



Current Federal Tax Developments

August 5, 2024

Kaplan Financial Education



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This Week We Look At:

Tax bill fails to clear a procedural vote in the Senate, reducing the likelihood we'll see the bill enacted before this Congress leaves office

US District Court declines to issue preliminary injunction requiring the IRS to terminate the ERC claim moratorium, but finds much the court liked in the plaintiff's arguments

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HR 7204 Fails a Procedural Vote to Bring the Matter to a Vote in the Senate



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- HR 7024, Tax Relief for American Families and Workers Act, Senate Vote to Invoke Cloture, August 1, 2024
 - HR 7024 passed the House in January on a bipartisan 357-70 vote - but then stalled in the Senate
 - Senator Crapo (R-ID) was the sole ranking member of the tax writing committees who had not endorsed the bill
 - No progress was made on how to modify the bill to obtain Sen. Crapo's backing (which then would have had to have passed the House again)

https://www.senate.gov/legislative/LIS/roll_call_votes/vote1182/vote_118_2_00230.htm



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- HR 7024, Tax Relief for American Families and Workers Act, Senate Vote to Invoke Cloture, August 1, 2024
 - Senate leadership decided to call to invoke cloture and bring the bill to a vote
 - Such a vote requires a 2/3 majority vote of the Senators voting - without it the bill cannot proceed to a regular vote (where it would only need a majority)
 - The bill contained relief provisions for the research deduction, bonus depreciation and business interest deduction, along with an increase in the refundable tax credit

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- HR 7204, Tax Relief for American Families and Workers Act, Senate Vote to Invoke Cloture, August 1, 2024
 - Not unexpectedly the cloture vote failed (48-44 with 8 not voting)
 - Remember it's relatively close to an election and a huge number of votes are not intended to actually produce new law
 - Similarly, many of the 8 not voting were, shall we say, "strategically" absent
 - Majority Leader Schumer (D-NY) changed his vote to no to preserve his ability to move to reconsider the bill

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- HR 7024, Tax Relief for American Families and Workers Act, Senate Vote to Invoke Cloture, August 1, 2024
 - It's unlikely that we will see this bill pass before the election - if they can get an agreement it's likely going to have to go through the lame duck session
 - It also is very possible (likely even?) that nothing will pass this session, punting this on to the next Congress
 - At what point is it simply too late to pass a retroactive fix?

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District Court Declines to Order the IRS to End ERC Processing Moratorium



Photo by [Yunus Tug](#) on [Unsplash](#)

- *Stenson Tamaddon LLC v. IRS*, US DC Ariz. Docket No. 2:24-cv-01123, July 30, 2024
 - Case brought by an ERC consultant to, among other things, require the IRS to end the moratorium on processing ERC refund claims received after September 14, 2023
 - Claimed the IRS violated provisions of the Administrative Procedures Act in implementing the policy
 - IRS argued that the consultant lacked standing to bring the action and, in any event, the IRS had not violated any applicable requirements

<https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/firm-falls-short-bid-move-needle-erc-claims-processing/7kjp>

District Court Declines to Order the IRS to End ERC Processing Moratorium



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- *Stenson Tamaddon LLC v. IRS*, US DC Ariz. Docket No. 2:24-cv-01123, July 30, 2024
 - Court found that the consulting firm had Constitutional standing to bring the suit
 - It was being damaged by the IRS ceasing processing of the claims, as the firm was to be paid out of the proceeds their client received
 - The damages arose out of the processing moratorium and
 - The damages would be at least somewhat addressed by the requested relief

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- *Stenson Tamaddon LLC v. IRS*, US DC Ariz. Docket No. 2:24-cv-01123, July 30, 2024
 - The firm also had statutory standing under the APA to bring the suit
 - The court found it could review the action as if the IRS could continue to extend the moratorium (as they had recently with no end date announced) that would effectively repeal the program
 - While the IRS's public statements are not actionable, the implementation of the moratorium is

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- *Stenson Tamaddon LLC v. IRS*, US DC Ariz. Docket No. 2:24-cv-01123, July 30, 2024
 - The firm also had statutory standing under the APA to bring the suit
 - Unlike their clients, the consulting firm had no alternative source of redress--they couldn't bring suit to obtain the refund unlike the employers who had hired them

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- *Stenson Tamaddon LLC v. IRS*, US DC Ariz. Docket No. 2:24-cv-01123, July 30, 2024
 - The firm had also show they will likely succeed on the merits and would suffer irreparable harm
 - The court found they made potentially compelling arguments both for the action itself and that the IRS was unreasonably delaying action in this case
 - The Court also agreed that the plaintiff would suffer irreparable harm without the injunction
 - So far it looks like we are heading to an injunction, but...

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District Court Declines to Order the IRS to End ERC Processing Moratorium



Photo by [Yunus Tug](#) on [Unsplash](#)+

- *Stenson Tamaddon LLC v. IRS*, US DC Ariz. Docket No. 2:24-cv-01123, July 30, 2024
 - Because the government is a party to the suit, an addition requirement must be addressed to justify issuing an injunction
 - Must balance the hardships and the interests of public policy (impact on non-parties to the suit)
 - Plaintiff attempt to bring in employers was rejected - they have alternative relief to bring suit
 - As well, the plaintiff should have know the IRS tends to move slowly when issuing refunds

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 - Must balance the hardships and the interests of public policy (impact on non-parties to the suit)
 - While other arguments on this point did favor the plaintiff, overall the balance did not tilt decisively in favor of the plaintiff
 - Thus preliminary injunctive relief is not appropriate

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 - Would presume the plaintiffs will take this up on appeal
 - Had to know if they had prevailed the IRS would have appealed the injunction up with the Ninth Circuit
 - At least in this analysis, it doesn't look the case the plaintiff's client filed would lead to relief (the availability of alternative relief may be a big problem for an employer)

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