

Case 24-5c

In Heaven Health Care Corporation

Background

The Employee Retention Credit (ERC), a fully refundable payroll tax credit that was enacted under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), provides financial incentives to eligible businesses to retain their workforce through the period of financial hardship resulting from COVID-19. An employer is eligible for the ERC if it operated a trade or business in 2020 or 2021 and experienced either of the following conditions:

- A full or partial suspension of its trade or business during any calendar quarter in the covered period between March 12, 2020, and September 30, 2021 (for most entities), as a result of COVID-19-related government orders limiting commerce, travel, or group meetings (the “governmental order test”).
- A significant decline in gross receipts for the years 2020 and 2021 calculated by using certain thresholds and comparisons to the same quarter in 2019 (the “gross receipts test”).

As of 2022, federal funds allocated to the ERC program remain, and companies who previously had not applied for these benefits are reconsidering whether they would have been eligible to apply for ERC payments.

Case Study

In Heaven Health Care Corporation (“In Heaven” or “the Company”) is a December 31 year-end not-for-profit (NFP) community health care clinic. It had more than 100 full-time employees during 2019; thus, in 2020 it was only eligible to claim the credit for wages paid to employees when they were not providing services as a result of circumstances related to COVID-19. In Heaven had not previously applied for ERC payments since it did not have proper documentation to support receiving the ERC. On July 1, 2022, In Heaven engaged CreditCollect LLC (“CreditCollect”), a consulting firm, to assess the documentation supporting In Heaven’s eligibility for the ERC and to calculate the amount of the ERC. CreditCollect’s Web site states that it is an expert in this area and has filed ERC claims for over 10,000 NFP entities. The Company has clear records that indicate which employees were providing services during 2020, including the period in which the Company had a significant decline in gross receipts, as calculated by CreditCollect, that would support applying for a credit for \$150 million. CreditCollect indicated to the Company that for the 2021 period, the documentation was subject to potential challenge; however, CreditCollect reassured management that it should apply for an ERC for the additional \$50 million claim for the 2021 period. On the basis of its experience with the Internal Revenue Service’s (IRS’s) administrative process, CreditCollect advised In Heaven that the ERC would not be denied as the likelihood of the IRS performing a review was low and In Heaven would be receiving the ERC cash credit according to the claim filed. As a result of the consultation with CreditCollect, on

August 1, 2022, In Heaven applied for \$200 million in ERC payments for the 2020 and 2021 periods. On January 31, 2023, In Health received \$200 million in ERC payments. In accordance with IRS regulations, the IRS has up to three years to review the claims from the date of filing of the ERC claim (i.e., August 1, 2025, for In Heaven), which represents the statute of limitations for the ERC. If the Company's eligibility for the ERC is not appropriately supported, the IRS has the right to demand that the Company refund the ERC. The Company is preparing its December 31, 2022, annual financial statements, which will be issued on March 29, 2023. As of the issuance date, the IRS has not indicated whether it would review In Heaven's ERC claim.