Delays in Receiving Pandemic Relief Benefits

Cross References

• TIGTA Report Number 2022-46-059, August 31, 2022

The Treasury Inspector General for Tax Administration (TIGTA) recently issued a report entitled: "Delays Continue to Result in Businesses Not Receiving Pandemic Relief Benefits." The report describes what TIGTA found and what it recommends.

Under the Families First Coronavirus Response Act (FFCR Act) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) signed into law in March of 2020, employers could claim employer tax credits for paid sick and family leave, and the Employee Retention Credit. Employers could also defer the payment of certain employment taxes.

In general, employers could claim these pandemic relief benefits on their Form 941, *Employer's Quarterly Federal Tax Return* (or similar federal employment tax return such as Form 944 or Form CT-1). Employers entitled to these benefits that did not claim them on their original Form 941, or that wanted to increase the amount originally claimed could file Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund,* to reduce their tax liability and receive a direct payment resulting from any refundable credit amount.

The timing of these various legislative provisions increased the number of Forms 941-X the IRS received from employers that wished to amend their original Form 941. As of February 1, 2022, there were 447,435 Forms 941-X still waiting to be processed.

The TIGTA report states continued processing delays have prevented businesses from receiving pandemic relief benefits. The IRS did not begin processing claims for qualified Sick and Family Leave Credits and the Employee Retention Credit for 12 months and claims for Social Security tax deferral for 16 months after the pandemic relief legislation was enacted. This was due to a lack of updated programming and procedural guidance. A lack of training, erroneously suspended claims, and a lack of prioritization of claims contributed to additional delays processing claims.

The Infrastructure Investment and Jobs Act repealed the Employee Retention Credit for wages paid after September 30, 2021, with the exception of a recovery startup business (which still qualified for the credit for wages paid before January 1, 2022).

TIGTA identified additional concerns with the IRS's processes to implement the retroactive termination of the Employee Retention Credit. Specifically, the IRS does not have processes to verify a recovery startup business or effective controls to deny the Employee Retention Credit for non-recovery startup businesses. To qualify as a recovery startup business, generally, an employer had to begin operations after February 15, 2020, and have annual gross receipts that did not exceed $1 million over a certain three-taxable-year period.

In addition, amended returns with Employee Retention Credit claims were not referred to Examination for review as required. TIGTA projected that 153 out of 209 amended returns with nonrefundable employer credit claims that met the referral criteria were not referred to Examination as required resulting in $45 million in potentially erroneous nonrefundable employer tax credits being allowed. This occurred because the IRS's internal guidance did not include processes to refer claims with significant refundable employer credits to Examination for review. In addition, tax examiners were not always referring amended returns without a refundable tax credit as required.

TIGTA made nine recommendations to the IRS, including developing plans to prioritize processing backlogged claims, updating Examination referral criteria to include Forms 941-X with refundable credit claims, and developing a systemic process to identify Forms 941-X that meet referral criteria and alerting the IRS employee when processing the claim of the need to refer the return to Examination for review.

The IRS agreed with eight of the nine recommendations. The IRS did not agree additional training was needed for employees related to referring Forms 941-X to Examination for review. Management stated they completed subsequent reviews of completed Form 941-X claims and determined no additional training was needed. TIGTA said, however, that the IRS's subsequent reviews do not address the concerns identified in their report. Accounts Management employees cited unclear guidance and training as to why 73 percent of claims were not referred when required.

The full report is available at:
www.treasury.gov/tigta