Calls to End the Employee Retention Credit Gain Support

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By Caitlin Mullaney

A legislative proposal to put an end to the processing of employee retention credit claims has been met with strong support from policy groups.

Garrett Watson of the Tax Foundation told *Tax Notes* that cleaning up and closing out ERC claims filed after January 31, 2024, "would be a reasonable way to reduce tax fraud while also reducing one source of increasing budget deficits over the past 24 months."

The ERTC Repeal Act of 2024 (S. 5079), introduced September 18 by Sen. Mitt Romney, R-Utah, would apply a retroactive filing deadline of January 31 for ERC claims and increase penalties for fraud related to claims.

Rachel Snyderman of the Bipartisan Policy Center said the cost of the ERC — which was created by the Coronavirus Aid, Relief, and Economic Security Act to help businesses pay their employees during the COVID-19 pandemic — "has outlived its purpose in part due to fraudulent and improper claims."

The provisions of the bill were included in the bipartisan Tax Relief for American Families and Workers Act of 2024 (H.R. 7024), which was introduced by Senate Finance Committee Chair Ron Wyden, D-Ore., and House Ways and Means Committee Chair Jason Smith, R-Mo., and passed the House in January but failed to pass in the Senate.

Adam N. Michel of the Cato Institute said the ERTC Repeal Act "is simply good governance and should be adopted immediately. Passing this bill alone has the added benefit of decoupling the [ERC] reforms from the rest of the Smith-Wyden tax bill (which includes several other tax credits that should not be expanded)."

"The large number of amended returns is economically damning. There can't be any employment incentive for taxpayers who submit claims on amended returns upon advice from third-party consultants years after the pandemic ended. If the credit didn't change behavior, it's simply a windfall" for business owners and tax return preparers, Michel told *Tax Notes* in an email.

Snyderman said the legislative effort by Romney and the bill's cosponsors — Senate Finance Committee member Thom Tillis, R-N.C., and Sen. Joe Manchin III, I-W.Va. — "is an example of lawmakers working together to find responsible and robust fiscal offsets."

"In a rare moment of widespread agreement in Washington, almost all members of Congress agree that we should eliminate the ERTC — which has been pervaded by fraud and cost nearly 200 percent more than originally projected," Romney said in a September 18 release.

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Limiting the ERC is just one of many provisions that could be ripe for inclusion in an end-of-year tax extenders package.

"That would be definitely something I feel very passionate about — I opined on it a little bit earlier this year, so I would definitely throw it in the mix," Tillis told *Tax Notes*.

The Joint Committee on Taxation originally estimated the cost of the ERC at $55 billion but increased its estimate to $78 billion with extensions of the credit. In January the Committee for a Responsible Federal Budget projected that the ERC may end up costing over $550 billion.

"With the national debt on course to reach a new record as a share of the economy in just three years, it should be a common-sense measure to repeal this credit, use the savings to reduce the deficit, and save the American taxpayers $80 billion over a decade," Maya MacGuineas of the Committee for a Responsible Federal Budget said in a September 19 statement.

Watson said implementing changes to the ERC could harm businesses that are relying on legitimate claims.

"However, the core value and intent of the ERTC was to ensure businesses could make it through the pandemic, which we are now clearly behind in terms of economic impacts," Watson said. "It's better to ensure that the cost growth associated with these ERTC claims is constrained given the explosive cost growth compared to initial estimates of the ERTC."

Cady Stanton contributed to this article.

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