

Fox Rothschild Podcast

The Presumption of Innocence Podcast Series: Episode 20

Pitfalls and Perils: Employee Retention Credit Enforcement Trends

Featuring Matt Adams of Fox Rothschild LLP and Matthew Walsh and Jessica Hollobaugh of Withum

Adams: Hi everyone and welcome to "The Presumption of Innocence." My name is [Matt Adams](#), and I am a partner and co-chair in Fox Rothschild's [White-Collar Criminal Defense and Regulatory Compliance Practice](#).

Today, I'm joined by Matthew Walsh, C.P.A., who is a Market Leader in Withum's COVID-19 Financial Assistance Services Practice, as well as Jessica Hollobaugh, who is a return guest and is a partner and Market Leader in the Forensics Investigations and White-Collar Criminal Defense Practice, also at Withum. Matt and Jess, welcome to "The Presumption of Innocence."

Let's get right to it. Today, we're talking about the Employee Retention Credit. And, I have to say that in March of 2020, when the world was seemingly falling apart from the COVID-19 pandemic, I heard a little bit about the Paycheck Protection Program. And never in my wildest imagination did I think that initial stimulus program brought about by the CARES Act would morph into literally trillions of dollars in the U.S. economy, stimulating businesses and for good reason because of the impact of the pandemic.

But the ways that the pitfalls and the ways that this line of work is keeping us busy in our respective practices, in a very complimentary way of one another, frankly, because of the intersection between accounting and the law.... I just, in my wildest imagination, I never realized it would be this way.

It's certainly a good thing. But these programs are wrought with pitfalls. And we've talked a lot about the Paycheck Protection Program on "The Presumption of Innocence." And Jess, you were a guest on Episode One, where we had that very in-depth discussion.

Today, we're talking about the Employee Retention Credit. And Matt, I wanna move to you first to talk a little bit about how the credit is obtained both mechanically and what it is designed to do.

Walsh: Thanks, Matt, and happy to be here with you. I appreciate you inviting me on. The Employee Retention Credit, it all started, believe it or not, back with the CARES Act when the Paycheck Protection Program was so popular. And the reason that we didn't really hear about the Employee Retention Credit ... By the way, a lot of people call it the ERC. Some people call it the ERTC, so you'll probably hear me go back and forth. I generally refer to it as the ERC.

The reason that the ERC wasn't extremely popular early on in the pandemic was because the CARES Act provided a prohibition for you to take advantage of both the PPP and the Employee Retention Credit. And at the time, the PPP -- and still to this day -- was much more favorable from a reimbursement perspective, from an amount perspective. So really, it wasn't until later in the year

when the Employee Retention Credit program was amended by the Consolidated Appropriations Act that it started to become big.

So, in general, the Employee Retention Credit program is a refundable tax credit. What that means is essentially the amount of the ERC that a company would be entitled to, it is refundable back from the IRS.

As far as the overall landscape of the program, it's been amended a few times, really. It started, as I mentioned, with the CARES Act. The Consolidated Appropriations Act changed it. Then in 2021, the American Rescue Plan Act changed it. And then again, we had a fairly robust change in the Infrastructure and Jobs Act towards the end of 2021. So, where we stand today is a program that exists for both 2020 and 2021.

Like I said earlier, it's a refundable tax credit. If you qualify, if a company qualifies, in 2020, it's up to \$5,000 per employee. In 2021, it's up to \$7,000 per employee per quarter.

The eligibility rules are fairly complex, and I know we'll chat a little bit more about them later. But in general, you can qualify for the Employee Retention Credit by either meeting the definition of having a significant reduction in gross receipts -- which is different for the 2020 and 2021 program -- or having a partial or full suspension of your operations due to government orders surrounding COVID-19.

And again, we'll chat about them a little bit more in depth later.

Adams: Sure.

Walsh: As far as accessing the credit, the chosen methodology for this was the payroll tax system. So, an eligible employer would access the credit through amending their payroll tax returns from 2020 and 2021 for the quarters which they are eligible for.

The process is a little slow from the IRS. They seem to be getting a little bit quicker, but this is a paper file process. There's no electronic method to do it. So, essentially, each eligible business signs and sends paper returns via USPS down to their respective IRS office. And the IRS processes and cuts checks the good old-fashioned way and sends them in the mail.

It's been an ever-evolving process, but yeah, that's the sort of overview and where we're at today, Matt.

