



# Current Federal Tax Developments

May 13, 2024

Kaplan Financial Education



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## This Week We Look At:

IRS gives update on final results for ERC voluntary compliance program and discusses the future

Taxpayer's contract did not make payment contingent on success of research

DOJ announces CPA firm barred from promoting CRAT/single premium annuity shelter

IRS provides information on CAF "under review status" and changes to requesting transcripts

2

<https://www.currentfederaltaxdevelopments.com>



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## IRS Gives Update on ERC Voluntary Disclosure Program and Path Forward



Photo by [Alexander Mills](#) on [Unsplash](#)

- Nathan Richman, “ABA Section of Taxation Meeting: Incorrect ERC Claims Grow to \$1B in Voluntary Disclosure Program,” *Tax Notes Today Federal*, May 7, 2024
- Carolyn Schenck, IRS national fraud counsel, spoke at the ABA Section of Taxation meeting on the ERC voluntary disclosure program
- Now have over \$1 billion in voluntary disclosures under the program, up from the \$225 million reported on the last day of the program on March 22

<https://www.taxnotes.com/tax-notes-today-federal/penalties/detailed-foreign-trust-gift-regs-address-reporting-and-penalties/2024/05/08/7jhh1> (subscription required)



## IRS Gives Update on ERC Voluntary Disclosure Program and Path Forward



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- Nathan Richman, “ABA Section of Taxation Meeting: Incorrect ERC Claims Grow to \$1B in Voluntary Disclosure Program,” *Tax Notes Today Federal*, May 7, 2024
  - Had a large number of claims submitted in the last week of the program that the IRS is still working to process
  - Under this program, taxpayers could retain 20% of their claimed credit
  - However, no criminal prosecution protection was offered as part of the program

<https://www.taxnotes.com/tax-notes-today-federal/penalties/detailed-foreign-trust-gift-regs-address-reporting-and-penalties/2024/05/08/7jhh1> (subscription required)



## IRS Gives Update on ERC Voluntary Disclosure Program and Path Forward



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- Nathan Richman, "ABA Section of Taxation Meeting: Incorrect ERC Claims Grow to \$1B in Voluntary Disclosure Program," *Tax Notes Today Federal*, May 7, 2024
  - Have continued to receive general voluntary disclosure filings following the end of the program
  - There are no current plans to reopen the program, however if they do reopen it the terms will be less favorable (as most would expect)

<https://www.taxnotes.com/tax-notes-today-federal/penalties/detailed-foreign-trust-gift-regs-address-reporting-and-penalties/2024/05/08/7jhh1> (subscription required)



## Research Credit Denied As Taxpayer's Payment Was Not Contingent on the Success of the Research



Photo by [Leon Seibert](#) on [Unsplash](#)

- *Meyer, Borgman & Johnson, Inc. v. Commissioner*, CA8, Docket No. 23-1523, May 6, 2024
  - Tax Court had found the taxpayer's research was funded research under IRC §41(d)(4)(H) and not eligible for the credit
  - To be allowed a credit, the regulations require that payment for research is "contingent on the success of the research."

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/eighth-circuit-affirms-denial-firms-research-tax-credits/7jhfp>



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- *Meyer, Borgman & Johnson, Inc. v. Commissioner*, CA8, Docket No. 23-1523, May 6, 2024
  - Contract required firm to create a design:
    - That included all of the items the owner required,
    - Complied with all of the pertinent codes and regulations,
    - Would result in a structurally sound building without being so over-engineered as to compromise the construction budget, and
    - Was sufficiently detailed that a contractor could follow it and successfully construct it.

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/eighth-circuit-affirms-denial-firms-research-tax-credits/7jhfp>

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- *Meyer, Borgman & Johnson, Inc. v. Commissioner*, CA8, Docket No. 23-1523, May 6, 2024
  - Taxpayer argued that those requirements made the payment contingent on the success of the research
  - Court of Appeals found that none of the conditions cited were specifically tied to the success of research, unlike the ones found in *Fairchild Industries, Inc. v. United States*, 71 F.3d 868, 874 (Fed. Cir. 1996) that the taxpayer cited
  - Just “general economic risk of investing resources without a commitment to be paid” is still funded research

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/eighth-circuit-affirms-denial-firms-research-tax-credits/7jhfp>





## CPA Barred by Court from Promoting CRAT/Annuity



Photo by [Nadine Shaabana](#) on [Unsplash](#)

- “Court Permanently Bars Missouri CPA from Promoting Charitable Remainder Annuity Trust Tax Scheme,” Department of Justice Press Release, May 6, 2024
  - IRS had issued guidance criticizing a marketed structure
    - Create a CRAT
    - Donate appreciated property to CRAT
    - Sell asset buy annuity
    - Claimed only pay tax based on what gets reported on Form 1099R, never consider capital gain on sale

