



# Current Federal Tax Developments

November 27, 2023

Kaplan Financial Education



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## This Week We Look At:

IRS delays certain parts of expanded Form 1099-K filings added in ARPA to 2024 tax years

FinCEN enters the ERC fraud enforcement game, publishing 10 red flags for financial institutions to use to identify suspicious transactions that may need to be reported to FinCEN

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<https://www.currentfederaltaxdevelopments.com>



## IRS Again Pushes Back Expanded Form 1099-K Filings for Third-Party Networks



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- Notice 2023-74, Fact Sheet 2023-27, November 21, 2023
  - Third-party settlement organizations (TPSOs) were required by ARPA to begin reporting on Form 1099-K for payments that totalled more than \$600 for goods and services beginning in 2022
  - In Notice 2023-10 the IRS pushed the start date back to 2023 activity
  - Now the IRS has pushed the filings back to 2023

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<https://www.currentfederaltaxdevelopments.com/blog/2023/11/22/form-1099-k-expanded-third-party-network-reporting-delayed-once-again-by-the-irs>

## IRS Again Pushes Back Expanded Form 1099-K Filings for Third-Party Networks



Photo by [Tech Daily](#) on [Unsplash](#)

- Notice 2023-74, Fact Sheet 2023-27, November 21, 2023
  - Does not change the rule for payment card transactions (Visa, Mastercard, AMEX, etc.)
  - Also have to file if performed backup withholding under IRC §3406(a) for payments in excess of \$600
  - In a separate Fact Sheet the IRS announced its intention to phase-in reporting, next year reducing the trigger to \$5,000 from its current \$20,000

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## FinCEN Gets Into ERC Enforcement, Announcing 10 Red Flags for Financial Institutions to Watch For



Photo by [Martin Sanchez](#) on [Unsplash](#)

- “FinCEN Alert on COVID-19 Employee Retention Credit Fraud,” FIN-2023-Alert007, November 22, 2023
- FinCEN issues an Alert to financial institutions related to the Employee Retention Credit
- Types of Frauds Discussed are:
  - Use of Fabricated or Dormant Entities
  - Ineligible Businesses Where the Owner is Aware the Business Does Not Qualify
  - Aggressive Third-Party Promoters

<https://www.currentfederaltaxdevelopments.com/blog/2023/11/22/fincen-issues-alert-with-10-red-flags-financial-institutions-can-use-to-identify-reportable-suspicious-transactions-related-to-erc-fraud>

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- “FinCEN Alert on COVID-19 Employee Retention Credit Fraud,” FIN-2023-Alert007, November 22, 2023
  - Fraudulent Receipt and Use of ERC Funds
  - Red flags indicators
    - To assist financial institutions in identifying suspicious transactions
    - Notes that must consider totality of circumstances
    - But also discusses required reporting

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  - Red flags:
    - A business account receives more than one ERC check deposit over multiple days.
    - Small business accounts receive an ERC check deposit that is not commensurate with the size of the business, the number of employees, and the volume of transactions.

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  - Red flags:
    - A large ERC is deposited into a business account and is subsequently transferred using P2P services or to an online banking institution, or withdrawn as cash at an ATM. Funds may be subsequently transferred from the account into separate accounts or payments may be made to new businesses that a customer has not had transactions with prior to receiving an ERC check deposit.

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  - Red flags:
    - The account receiving an ERC check deposit has no deposits other than Treasury-issued checks, or the account has no regular business transactions.
    - A customer attempts to deposit an altered Treasury ERC check, or financial institutions are unable to verify the validity of the checks that customers attempt to deposit.

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  - Red flags:
    - The ERC check is deposited into a new business account that did not exist in 2020 or 2021.
    - A new business account is created for an established business, but no other business activity occurs in the account except the deposit of the ERC. This may be indicative of identity theft, where the established business was used as a fraudulent front to file for the ERC.

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  - Red flags:
    - A dormant business account suddenly receives an ERC check deposit.
    - An ERC is deposited into a business account with no payroll history.
    - A customer reports or provides documents indicating that their ERC was obtained by a third-party firm whose credentials cannot be verified or is the subject of adverse media.

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