Adams: So Matt and Jess, I want to really talk about enforcement trends today. And if you're interested in taking a bit more of a deep-dive into the eligibility and mechanics of the ERC, we have another podcast earlier in our series where we really took a deep dive into mechanically how the program works.

And I thank Matt for giving us a bit of an overview here at the outset, but I wanna talk about enforcement audit and the trends that we expect to see. Because what I have stated at the outset, which is that I have been just astonished at the level of activity that the government has presented at all of these COVID-19 programs.

And Jess, I know you've testified in the first PPP fraud trial, and we talked about that extensively in an earlier episode. But Matt, from your perspective, the mechanical way that this credit is obtained

by amendment to payroll tax returns, 941, how common is that outside of a program like this that's administered through amendments?

Is it a common practice that people are actually amending their payroll tax returns? Because when we talk about enforcement and audit, that's really what I want to start. It strikes me as a process that might not have historically been that common.

Walsh: Yeah. That's a great question, Matt. And you're absolutely right. It is not common to have amended payroll tax returns previous to the Employer Retention Credit. In fact, the IRS does have ways in which to take amendments for other tax returns in a different way than the old-fashioned paper filing.

They do not for the 941-X. And when pressed early on, when the Employee Retention Credit was more popular, the IRS, their general response was in the vein of, look, outside the Employee Retention Credit, we don't really process a lot of 941-Xs, which is the amended 941.

So yeah, this is fairly uncommon. And, in a way, that has been one of the sole contributors toward the delays that a lot of Employee Retention Credit-eligible companies are seeing and actually getting their refunds.

Adams: Yeah. And let me capture one word you're saying, and that's "delay." Because we saw a real flurry of enforcement activity with the PPP program almost immediately. And it's been well documented that the first cases came out almost right away after funds were distributed. And I'm on record saying that those were low-hanging fruit cases. We've talked extensively about that on this podcast, in fact. But this notion of ERC enforcement activity ... Here we are in 2023 and we really are just starting to scratch the surface on ERC enforcement.

Matt, do you think that's a byproduct of this amendment process, which is something that allows this credit to be obtained retroactively?

Walsh: Yeah I do. I think it's a couple of things. One, I think the program was changing, right? The latest legislation that we saw that significantly adjusted the ERC was the Infrastructure and Jobs Act, which was late 2021.

So, by the time the IRS got around to publishing, interpreting the changes and publishing updates, right ... That was later in 2021, early 2022. The IRS audit guide, which was created to train their own employees, we believe was released to those employees somewhere around July of 2022, and then released to the general public later in 2022.

So really, we look at that and we think that's probably the signal of when the IRS started to really begin enforcement around the ERC is when that training guide became available to their employees. Because they really had to shift a number of employment tax agents into an enforcement on a tax credit program.

Keep in mind, as you mentioned earlier, Matt, with this being uncommon, what we saw also is the IRS agents who are assigned to the employment tax division. This is also just as uncommon for them, right? In general their audits are relating to payroll and they're not relating to refundable tax credits. So there was a learning curve there from the IRS side. And that led to the delay in enforcement and why we're really starting to see it pick up now.

Adams: Yeah. And one of the political hot buttons in Washington, DC right now is this influx of funding that's been given to the IRS to hire new agents, to really make enforcement a priority. And it just strikes me that this is the next low-hanging fruit. Because of all the mechanical ways that this program, -- the pitfalls I guess is the best way to put it -- that this program has, and we're gonna get to some of those in a minute.

But when we talk about the most glaring enforcement trends, one of the areas that I see is with promoters and enforcement trends specific to promoters. And I wanna shift to you, Jessica, a bit because I know that your practice, perhaps unlike Matt's, is on the backend when these things blow up. And you're oftentimes brought in by lawyers like myself who are defending cases that the IRS or the Department of Justice is bringing on these credits.

Now, I know anecdotally, it has been in the news, that promoters are the subject of significant scrutiny by the government right now. And I also know that all you have to do is Google the ERC or the ERTC or the Employee Retention Credit, and a litany of different companies come up that guarantee you whatever money they're gonna guarantee you. They tell you that their methodology is sound and backed by lawyers and accountants. But then, you sign a contract with one of these agencies and in the fine print they take no responsibility for the calculation that they're doing for you.

More than that, they disclaim any liability for what you actually submit on these 941-X returns that Matt just talked about. And they, even though they're accountants, they won't even sign the return as a preparer because they're trying to distance themselves from the calculation.