[https://www.justice.gov/opa/pr/court-permanently-bars-missouri-cpa-promoting-charitable-remainder-annuity-trust-tax-scheme#:~:text=On%20May%203%2C%20the%20U.S.,remainder%20annuity%20trusts%20\(CRATs\)](https://www.justice.gov/opa/pr/court-permanently-bars-missouri-cpa-promoting-charitable-remainder-annuity-trust-tax-scheme#:~:text=On%20May%203%2C%20the%20U.S.,remainder%20annuity%20trusts%20(CRATs))

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- “Court Permanently Bars Missouri CPA from Promoting Charitable Remainder Annuity Trust Tax Scheme,” Department of Justice Press Release, May 6, 2024
  - IRS has also issued proposed regulations to make this a listed transaction
  - But the government is already moving against this program, general sold via tax advisers who were approached by parties pushing the structure
  - Government sued this firm and five other defendants

[https://www.justice.gov/opa/pr/court-permanently-bars-missouri-cpa-promoting-charitable-remainder-annuity-trust-tax-scheme#:~:text=On%20May%203%2C%20the%20U.S.,remainder%20annuity%20trusts%20\(CRATs\)](https://www.justice.gov/opa/pr/court-permanently-bars-missouri-cpa-promoting-charitable-remainder-annuity-trust-tax-scheme#:~:text=On%20May%203%2C%20the%20U.S.,remainder%20annuity%20trusts%20(CRATs))

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  - The other five agreed to the entry of permanent injunctions by the court, but one firm went to trial
  - Firm lost and Court imposed the following:
    - Barred from organizing, promoting, selling or marketing tax schemes involving the use of charitable remainder annuity trusts (CRATs) and
    - Disgorge income from the scheme of \$400,000

[https://www.justice.gov/opa/pr/court-permanently-bars-missouri-cpa-promoting-charitable-remainder-annuity-trust-tax-scheme#:~:text=On%20May%202023%2C%20the%20U.S.,remainder%20annuity%20trusts%20\(CRATs\)](https://www.justice.gov/opa/pr/court-permanently-bars-missouri-cpa-promoting-charitable-remainder-annuity-trust-tax-scheme#:~:text=On%20May%202023%2C%20the%20U.S.,remainder%20annuity%20trusts%20(CRATs))

## IRS is Suspending Some CAFs “Pending Review” and Restrictions Imposed on Requesting Transcripts by Phone



Photo by [Katrin Hauf](#) on [Unsplash](#)

- “CAF Numbers in “Pending Review” Status,” OPR Alert 2024-05, May 8, 2024 and IRS News Release, IR-2024-136, May 8, 2024
  - OPR and the IRS have made changes to deal with concerns over ID Theft from tax pros, allowing unauthorized parties to attempt to obtain confidential taxpayer information based on posing as a representative
  - OPR notice reminds tax pros that the CAF should be considered personally identifiable information (PII) and should be protected as such

<https://content.govdelivery.com/accounts/USIRS/bulletins/39b0dcc>  
<https://www.irs.gov/newsroom/to-protect-against-identity-theft-irs-adds-additional-protections-to-centralized-authorization-file-transcript-delivery-system-changes-designed-to-protect-sensitive-tax-pro-taxpayer-information>  
<https://www.irs.gov/tax-professionals/instructions-to-access-the-secure-object-repository-sor-mailbox> (SOR Mailbox)

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  - OPR also discusses IRS’s authentication process for those claiming to hold a CAF
  - IRS employees have a process to refer any CAF they see as potentially suspicious for further review - these are placed on “pending review” status
  - IRS cannot interact with those holding that CAF until the matter is resolved (CAF likens it to a credit card hold)

<https://content.govdelivery.com/accounts/USIRS/bulletins/39b0dcc>  
<https://www.irs.gov/newsroom/to-protect-against-identity-theft-irs-adds-additional-protections-to-centralized-authorization-file-transcript-delivery-system-changes-designed-to-protect-sensitive-tax-pro-taxpayer-information>  
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  - Notes the risk of a third party obtaining access to a legitimate Form 2848 or Form 8821 sent to a client or third party
  - Notes there will be false positives under this program
  - Practitioner will get a letter from the IRS, generally CID, noting that their account is under investigation

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  - To expedite the process of getting status back:
    - The individuals who receive these letters are asked to verify their identities by sending to the IRS a notarized document that includes pictures of their photo identification.
    - The notarized document should be returned to CI using the mailbox provided in the letter within 30 days from the date of the letter.

<https://content.govdelivery.com/accounts/USIRS/bulletins/39b0dcc>  
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  - To expedite the process of getting status back:
    - The return of the notarized document will then begin a dialogue of verifying their client listings and, if needed, the issuance of a new CAF number. The dialogue may be done over the phone in some cases to accelerate the process.
  - Will be assigned a new CAF number if number confirmed to be compromised

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- Also announced a change to practitioners requesting transcripts by phone
  - Must call PPS to initiate a request
  - Transcripts will be delivered to practitioner’s Secure Object Depository mailbox (in e-services)
  - Other IRS lines are not able to provide transcripts to practitioners

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    - Practitioners will still need to pass authorization and provide the Short Identification Number associated with their SOR mailbox
  - If ID cannot be verified, transcripts will be sent to the taxpayer's address of record

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