



Current Federal Tax Developments

September 18, 2023

Kaplan Financial Education

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This Week We Look At:

Just having a CPA prepare a taxpayer's return does mean the taxpayer will get reasonable cause relief for assessments

IRS announces halt to processing of new ERC claims until after 2023, will slow processing of claims currently in progress

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<https://www.currentfederaltaxdevelopments.com>



Just having a CPA prepare a taxpayer's return does mean the taxpayer will get reasonable cause relief for assessments

IRS announces halt to processing of new ERC claims until after 2023, will slow processing of claims currently in progress

No Reasonable Cause Relief for Erroneous Return Positions As No Advice Given



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- *Johnson v. Commissioner*, TC Memo 2023-116, 9/13/23
 - Tax return in question contained a number of errors
 - Biggest error - depreciation of buildings
 - Tax years before the court begin with 2015
 - Acquired commercial buildings in 2006
 - Depreciated them over 7 years, not 39
 - How could this matter? - it's an accounting method is how

<https://www.currentfederaltaxdevelopments.com/blog/2023/9/14/no-reasonable-cause-relief-for-penalties-related-to-returns-with-multiple-significant-problems>

No Reasonable Cause Relief for Erroneous Return Positions As No Advice Given



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- *Johnson v. Commissioner*, TC Memo 2023-116, 9/13/23
- Next largest errors for charitable contribution documentation
 - Gave noncash contributions of \$152,500
 - Building valued at \$150,000
 - Fencing valued at \$2,500
 - Did not obtain a qualified appraisal for building
 - Did not produce a contemporaneous written acknowledgement for either

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- *Johnson v. Commissioner*, TC Memo 2023-116, 9/13/23
 - Claimed deduction for same interest twice
 - Properly claimed \$44,806 as home mortgage interest on Schedule A
 - But claimed the same amount as interest on a commercial property on Schedule E
 - Reported \$30,813 of Social Security instead of the actual \$35,492
 - Conceded adjustments related to each of these items before trial

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- *Johnson v. Commissioner*, TC Memo 2023-116, 9/13/23
 - Wanted the court to remove a 20% accuracy related penalty under IRC §6662 under reasonable cause relief found at IRC §6664(c)(1)
 - How IRS argued §6662 applied:
 - Negligence (IRC §6662(b)(1))
 - Substantial understatement (IRC §6662(b)(2))
 - Gross/substantial overstatement of contribution (IRC §6662(e))

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- *Johnson v. Commissioner*, TC Memo 2023-116, 9/13/23
 - §6662(e) was first penalty option looked at
 - Is not eligible for reasonable cause relief (IRC §6664(c)(3))
 - But found no evidence of value had been produced by either party - so IRS had not proven the values were improper
 - Not deductible isn't the same thing
 - So could look at reasonable cause for other two justifications

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- *Johnson v. Commissioner*, TC Memo 2023-116, 9/13/23
- Reliance on the advice of a tax professional will qualify but must show:
 - Adviser was a competent professional with sufficient expertise
 - Taxpayer provided all necessary and accurate information and
 - Taxpayer actually relied in good faith on the adviser's judgment

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- *Johnson v. Commissioner*, TC Memo 2023-116, 9/13/23
- Court found the taxpayer met the first two tests, but never showed any advice was sought or given
 - No evidence CPA told them 7 year life was appropriate for the building
 - CPA denied she told them they could use the assessor's valuation rather than a qualified appraisal for the contribution
 - No evidence CPA advised on other items

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- *Johnson v. Commissioner*, TC Memo 2023-116, 9/13/23
- Merely having a CPA prepare the return does not meet the requirements for reasonable basis relief
 - Taxpayer has a *nondelegable* duty to review return for potential issues
 - Court could not accept the taxpayer, with ½ century of experience in real estate, would have missed these issues if he had reviewed the return before filing

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- *Johnson v. Commissioner*, TC Memo 2023-116, 9/13/23
- What about the CPA and preparation standards?
 - Wasn't what the court was looking at
 - There appear to be a number of areas of exposure for this CPA
 - Very possible client didn't want the depreciation corrected or to get the necessary documentation for the contribution

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IRS Halts Processing of New ERC Claims, Slows Down Handling of Those in Process



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- “To protect taxpayers from scams, IRS orders immediate stop to new Employee Retention Credit processing amid surge of questionable claims; concerns from tax pros,” IR-2023-169, September 14, 2023
 - Halt processing of new claims until 2023
 - Also published
 - Checklist for ERC qualification
 - Updated document of red flags for ERC claims

<https://www.currentfederaltaxdevelopments.com/blog/2023/9/14/irs-pauses-processing-of-new-erc-claims-for-the-remainder-of-2022-advises-employers-to-be-wary-of-aggressive-marketing-for-filing-credit-claims>

ERC Eligibility Checklist:

<https://www.irs.gov/newsroom/employee-retention-credit-eligibility-checklist-help-understanding-this-complex-credit>

Updated red flags document:

<https://www.irs.gov/newsroom/red-flags-for-employee-retention-credit-claims-irs-reminds-businesses-to-watch-out-for-warning-signs-of-aggressive-promotion-that-can-mislead-people-into-making-improper-erc-claims>

IRS FAQs on ERC

<https://www.irs.gov/coronavirus/frequently-asked-questions-about-the-employee-retention-credit>



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- Per the IRS, the halt is meant to protect small businesses from falling victim to unscrupulous promoters
- For those in process, will continue to be processed but subject to a stricter review
 - Standard processing goal will go from 90 days to 180 days
 - Much longer if claim faces a review or audit
 - IRS may seek additional documentation from the taxpayer

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- Directs those considering filing a claim to review IRS guidance and tools (including expanded FAQs and checklist)
- IRS developing a settlement program that will be available for repayments this fall
- Also developing a program to allow the withdrawal of a claim already filed but for which review is not complete
- Warns of risks to employers who file unsupported claims - repayment, penalties and interest

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- Guidance
 - For those who have filed a claim
 - No way to speed these claims up
 - Will be subject to additional scrutiny
 - Carefully review the program guideline with a trusted tax professional (not the promoter) and consider withdrawal if not justified
 - Specifically calls out improper supply chain based claims

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- Guidance
 - Already received a refund but are concerned they don't qualify for it
 - Watch for details of the settlement program
 - Will allow employer to avoid penalties and future compliance action
 - Considering options for a business that had a promoter contingency fee paid out

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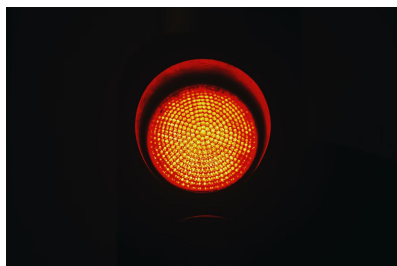


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- Guidance
 - Employers considering filing a claim
 - Consult with a tax professional not affiliated with a firm promoting or marketing ERC claims
 - Review Q&A guide
 - Advisers should advise clients that if a claim is clearly valid, it should still be filed. But, as was noted, don't base that belief solely on the word of someone being paid a contingent fee based on the size of the refund

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