



## Fox Rothschild Podcast

### The Presumption of Innocence

#### Episode 44: A Recipe for Litigation: The Simmering Conflict Surrounding ERC Claims

*Featuring Matt Adams and Elizabeth Blickley of Fox Rothschild*

**Adams:** Hi, everyone, and welcome back to "The Presumption of Innocence," a podcast brought to you by the White-Collar Criminal Defense and Regulatory Compliance Practice at Fox Rothschild.

I'm your host, Matt Adams. And today we are going back to a favorite topic of ours on the program, the Employee Retention Credit. Cause boy, have there been some really significant developments recently. And our guest today is Elizabeth Blickley. Elizabeth is resident in Fox Rothschild's Washington, DC, office. And she is an experienced tax attorney who represents clients in a full range of federal tax controversy litigation.

She's also a member of our White-Collar Criminal Defense and Regulatory Compliance Practice and a member of our ERC Task Force, which has been guiding clients through this... ordeal? Is that a good way to put it? But it sounds like an ordeal the way that this thing has been developing. So, Elizabeth, welcome to the program.

And from, from go, because while we have covered ERC extensively in past episodes, let's just remind our audience what the ERC is, as a baseline threshold, before we talk about all the craziness that has developed with this program, especially in recent weeks.

**Blickley:** Okay, so we won't get too much into the weeds for those of you who have heard our prior podcast, but what you need to know is that it was a credit taken against your prior employment tax payments in order to keep people on the books employed during COVID, whether or not they were working. If you were a small business, even if they were working, you could take the ERC. If you were a larger business, they had to not be working in order to take the ERC for their employment taxes.

So most folks made their request previously. And IRS asked them, hey, please hold on, don't do anything, wait, we'll call you, don't call us. And people have been waiting months or potentially years for their ERC claims to be paid.

**Adams:** And we're talking cash money. This is a dollar-for-dollar tax credit, right?

**Blickley:** Yeah, I mean, it's based on what you have previously paid. If you paid one dollar, your credit is one dollar.

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**Adams:** And remind our audience how you achieved it. You filed amended 941s, right?

**Blickley:** Amended forms 941, which is your quarterly employment tax statement. There's also a 940, which is your yearly. But you make your claim with an amended 941-X.

So it's per quarter. And, you know, potentially you are eligible for the entire quarter for those entire set of wages. Or, you're eligible for a smaller portion of a quarter. And again, you would put that on your 941-X for that quarter.

**Adams:** All right. So the program was chugging along. It's a vestige of the COVID economic stimulus in a broader sense. And then all hell broke loose last fall. And we get a moratorium, okay. And we've talked about the moratorium. The firm has published a bunch of articles and guidance on the moratorium. But for our audience, Elizabeth, recapture exactly what that meant, because that was really sort of a monumental moment that set the stage for all the craziness that's happened since.

**Blickley:** Yeah. Commissioner Werfel, the IRS commissioner, complained repeatedly to the public, to Congress: hey, we're being inundated by fraudulent claims. We don't want the last avalanche to come through between now and the final days of being able to make your claim. So we've decided to institute a moratorium. And that means everybody pause. Please don't send us any more claims. You know, don't call and ask us. We are in a moratorium.

And that started Sept. 15 of 2023. And they said, you know what? We have so many claims. We'd like to digitize them. We'd like to look through them, evaluate. Give us a chance to catch up. And people said, oh, that seems like a reasonable request. And then it just drug on.

So we have a situation where even now, the moratorium is in place. And I mean, it's been more than six months. It's been what, eight months? Actually more than that now, 12. Oh, almost a year now. People are really frustrated because they needed the money in the first instance, and they have tacked almost a whole other year on to waiting to find out if their claim is going to be paid or not.

**Adams:** All right. So people are waiting on money that was supposed to help them get through the pandemic and the pandemic's kind of over. Is the government rethinking this and saying, huh, maybe we don't want to give this money out anymore? Because things improved and maybe we can get away with not doing it? What exactly is going on, Elizabeth?

