



# Current Federal Tax Developments

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Kaplan Financial Education



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## This Week We Look At:

OIRA is no longer going to review IRS regulations before issuance

IRS updates list of automatic accounting method changes

Proposed regulations issued on transfers of certain energy credits and DirectPay for certain credits

What can go wrong with an employee retention credit refund claim?

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## OIRA No Longer Reviewing Treasury Regulations Before Publication



- Memorandum of Agreement, The Department of the Treasury and the Office of Management and Budget Review of Treasury Regulations under Executive Order 12866, June 9, 2023
  - In 2018, a similar MOA was issued to require such reviews
  - Argument was that it gave more transparency to IRS regulatory process, complaint was it slowed necessary guidance
  - Now we are going back to what we had in 2018

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<https://www.whitehouse.gov/wp-content/uploads/2023/06/Treasury-OMB-MOA.pdf>



## IRS Publishes Updated List of Accounting Method Changes



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- Revenue Procedure 2023-24, June 15, 2023
  - Must have permission of the IRS to change accounting methods
    - Default (but not used most often) is to have to file a Form 3115 and wait for approval
    - IRS publishes a list of automatic changes that only require a Form 3115 with the return
  - Republishes the list every so often
  - Did extend period for §451(b) and (c)

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<https://www.irs.gov/pub/irs-drop/rp-23-24.pdf>

## Proposed Regulations Issued on Transfers and DirectPay of Energy Credits



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TD 9975, June 21, 2023

- IRA 2022 added option to
  - Take payment for energy credits for certain tax exempt organizations
  - Transfer credits to other taxpayers for other entities
- Different list of credit for each
- Proposed regulations issued
- Will require registration

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<https://public-inspection.federalregister.gov/2023-12797.pdf>

## What Can It Hurt to File an ERC Refund Claim?



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- Question has been asked by employers regarding filing for the employee retention tax credit
- Should they just go with a party that promises they qualify without doing additional due diligence
- That is, what could it hurt? You won't get any if you don't ask
- Will look at that issue with an example claim and then later IRS reversal
- Not saying all claims are flaky - but employer have to do their due diligence

## What Can It Hurt to File an ERC Refund Claim?

### Employee Retention Credit - What Do You Have to Lose? (More Than You Think)

#### *Example*

The Initial Upside 20 Employees All Quarters Maximum

#### Qualifying Wages

2020 Wages	200,000
2021 Wages	600,000
<b>Total</b>	<b>800,000</b>

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## What Can It Hurt to File an ERC Refund Claim?

<b>ERC Credit</b>	
2020 - 50% Credit	100,000
2021 - 70% Credit	420,000
<b>Total</b>	<b>520,000</b>
<b>Interest on Due on Refund (3 years 7%)</b>	
	<b>121,500</b>
<b>Amended Tax Returns - Assume 29.6% Net Rate*</b>	<b>153,920</b>
<b>Interest Due on Amended Return Payment</b>	<b>35,964</b>
*Actual rate would likely need to consider state income taxes and possible effect on self-employment taxes	
<b>Net Tax Benefit (Ending Net Good News)</b>	<b>451,616</b>
<b>20% Contingent Fee for ERC Study</b>	<b>104,000</b>
<b>Overall Net Benefit</b>	<b>347,616</b>





## What Can It Hurt to File an ERC Refund Claim?

### The Worst Case Downside

Repayment of credit (no qualification shown)	(520,000)
Interest due on underpayment (5 years)	(217,890)
Penalty for erroneous refund claim	(104,000)
Refund of fee (consultant insolvent)	-
Refund of amended taxes paid (statute closed)	-

**Cash Outflow in Five Years (841,890)**

**Net Cash Outflow\* (494,274)**

\*Assume five year statute tripped IRC §6532(b)

## What Can It Hurt to File an ERC Refund Claim?



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- Clearly this is not a risk free operation
  - If the employer uses an overly aggressive consultant that begins losing cases against the IRS, unlikely they can make good on any promises to protect the employer
  - The key issue is the need to consider more than simply what the consultant promises for refund to be received

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