Jess, talk to us about what you're seeing vis-a-vis promoters and the focus of the government on them.

Hollobaugh: Sure, Matt. So, you know, what we saw very early on, almost immediately after the announcements of the Employer Retention Credit were certain -- we'll call tax credit shops -- that were taking these extremely aggressive positions with respect to eligibility.

So, Matt talked a bit earlier about the two tests, either under a reduction in gross receipts or this governmental orders test. And what we saw that these workshops were almost always indicating that taxpayers were eligible for all quarters of 2020 and 2021 under a very broad interpretation of that governmental orders test.

And as clients of ours were being pursued by these promoters, what we saw was that the taxpayers were all being provided with memos that somehow came to a conclusion that they were eligible for these tax credits. But the memos, as you mentioned, had these disclaimers that they weren't providing legal advice. And it was really that legal advice that many of these clients and many taxpayers thought that they were seeking out by retaining these promoters. So, as these taxpayers moved forward and filed the amended returns to claim the credits, and like you said it, these workshops wouldn't file them, they would take them back to their, payroll provider and have the returns processed.

The amended returns were filed when in fact the actual analysis needed to qualify for the credits was never done. And clearly, it wasn't just us that saw this trend because as you mentioned, in October, the IRS released the notice warning taxpayers of these third parties, warning them that there are these improper positions related to eligibility being taken and reiterating to the taxpayers that it's the taxpayers themselves that are responsible for any of those incorrect tax filings.

Adams: Yeah, and you mentioned it, tax credit shops or whatever you wanna call them, these are generally from my experience, organizations that are working on a contingency fee basis and therefore they're financially incentivized to "maximize," quote unquote, your credit and therefore enhance their fee.

That type of arrangement, that contingency fee/preparer relationship, has routinely been ranked among the IRS's Dirty Dozen, which has also been the subject of previous episodes of "The Presumption of Innocence" here. And it strikes me that these shops essentially think they're operating with impunity because of the legal language that they put into their contractual agreements with their clients.

But in reality, I've talked to a number of IRS agents, I've talked on panels with IRS agents, and this is the central focus of a large number of investigations right now. And in fact, I think we've seen some civil actions brought already by the government against these promoters. I'm wondering, Jess, how frequently are you seeing in your practice assisting largely defense lawyers, white-collar defense lawyers like myself?

How often are you being tasked in aid of that legal attorney-client relationship? How often are you recalculating the work of these promoters in ways that demonstrate that they were just way off base in what they were trying to advance for their clients?

Hollobaugh: Almost weekly. So, there's probably one case a week that comes across my desk. Whether it be we are being retained by legal counsel such as a firm like yourself and or Covell to help do the recalculation. Or whether it be, you know, one of our internal firm clients that may have utilized another service to calculate the credits that are now coming to us and saying, you know, maybe we shouldn't have done that and can you take a closer look.

Adams: Yeah, that to me is just astonishing. For anyone in our audience who is an ERC credit recipient and you utilized a promoter, the best advice I can give -- and I'll let Matt and Jess, you guys speak for yourself on this -- but the best advice I could give is to retain an attorney, a white-collar defense lawyer, who can bring in accountants like the two of you to recalculate this credit under the protections of the attorney-client privilege. Just to have the peace of mind of knowing that you were not among the -- and I'll say it out loud -- the businesses that have been victimized by these promoters. Because the statute of limitations on these types of claims is going to be around for a long time. I mean, would you guys agree with me, first Matt, and then Jess?

Walsh: Yeah. Matt, I would agree. And we've written a lot on this topic as well to the same. I think it's prudent for businesses that took advantage of the Employee Retention Credit that they make sure that their documentation, their substantiation documentation, is in order.

And you know, this is a great program intended for companies who kept employees on and had economic hardships as it related to COVID. And there are thousands, probably hundreds of thousands of businesses, that are truly eligible for this credit and should take advantage of it for every dollar that they're entitled to.

I think that there are, as we talked about, some positions out there that are a little bit shaky, right? And, if your documentation does not support the claim that was made, that's going to be really difficult if the IRS comes knocking.

So I do think I agree with you, Matt. It's really important to have that stuff in order now before the IRS opens an audit. Because once they do, you can ask for an extension, but you know, you still have to have a substantial amount of information ready and available to give them.

Adams: Jess?