**Blickley:** A couple of things. One, for anybody who's ever had an insurance claim, this is prevalent in the insurance industry. They like to reject claims first, and then ask for you to come back in and prove that you're entitled to the amount of money that you've claimed. IRS is thinking, I have so many requests. Let me see if I can kick out a whole number of them and see who comes back, see who fights back. Because folks who were never entitled probably won't come back and argue with us. The problem is, that gets a lot of people who literally don't have the money to come back and fight. But a lot of times you have situations where payments were shifted, so they were waiting on the ERC. So they use money that they were going to use for something else to pay those wages. What the idea is, when the ERC is paid to them, they would pay back a loan or go forward with an expenditure that they were previously going to do during the pandemic.

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But there are folks who were on their last breath of being able to run their business and it's really the last moment for them. Otherwise, they're going to run out of business. They might have to start layoffs. So, it's really getting very dire. And more than 1000 businesses have reached out to the national taxpayer advocate asking for help with this.

**Adams:** Yeah, so this was supposed to be a program to fend off economic calamity. And here we are, potentially on the verge of economic calamity for some of these businesses that really needed this the most, and Congress essentially devised a policy that's not been rescinded, it's just an administrative bureaucracy that can't keep up with it.

And that's a recipe for litigation, isn't it?

**Blickley:** It is. We're not the only ones to think that this is a good recipe for litigation. So, some of you may be aware of this case out of a District Court in Arizona, Stenson Tamaddon LLC. They had filed their claim. They had asked for a preliminary injunction forcing the IRS to process these claims, withdraw the moratorium or open it back up. But you know, there was a hearing. IRS argued that they didn't have standing because it was not their ERC claim. It was claims that they have prepared on behalf of others.

Now, the district court said, yes, you did have standing. And yes, you have some pretty good arguments. But no, we can't force them at this stage to lift the moratorium. However, any timely file claim IRS must process. So that was a bit of a win.

**Adams:** So it's the court, it's the court saying, hey, you can't reject, you can't just refuse to process this indefinitely. We get it. Administrative feasibility. You're overwhelmed, inundated. But if they filed it before the deadline, you got to process it. And if they are qualified, give them their money.

**Blickley:** That's absolutely correct.

**Adams:** You know, here we are with all this effort out there... seemingly, I don't speak for the IRS. God forbid... but it sounds a lot like they're trying to do their best to get people to withdraw. I mean, we have the voluntary disclosure program that began at the beginning of the year where you're actually incentivizing people to sort of tap out by giving them at least a small portion of their claim for self-disclosing that they don't want it anymore.

And now they've reopened that again, right? That voluntary disclosure program is now back. It's a little different.

We're seeing all this momentum out there by the Internal Revenue Service to effectively say, are you sure you want that money that you applied for two years ago when you were in dire straits because of the pandemic? And, what are you seeing out there Elizabeth? Are people actually heeding that? Are they taking the opportunity to reevaluate and maybe withdrawing? Or do you see the vast majority of people -- I shouldn't say people, I should say businesses -- saying, no, give me my money.



**Blickley:** The latter. Pretty much everyone at this point has made the determination that they are eligible and they are waiting for their money.

**Adams:** And if they haven't, it's on them, right? If they're still sitting on a fraudulent claim two iterations of a voluntary disclosure program later, that's on them. Right?

**Blickley:** I mean, you can't be living under a rock. If you have been waiting for two years or more for your claim to be paid, you had to have heard something. And as Matt mentioned, the first disclosure program, you got a 20% discount. So you had to pay back 80% of the claim. Now that was to accommodate the payment that you will have made to a third party who prepared your claim. So the idea is if you only got 80% of the money, you should only have to pay back 80%.

The new voluntary disclosure program is at 15%. So you waited, you didn't come in the first time, you get less of a discount now. Again, the idea is the 15% is if you ended up making a payment to a third party who helped you to prepare your claim.

**Adams:** So, If you still have concerns, the message is very loud and clear. If you still have concerns about the legitimacy of your original claim, you still have an out. You still can avoid the parade of horrors that go with filing a false return, probably. There's some exceptions, which we've talked about previously.

But you're saying at this point, the well is really running dry on those types of applicants. And now we have these people that really need the money the most. And they're lining up to sue the IRS. And we're getting some favorable decisions on that front.

**Blickley:** Yeah, yeah. Most, mostly if people thought that they were not eligible you know, they went and bought in the first time around. At this point, it's just for 2021 claims. And again, you have to completely withdraw. You have to say, I was entitled to zero dollars. Not that my number was wrong. I was never entitled to anything. And a lot of people think, even if my number is wrong, I'm still entitled to something. You don't have a lot of people saying, I was never entitled. And you'll see a lot of people are actually filing claims for refund and bringing refund suits, just to get somebody to look at their documents. Because the rejection letters that we'll talk about a little bit later have not undergone audit. They're simply rejection letters. And they say, I know I told you not to come to me, we'll come to you. I've decided I don't want to come to you. I reject. So, some people are actually going the refund route just to get somebody to look at their documents.

