by §2301 of the CARES Act.

Most ERC cases will not likely end up in Bankruptcy Court; however, it is a valuable first look at how a court may evaluate ERC claims under the plain language of the statute. In this case, the Bankruptcy Court considered Notice 2021-20 and other subregulatory guidance in its interpretation of the statute. In *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), the US Supreme Court held that the APA requires courts to exercise their independent judgment in deciding

whether an agency has acted within its statutory authority, that courts may not defer to an agency interpretation of the law simply because a statute is ambiguous, and overruled *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The court in *Loper Bright* made clear that the deference outlined in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), may still apply, where an agency's interpretations "'constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance' consistent with the APA." *Loper Bright*, 603 U.S. at 394, citing *Skidmore*, 323 U.S. at 140.

While the *JSmith* court stated it must "exercise independent judgment" under *Loper Bright*, it nevertheless treated the guidance as persuasive authority under *Skidmore*. The court came to a similar conclusion as the IRS in determining that the statutory language required a compulsory mandate and that a business that was exempt from that mandate, under the clear language of the order, could not be eligible for the ERC. The court also reviewed how other governmental guidance, regardless of whether it was an order under the ERC, affected plaintiff's operations, and determined a suspension did not occur. And finally, the court concluded that a general disruption was not sufficient.

Taxpayers who find themselves in litigation should be prepared to (i) demonstrate how the government order upon which they rely applied to their business, (ii) demonstrate how the order affected their business operations such that their operations were suspended, and (iii) provide evidence to substantiate any purported suspension.

Stenson Tamaddon LLC v. IRS

Stenson Tamaddon LLC v. IRS, No. 2:24-cv-01123-SPL, 2025 BL 214447 (D. Ariz. Jun. 18, 2025), *appeal docketed*, No. 25-4217 (9th Cir. Jul. 8, 2025) is the first to evaluate the merits of a litigant's challenge to Notice 2021-20 under the Administrative Procedure Act. Plaintiff Stenson Tamaddon LLC described itself as a "multifaceted tax advisory and technology firm that assists businesses with tax credits and financial solutions" that "operates as a consultant under the ERC program by helping businesses file ERC claims." *Id.* at *2. In this action, StenTam asserted that Notice 2021-20 constituted an improper legislative rulemaking that violated the Administrative Procedure Act (APA) notice-and-comment procedures, was an arbitrary and capricious agency action, and was in excess of the IRS's statutory authority. StenTam thus sought to invalidate Notice 2021-20 under the APA. The government argued that Notice 2021-20 was merely an interpretative document that is exempt from the APA's notice and comment procedures.

Legislative vs. Interpretive

The court analyzed Notice 2021-20 under the Ninth Circuit's framework for determining for whether a rule is legislative:

"[A] rule has the force of law, and is therefore legislative, when: (1) in the absence of the rule, there would not be an adequate legislative basis for enforcement action, (2) the agency has explicitly invoked its general legislative authority, or (3) the rule effectively amends a prior legislative rule."

Id. citing Hemp Industries Ass'n v. DEA, 333 F.3d 1082, 1087 (9th Cir. 2003). StenTam raised three primary objections to a finding that there was adequate legislative basis: (1) Notice 2021-20 limited "eligible employers" under the statute by excluding household employers, (2) Notice 2021-20 narrowed the scope of suspensions, and (3) Notice 2021-20 imposed new recordkeeping requirements on employers.

In the case of household employers, the court determined that the IRS was "merely interpreting" an existing standard found within the statute – that eligible employers must, among other requirements, be "carrying on a trade or business" during the applicable quarter. Similarly, the court found that the IRS did not impose any new duties upon taxpayers by setting forth the recordkeeping "substantiation requirements" contained within the Notice; the IRS was merely clarifying "an existing and underlying statutory duty to maintain records…that would effectively prove the employer's entitlement to the ERC, specifically." *Id.*