Hollobaugh: Yeah, I absolutely agree as well. So, you know, in these credits it's not always black and white where the taxpayer is entirely eligible or not eligible at all. It's very often something in between there. And it's important, as Matt said, to have that documentation and get it right. We talked about the fact that amended returns are not that common. To fix an error, now we're gonna be amending those amended returns. So it's uncommon on top of even more uncommon.

Adams: Hello, audit. I'll go one step further. There's a legal mandate -- Matt, you mentioned about the documentation -- there's a legal mandate that comes with this program that you have the documentation on demand and pull it out of a drawer whenever the IRS asks. And your failure to do so is a huge enforcement issue.

We're talking a lot about pitfalls as it relates to the calculation. But the way that I see it, and as you peel back the layers of the onion with respect to the ERC, there's really a two-pronged analysis that's necessary. The first is a legal one, and the second is an accounting one. And I know, having worked with the both of you in a number of these cases, proactively for just people that want to make sure their ducks are in a row, so to speak, in the event of a later inquiry by the IRS. And in fact, cases where the IRS has come knocking and instituted an audit or some sort of a more aggressive enforcement action.

We really do take it in two steps. One's a legal and one is an accounting analysis. And on the legal side, that really speaks to qualification. That threshold question. The government orders test or the gross receipts test. And those two qualifying standards, while they are predicated along the same lines, the analysis that goes in -- and in particular goes into the gross receipts test that decline in grocery receipts standard -- has changed a bit.

Matt, let's talk about the evolution of that. Because the ERC qualification standard that existed for 2020... and you mentioned at the outset quite adeptly that this particular program, in a short space and time I might add, has really been amended four separate times to achieve the public policy goals that it's designed to achieve. So, that second thing, the gross receipts test, that second legal qualifying standard has really changed. There is some inherent accounting work that needs to go into that, right?

Walsh: Yeah, you're right it has. So, the gross receipts test for 2020 is not the same as it is for 2021. There's a lot of confusion in the marketplace around this because, quite frankly, the rules have changed so many times.

But the current environment, and this is where it's gonna stick -- we don't anticipate any further changes at this point, thankfully -- is that a 50% reduction in any quarter in 2020 against 2019, starts your eligibility and you remain eligible in 2020 through the quarter you get back up above 80%. So, you need a 50% to start and you stay eligible through the quarter you get back up above 80%.

But 2021 is different. It's a much lower threshold. They reduced the threshold to a 20% bogey. So if you have any quarter in 2021 that has a greater than 20% dip in your gross receipts from 2019, you gain eligibility there. And then on top of that, 2021 has even a more favorable ruling, that you can utilize the immediate preceding calendar quarter to test your eligibility.

So essentially, it's almost like you get two for one in 2021. Let's say you don't have a 20% dip in one quarter, you can look at the previous quarter and if you had a 20% dip there, you qualify.

So, that's the current landscape.

Adams: Yeah. And in Congress's infinite wisdom-- you called it the "bogey," the decline in gross receipts -- they backstopped that to an analysis to also include the backend recovery. And in the 2020 program, that's back up to 80% of what you did in the comparable quarter in 2019.

I find that pretty fascinating that this law was written in such an emergency, and that's right there in the CARES Act, but they found a way to put a backstop in to ensure that the businesses that began to recover more quickly-- that maybe figured it out and how to live in the pandemic-laden environment in 2020-- would lose eligibility.

And I was just talking to a prospective client just yesterday, and he was telling me, you know, I want to explore this ERC thing, but before I pursue it much further, here's my situation. And it was a transportation sector business. And he said, listen, we dropped off dramatically in Q2 of 2020. But I figured it out. I figured out how to do it, and that summer I rebounded, and yeah, I was down, eight or 9%, but I figured it out and my decline was sort of a quick V-shaped recovery, and became pretty much back to where I was gross receipts wise not far into Q4 of 2020.

And just in analyzing that out loud, we were talking about that backstop, that backend recovery, that Congress factored into the criteria, and a lot of people don't quite understand that without professional guidance, Matt. Have you seen in your practice, anybody get jammed up in failing to assess the quickness of the backended recovery?

Walsh: Yeah we have, and I think there's a counter viewpoint, that maybe the business owner that you were speaking with also shares, that we get a lot of, which is the viewpoint of maybe a little bit of unfairness in the way that backstop was created. Almost feeling like they were rewarding businesses that didn't necessarily exercise levels of entrepreneurship and ingenuity in adapting their business policies and practices as opposed to those who had.