**Adams:** Bottom line it for me. The Arizona District Court's decision in Stenson Tamaddon was really a win for the taxpayers against the IRS. Bottom line the impact of that for me.

**Blickley:** Yeah, so, I think what's important to know is that IRS said any claims after Sept. 14 of '23, we will not process until we feel like it, or potentially never.

**Adams:** That was the date of the original moratorium.



**Blickley:** That was the original moratorium. The District Court says, you cannot hold any of these claims hostage. You must process every claim that is timely. The IRS does not have the ability to opt out of a Congressionally mandated program.

**Adams:** So the moratorium is just that, hey, hold up, you can still file, but we're not going to process it. And this case now eliminates the ambiguity if you filed after the impact date of the moratorium up to what date?

**Blickley:** Okay. So. If you're a taxpayer, you say, the law says April 15, 2025. IRS commissioner said, I really don't want it to be 2025. Can you please make it retroactively Jan. 31, 2024? And, what IRS has decided is, one, to continue going to Congress and asking for this change. This change is actually embodied in a bill that has been passed by the House back in January. It has not been passed by the Senate. This is something that came to a head right before August recess. But it still has not had a vote.

That deadline in that bill is Jan. 31, 2024. And that is what the commissioner would like. Following this Arizona District Court order, the commissioner said, okay fine, I will process claims from Sept. 15 through Jan. 31, 2024. Let's stick a pin in anything after that. I hope that Congress will change its mind. Now--

**Adams:** Isn't that an ex post facto law?

**Blickley:** Yes, it is. There will be more litigation.

**Adams:** Aren't they unconstitutional?

**Blickley:** Yes. There was actually quite a bit of language in this 39-page order that was issued at the end of July about the separation of powers. And there were a lot of hints that, hey, you're going to have to lift this moratorium. You're going to have to process timely file claims. Because the moratorium, the District Court said the moratorium cannot last until April 15, 2025.

**Adams:** Get, get this straight. Let's get this straight for our listeners, Elizabeth. Congress passes a law and says, IRS, administer this dollar-for-dollar credit to fend off economic calamity up to and including the first quarter of 2024, April 31.

**Blickley:** 25. Yeah.

**Adams:** 25. Okay.

**Blickley:** Yes.

**Adams:** The IRS says, no, that's too much work Congress. We can't do that. We're going to put in a moratorium, we're going to make it administratively burdensome and we're going to artificially try to change that goalpost.



**Blickley:** Correct. Correct. And let's move the goalpost behind you.

**Adams:** Wow. And so so now we're in this rock and a hard place for folks that are sort of sitting as Congress and the IRS, two separate co-equal branches of government, executive and legislative, fight it out over when this thing's going to end.

We're in an election year, the political landscape in this country could not be more divided. How do you think this is going to shape out?

**Blickley:** I think the bill dies. Congress, or the Senate, is on August recess until Sept. 9. Then there is a 15-business day period where the Senate will be in session. And then it will go back out to a state work period where it's out there, you know, campaigning for reelection, supporting others for reelection.

I mean, that is a teeny tiny window of anything to get done. And they couldn't even get the amount of votes that they needed in order to call the vote on this bill. You have Democrats who don't like it for one reason, because there are big refunds embedded in it. You have Republicans who don't like it because of the refundable, advanced child tax credit. . There are reasons for either party to vote against it, and that is why they couldn't even get a vote on this bill on Aug. 1 when they tried to call it.

**Adams:** So if you had to predict it today, you would say that, whether the IRS likes it or not, they're going to have to administer this program as Congress originally intended.

**Blickley:** Oh, for sure. Until they change the law, the date is April 15, 2025. And the chances of them changing the law between now and the end of Congress are extremely low.

**Adams:** In a presidential election year where lawmakers are already sort of checked out and moving on to election-type things.

**Blickley:** Absolutely, that's the only thing that they're focused on at this moment.

**Adams:** So, in the meantime, you've got this IRS that's trying to do everything under the sun to try to not do their job. What are they doing to try to make life difficult for taxpayers? What are you seeing out there from your clients as the IRS rages against the congressional mandate to keep this thing alive until Q1 '25?