StenTam challenged the Q/As involving the IRS's interpretation of the Suspension Test as inappropriately narrowing eligibility and undermining congressional intent such as Q/A-10's clarification that "orders from an appropriate governmental authority" are limited to orders from a federal, state or local government that had jurisdiction over the

employer's operations. In reviewing the various Q/As involving the Suspension Test, the court found that they comport with the plain text of the statute, noting specific examples in which the Q/A involved the most obvious or natural interpretation of the statutory language. For example, the court noted that a "business voluntarily suspending its own operations has not been suspended due to orders from an appropriate governmental authority but rather has suspended operations of its own volition." *Id.*

StenTam also objected to the IRS's "nominal portion" and "nominal effects" tests as setting forth a binding legal standard for determining whether a partial suspension occurred. The IRS generally considers a business to be partially suspended if more than a nominal portion of its operations are suspended by a government order, based on the facts and circumstances. If a business can still operate, then the IRS generally considers a business to be partially suspended if any modifications the business must make has more than a nominal effect on the business operations, based on the facts and circumstances. Notice 2021-20 states that the IRS will deem that more than a nominal portion is suspended or that more than a nominal effect occurs if a ten-percent threshold is met. The government argued that these thresholds were merely safe harbors rather than a legislative rule – to which the court agreed, based on the plain language of the Notice. The court also noted the fact that the ten-percent threshold is subject to rebuttal and that the IRS retains to discretion to consider if a taxpayer has qualified without meeting the ten-percent threshold in finding the Notice was not a legislative rule.

In concluding that there was adequate legislative basis, the court looked to the text of the Notice and determined that the IRS was not modifying or making additions to the eligibility requirements, but "simply trying to parse the precise meaning of the specific statutory language that Congress itself has chosen." *Id. citing Doe v. United States*, 129 F.4th 1362, 1366 (Fed. Cir. 2025). Further, where the "agency's clarification does not impose new rights and duties, it is more interpretive than legislative." *Id. citing Bharathm*, [2025 BL 180466], 2025 U.S. Dist. LEXIS 99498, at *40 (holding that a policy memorandum was an interpretive rule where it "d[id] not add to the statute, amend the statute, or create new duties for visa applicants," but rather "announced [the agency's] interpretation of the governing statute and regulation...."). The court noted that if a party disagrees with the IRS on the statute's interpretation, then the remedy is a tax refund suit.

The court did not spend as much time on the last two prongs of the Ninth Circuit's framework. Since the IRS did not invoke its general legislative authority in the Notice and there were no prior legislative rules interpreting the ERC statutes, StenTam did not meet its burden in showing the Notice was legislative as opposed to interpretive.

Arbitrary/Capricious
The court laid out the Ninth Circuit's test for determining whether an agency action is arbitrary and capricious, thusly:

"[1] the agency relied on factors Congress did not intend it to consider, [2] entirely failed to consider an important aspect of the problem, or [3] offered an explanation that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."

Id. citing Defs. of Wildlife v. Zinke, 856 F.3d 1248, 1257 (9th Cir. 2017) (internal quotation marks and citations omitted). StenTam argued that Notice 2021-20 was arbitrary and capricious because the IRS "(1) 'relied on factors Congress had not intended it to consider,' (2) 'ignored important aspects of the problem,' and (3) 'fashioned rules that were not supported by transparent and reasoned decision-making.'" StenTam further compared this case to *CIC Services, LLC v. IRS*, 592 F. Supp. 3d 677 (E.D. Tenn. 2022), in which an IRS notice was found to be a legislative rule that should have been subject to notice-and-comment and was arbitrary and capricious. The notice in *CIC Services* was found to be a legislative rule that amended an existing regulation, and that was issued in response to a specific concern that should have been supported by specific facts and data.