And those who had are likely the ones that are also keeping more employees, right? Because if you have a sustained 50% drop, you are likely to need to lay off employees to maintain a reasonable run rate of operations. So, we do see that a lot which I think is the reason that the government orders t ests also exists and it's an either-or classification. But you're absolutely right, Matt.

Adams: Yeah. And Jess, from your perspective: Gross receipts. What does that mean? And what types of documents are you looking at to substantiate gross receipts if we're going to talk about an analysis of that first eligibility criteria?

Hollobaugh: That's a great question, Matt. So, we've seen a lot of clients have issues with the gross receipts as well. So remember, under the eligibility, the gross receipts are required to be on the same basis utilized for tax return reporting. So what that means is, even though a taxpayer or client may keep their internal books and records on an accrual basis -- they have receivables, they have payables -- for purposes of the ERC eligibility, they must be converted to the cash basis if they're reporting in the tax return on a cash basis.

What we've seen the IRS request when they're coming in for audits are a reconciliation of those quarterly revenues to the annual tax return revenues.

Adams: So it's almost like a conversion that you need to do.

Hollobaugh: Assuming that they're a cash basis taxpayer? Yes.

Adams: Wow. So, there's a lot to unpack is the bottom line. And then from the accounting perspective, that's just before we get to actually computing the credit. So Matt, talk to us a little bit about that process.

Walsh: Yeah, so, computing the credit is where the real detailed work comes in on the payroll side of things. The way that we like to think about it is there's a lot of competing programs for the same payroll dollars, right? There's the Paycheck Protection Program. For most employers in the category of the Employee Retention Credit there's the FFCRA credits-- the Families First Coronavirus Relief Act -- which provided funds back to employers for paying for sick pay for those with COVID. There's other areas of unqualified wages.

Really, the way that we like to think about it when computing the Employee Retention Credit: A taxpayer should be able to clearly identify where every single dollar of wages paid to every single employee across every single check date lives to make sure that they're not double dipping on the calculation. To make sure that they're not utilizing wages that were previously utilized for another program.

And to the extent that we work with clients, we make sure that they have that in their files. Because, quite frankly, that's one of the IRS's substantiation requirements is that you can demonstrate to them that you took into consideration all of those things.

Adams: Yeah. And this is just a ton of margin for error is what I'm hearing. And all the more reason that if you availed yourself of the ERC, it's worth an examination in a protected, privileged, confidential way, working both with competent counsel and forensic accounting folks to get that done.

And then frankly, I know the two of you and I are no strangers to this. We frequently are presented with a scenario where we find that there is a problem. And then we can make sound decisions about how to mitigate against any kind of potential enforcement or audit issue associated with the problem that's identified.

Before we really leave the problems though and go to the solutions, Matt, talk to us a bit about some of the aggregation rules and some of the pitfalls associated with the ERC in that area.

Walsh: Yeah, thanks Matt. Aggregation rules are a big one. We'll leave the code sections off the podcast for the sake of--

Adams: Yeah, we don't wanna put anybody to sleep today, Matt.

Walsh: Yeah. But in general, the aggregation rules are not dissimilar to affiliation from the PPP, in the stance that you need to consider aggregated companies together when you're looking at eligibility. The specifics of the aggregation rules are in actuality a little bit more complex than the PPP affiliation rules. They're much more scripted.

And aggregation can exist in a few different scenarios. Apparent subsidiary relationship is one. A brother-sister aggregation group is another where you have a number of businesses or multiple

businesses that are owned by a few individual owners, to a large extent. And then there's also a concept called the affiliated service group, which could create an aggregation.

Those rules are fairly nuanced and pretty company-specific. Layering on top of that, some additional complexities when you have familial relationships with who gets stock attributed to who. And that's actually one of the areas we see a lot of companies miss the boat on in terms of their first analysis. They kind of look at each company they have or they operate in a silo and say, okay, this company had a gross receipt reduction, but this one didn't. So we claimed it for this entity only.

In reality, you have to apply eligibility across all members of an aggregated group. And by the way, we've seen a number of situations where that actually helps companies become eligible for the credit and gets them more benefit. So, it's not always a negative. But aggregation rules are required to be applied, and it's a very specific analysis.

Adams: Wow. And this is just on the good faith, unintentional errors, to say nothing of the blatant low-hanging fruit.

