New Enforcement Measures for the Employee Retention Credit Under the One Big Beautiful Bill

By Steven Toscher, Robert Horwitz and Philipp Behrendt

On July 3, 2025, the House of Representatives narrowly passed the Republicans' sweeping reconciliation package, the *One Big Beautiful Bill*, by a 218-214 vote, which President Trump signed on July 4. The legislation marks the most extensive tax package since the 2017 Tax Cuts and Jobs Act (TCJA), making many of the TCJA's temporary provisions permanent and introducing a new set of incentives and enforcement priorities.

While the Bill headlines with provisions like permanent lower individual tax rates, a $40,000 SALT cap through 2029, expanded business expensing, and tip income tax relief, tax professionals should take particular note of a new section buried in the back: Section 70605, which establishes new enforcement provisions relating to the COVID-era Employee Retention Credit (ERTC) under IRC § 3134.

For anyone advising clients on ERTC claims—or considering doing so retroactively—the new legislation has many new enforcement tools for the IRS. It seeks to close the door on any remaining refund claims and clamp down on promoters and erroneous claims. Below is a summary of the changes, along with some preliminary observations.

1. Section 70605: Enforcement Provisions for COVID-Related ERTC

The COVID-ERTC provisions are contained in § 70605 of the Bill. The key elements include a strict filing deadline, promoter penalties, expanded IRS assessment authority, and a longer statute of limitations. Each provision is detailed below:

(a) Penalty for Promoters Who Fail Due Diligence

Taxpayers are no longer the sole targets. A $1,000 penalty now applies per failure to meet new due diligence standards for "COVID–ERTC promoters." These standards are to be similar to those under IRC § 6695(g), which imposes due diligence requirements on preparers of returns claiming the Earned Income Tax Credit (EITC) and other refundable credits.

Key Details:

- Applies only to assistance involving actual COVID-ERTC documents that constitute, or relate to, a return or claim for refund.
- The penalty is an assessable penalty under IRC §§ 6695 and 6201, which allows it to be assessed without deficiency procedures.

(b) Definition of a "COVID–ERTC Promoter"

The bill targets specific categories of preparers, advisors, and refund shops based on their revenue model and volume of ERTC-related work.

Promoters include those who:

- Charge or receive fees based on the size of the refund and derive more than 20% of gross receipts from ERTC-related services in the current or prior tax year.
- Derive (i) more than 50% of total gross receipts from ERTC services regardless of fee structure, or (ii) more than 20% of gross receipts *and* more than $500,000 in ERTC-related revenue.

There is one exemption:

- Certified Professional Employer Organizations (PEOs) under IRC § 7705 are excluded from this promoter definition.

Aggregation rules apply to affiliated entities under IRC §§ 52, 414(m), or (o), which are grouped when determining thresholds, making it harder to avoid promoter status via structuring or entity spinoffs.

Short tax years are handled by proxy: if the tax year is under 12 months, the analysis looks at either the actual year or substitutes a calendar-year equivalent.

(c) What Counts as a COVID–ERTC Document?

The definition is broad:

- Includes any return, claim, affidavit, or "other document" related to the eligibility for or amount of a credit or advance payment under § 3134.

This scope allows IRS enforcement even if a promoter only worked on eligibility analysis or documentation—not just the return itself.

(d) Hard Stop: No Claims Allowed After January 31, 2024

In a sweeping procedural change, the Bill bars any ERTC credit or refund after the enactment of the Bill unless a claim was filed on or before January 31, 2024, regardless of whether the usual statute of limitations would otherwise allow a later filing.

This provision:

- Applies retroactively, nullifying otherwise timely claims under IRC § 6511 if they weren't filed by January 31, 2024.

Expressly overrides existing statute of limitations provisions. In other words, if a business discovered eligibility after January 31, it is out of luck—even if the refund would have been timely under standard rules.

This provision is likely to be challenged. Practitioners must ensure clients understand that no new refund claims are allowed under § 3134 and any claim for refund or credit filed after January 31, 2024, is barred.

(e) Extended Statute of Limitations for IRS Assessments

IRC § 3134(l) is amended to give the IRS six years to assess any ERTC-related liability, aligning it with the six-year window for substantial omissions of income.

The six-year clock starts on the latest of:

- The date of filing of the original return that includes the calendar quarter "with respect to which such credit is determined,"
- For any period ending with or within a calendar year, April 15 of the succeeding calendar year if the return is filed before April 15 of such succeeding calendar year, or
- The date the claim was made.

Section 70605(e)(2) provides important relief for taxpayers whose ERTC claims under section 3134 are later disallowed. Specifically, if a taxpayer did not claim a deduction for wages because those wages formed the basis of an ERTC refund claim, and that claim is subsequently denied, the statute of limitations for filing a claim for refund or credit of income tax attributable to those disallowed wages is extended. The extension remains open until the expiration of the assessment period for the ERTC refund claim.

(f) Expansion of § 6676: Penalty for Erroneous Refund Claims

Congress broadened the penalty for excessive refund claims without reasonable basis by amending IRC § 6676 to apply not just to income tax but also to employment tax refund claims.

Previously, many ERTC refund claims—technically employment tax refunds—were outside the penalty's reach. Not anymore.

Now, anyone filing an employment tax refund claim that lacks reasonable basis may face a 20% penalty under § 6676.

(g) Effective Dates and Retroactivity Issues

The law is clear on some dates, less so on others:

- Promoter penalties apply to assistance rendered after enactment. This may severely limit the reach of these new penalties.
- The January 31, 2024, filing deadline is effective immediately upon enactment.
- Statute of limitations extension and penalty expansion apply only to future assessments and claims, respectively, but retroactive effects may emerge based on wording like "shall apply to claims for refund *after* the date of the enactment of this Act."

This ambiguity—particularly in subsection (f)—may require future guidance or litigation. For example, does the new penalty apply to any claim processed after enactment or only those submitted after enactment?

(h) Regulatory Authority

Treasury is authorized to issue regulations and other guidance "as may be necessary or appropriate to carry out the purposes of § 70605." This catch-all grants the IRS flexibility but leaves open many procedural questions.

2. Final Observations

The passage of the *One Big Beautiful Bill* marks not only a new chapter in tax cuts and economic incentives but also new tools for the IRS to deal with abusive ERTC claims.

Congress has drawn a bright line with a hard deadline, an enhanced enforcement regime, and an expanded statute of limitations—all aimed at recovering ERTC claims which have already been paid over the last few years.

If your client didn't file a claim for credit or refund by January 31, 2024, the window is now closed-it cannot obtain a refund or credit even if it would otherwise be entitled to one. If your client already filed and received a refund, it faces an extended statute of limitations on assessment for the IRS to get the money back

And if you're a tax professional whose firm generated substantial ERTC revenue, you will need to reassess your due diligence procedures, documentation practices, and fee arrangements.

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