However, because Notice 2021-20 was found to be an interpretive rule explaining the language of the statute, there were no facts or data for the agency to rely on, and the Notice was more akin to a policy determination, the court was able to fully distinguish this case from *CIC Services*. In addition, since the Notice was based on the text of the statute, the court

noted that "there was no identifiable factual evidence to consider—just the text of the statute," and that "it also cannot be said that the agency 'relied on factors Congress did not intend it to consider.'" *Id.*

With respect to whether the Notice "ignored important aspects of the problem," the court noted that the administrative record demonstrated that the IRS received multiple inquiries that were internally circulated dealing with the very issues StenTam alleged the IRS failed to consider. The court also noted that with respect to the ten-percent nominal portion threshold, it is merely a safe harbor and not a cut-off that would exclude employers from eligibility. The court further stated that while "it is true that any classification based on a percentage or amount 'is necessarily somewhat arbitrary,'…[t]hat does not mean, however, that the agency's determination is arbitrary and capricious within the meaning of the APA."

Beyond Statutory Authority
On the last claim of the IRS lacking the authority to issue legislative rules, the court simply noted that the court had already determined that the Notice was an interpretive rule, not a legislative one. Furthermore, StenTam's arguments under *Loper Bright* and the major questions doctrine were also found to be irrelevant since the Notice does not depart from the statute and is not entitled to deference.

Implications
StenTam is currently appealing this decision to the Ninth Circuit Court of Appeals, so the fate of Notice 2021-20 is not yet settled. *Stenson Tamaddon, LLC v. IRS, et al.*, No. 2:24-cv-01123-SPL, 2025 BL 214447, *appeal docketed*, No. 25-4217 (9th Cir. Jul. 8, 2025). Regardless, even if a future court enjoins the IRS from referring to Notice 2021-20, the Notice still represents the agency's interpretation of the statute, and taxpayers must be prepared to argue that their own interpretation is more persuasive. This is true even now -- while Notice 2021-20 may not be a legislative rule and taxpayers are free to take a position contrary to the IRS's position as described therein, they must nevertheless put forth an argument for eligibility that is grounded in the statute.

JPM Restaurant, LLC v. United States
The opinion in *JPM Restaurant, LLC v. United States,* No. 1:24-cv-357, 2025 BL 270126 (E.D. Tenn. Jul. 31, 2025), is based entirely on a procedural matter, but may be of great interest to any taxpayers currently contemplating whether to file suit against the IRS to seek refund of their ERC claim. Plaintiff, a restaurant business, filed a total of $338,132.56 in ERC claims for the six calendar quarters beginning with the second calendar quarter of 2020 through the third calendar quarter of 2021. The IRS had not issued any refunds within six months of plaintiff filing a claim; plaintiff filed a refund suit on November 11, 2024. The IRS Office of Chief Counsel referred the case to the Department of Justice ("DOJ") for defense on January 7, 2025.

On February 18, 2025, the IRS approved the payment of plaintiff's ERC claims for the five calendar quarters beginning with the third calendar quarter of 2020 through the third calendar quarter of 2021. However, because the claims were approved in error, the IRS stopped the refunds from being issued. Plaintiff moved for summary judgment claiming that since the IRS approved the payments, the government no longer had a basis for withholding the payment.

In denying the plaintiff's motion for summary judgment, the court explained that under §7122 of the Code only "the Attorney General or his delegate may compromise any civil or criminal case arising under the internal revenue laws after reference to the DOJ for prosecution or defense." Therefore, once the case was referred to the DOJ on January 7, 2025, only the DOJ had the power to compromise any tax liabilities or concede any claims. It did not matter that the IRS approved the plaintiff's claims the following month since the IRS lacked the authority to approve the claims at that point. Thus, as a matter of law, the court denied plaintiff's motion for summary judgment because plaintiff had not met its burden of proving it was entitled to a refund.

Many taxpayers may be contemplating whether to file suit given the delays in processing ERC claims; however, that should be weighed against the possibility that a refund suit would only incur additional costs to receive a payment that may eventually get approved by the IRS anyway. As demonstrated by this case, had plaintiff waited to file suit, they

would've received the bulk of the refund claim in February 2025. Now, plaintiff may be forced to endure longer delays as the litigation progresses and may lose out entirely if it goes to trial and the court determines that they are not entitled to the refund. Taxpayers who receive a letter of disallowance will, of course, be in a different position and will need to weigh whether pursuing litigation to prove eligibility will be worth it.