So, let's shift now that we've talked about some of these common pitfalls from both a legal analysis and an accounting analysis perspective. What do we do if we found an error? Because the last thing we want to do is have an error found during an audit, in my opinion.

We're, I think, all aligned in saying that if -- especially if you used a promoter, but pretty much, even if you didn't -- it's probably a good exercise to have competent counsel and forensic accounting folks, like yourselves, examine an ERC calculation to ensure you're in good shape.

But, let's go to the worst case scenario. One of these common pitfalls is evident in your application. You filed this seldomly utilized 941-X, amended your payroll tax returns and now you're in the boat of having found something wrong with your amended filing. What do you do next, Jess?

Hollobaugh: Seek legal and accounting help. So, as we talked before, you really just want to get it right and make sure that you have the supporting documentation in case of a future audit. And, like you said, you don't wanna wait until you get audited, because there are going to be penalties associated with incorrect filings.

So, just as you said before, you wanna get an attorney, an accountant, that both have expertise in the ERC credits and get the calculations right and get those amended returns corrected.

Adams: Matt, have you been in the position to be filing amendments of the amendments?

Walsh: Yes, unfortunately, we have. The reality is that, and even underscoring good faith, unintentional errors here, with the changing landscape we've come across a number of situations whereby a taxpayer may not have applied the rules correctly, or didn't understand fully what they should or should not be claiming.

We've also seen amended 941s just be prepared incorrectly with some of the changing landscapes. So unfortunately, we have been in that position of refiling. And we talked a little bit earlier about the delays in the process of processing the 941-Xs to begin with. It does add an additional layer of stress for company management when you get in this situation because the same delay exists when you file an amendment to an amendment. It extends the waiting game for sure.

Adams: Yeah. I would just underscore everything that the two of you just said by saying, simply stated: It's better to get it right.

Even if you've got to amend an amendment, even if you've got to file that subsequent 941-X, just to ensure the defensible good faith position that you're trying to take. And I think, really, that underscores why amendments are even possible. In the traditional underpayment of taxes kind of environment, that amendment opportunity exists for a reason. It's that the government wants to give you a chance to get it right.

And from the legal perspective -- provided you're not doing it only because you come to learn you're under investigation or in audit -- but it certainly does show good faith and the unintentional aspects of things, which keep this a purely civil and enforcement issue from the IRS's perspective. And don't bleed over into what is the worst case scenario, which is a criminal referral to the Department of Justice.

We talked about, in an episode of "The Presumption of Innocence," the interplay between the civil, regulatory and criminal proceedings that oftentimes proceed on concurrent parallel tracks. And this is one area where you don't want that to occur, for sure, because there's proactive steps you can take to head that off at the pass prior to the sort of catastrophic event of a referral to the DOJ.

We're running short on time. I wanna hear from both of you on one final topic, and that's the natural. We've presented a lot today about the various ways that the ERC can run amok. What do you predict is going to be the next wave of enforcement? Let's hear from Jess. And Matt, I'll give you the final word.

Hollobaugh: I think Matt, just like the PPP trend, I think we have seen the low hanging fruit where we have the entirely fraudulent returns and those are being attacked. I think the next to come are those grayer returns, ones where we are seeking ERC credit using Governmental Orders Tests.

And I think the IRS is going to be looking for support for those returns that are more gray in nature.

Adams: Matt, what do you see as the next wave?

Walsh: Yeah, I think -- and again, this is purely my prediction -- the IRS is gonna get a little bit more deep into utilizing some data analytics to pick their audit targets for the Employee Retention Credit.

And what I mean by that is, I think they're gonna look at industries. They're gonna look at size of credit, obviously, but I think they're also gonna look at industries that maybe they feel have a higher risk of maybe misstatement of the credit amount. I think they're gonna target industries where they feel that they could have either worked remotely or that the partial suspension rules would not apply and then go towards that.

So, I think ultimately the IRS is obviously doing their duty to make sure that those who took the credit did so appropriately but also, at the same time, they are looking to find those who didn't.

And I think that they're gonna do everything in their power to do that.

Adams: I can't thank the two of you enough for sharing your expertise with us today. That's all the time we have for this episode of "The Presumption of Innocence." But I'm Matt Adams, and I ask you to please join us next time where we unpack the cutting-edge issues associated with the white-collar criminal and regulatory defense world. Thanks a lot.