**Blickley:** Okay, so part of what they're doing is they're still saying it's still a moratorium. Please don't call us, we'll call you. So you have people who received letters during the moratorium and you have others who didn't receive letters during the moratorium. They are both now getting rejections. And when you look at the rejection letter, you cannot figure out why they've rejected your claim.

It's very conclusory. And sometimes it's baldly wrong. You didn't check this box on this form. Very clearly, you did check this box on this form. Or, you are not eligible for quarter three based on a rule that only applied to quarter four. In those instances, you can get a very irate client saying, this is



facially wrong. But, other people are saying, finally, I got some sort of response. I have an avenue out now.

**Adams:** It sounds a lot like the IRS is playing games.

**Blickley:** Oh, absolutely. Absolutely, they're playing games. They're saying, we're overwhelmed, so I'm going to lob the ball back over the net to you.

**Adams:** That's insane.

**Blickley:** It's really frustrating for people who've been waiting and for people who are ready. They are ready to say, here's 100% of my documents. Let me show you in 15 minutes why I'm eligible. And instead of that, they said, no, I'm not really all that interested. I've decided to deny your claim. And now you have the burden to come back to me. And then maybe we'll start an audit, which is what we should have done in the first instance.

**Adams:** These letters, taxpayers are getting them left and right, center. What is your best advice for folks that receive one of these letters amidst this stage that you've set for us. Which is frankly, just crippling government bureaucratic inefficiency at the IRS.

What's a person or a business owner to do when they get one of these letters against that backdrop? Because it sounds like you have no option, but to play that game and volley the ball back.

**Blickley:** Yeah, so, essentially what I tell people, like, now is the time to raise your hand and ask for help. If you wanted to wait to find out what they were going to do with your claim, you now have an answer. The problem is, now you need to act. You don't have an indefinite amount of time to fight back. You have approximately 30 days to go to the IRS Office of Appeals, again, capital a Appeals. It has the effect of appealing the ruling.

But the problem is, a lot of these letters did not include that language that within 30 days, you have the right to go to Appeals and say, hey, I am actually entitled. And it's really surprising to every tax professional I've ever met, because this goes in your regular letters. When you have a problem with your form 1040 that you file every year, there is a paragraph about appealing to the Independent Office of Appeals.

They could have copy and pasted it. And they seemed to overlook something so basic. The National Taxpayer Advocate, Aaron Collins, pointed this out to the Commissioner. And he said yeah, we might reissue some of the letters. But he has not committed to reissuing all of these letters. So, if you get a letter, whether or not it has this language in it, please raise your hand and ask for help.

**Adams:** Because you might be jeopardizing your rights. Because this letter could be completely wrong, but you're jeopardizing under some procedural deficiency by virtue of letting that time go by, that time expire, and you lose your rights for something that shouldn't have been questioned in the first place.





**Blickley:** Right. I mean, you always have the right to bring your claim in District Court for refund but that costs extra money. And generally Appeals is supposed to be the cheaper way to deal with a claim disallowance.

Now, normally, you can't present new evidence to appeal because there has already been an audit. But in this case, there hasn't been an audit. So you provide your documents, Appeals gives it back to IRS and maybe then you get a revenue agent to actually look at your documents. Now, hopefully that actually gives you the credit that you are always entitled to, but not necessarily. And still, you have the option to go to District Court. But, you know, it's not a guarantee. It will inject even more delay into the process because if there really are 1.4 million ERC claims, the Office of Appeals cannot look at 1.4 million claims in any reasonable amount of time.

**Adams:** Yeah. And if after all of this back and forth, you still discover a problem, are you without hope? Or does this new voluntary disclosure program that's just been recently announced allow you yet another opportunity to do a mea culpa and try to mitigate against the ultimate sanction? I mean if this process tells me anything-- and I tell this to every client that calls me about an ERC issue and frankly, any of the economic stimulus programs that were promulgated through the COVID era. I'm like, we got to do the math on this first. Let's check your application out, inside out upside down three dimensionally, and examine whether everything is in order. Because if we go down the path of challenging the government, we damn well better be right.

**Blickley:** Yes.

**Adams:** And to me, it's a nonstarter if a client is not willing to go through that examination and really look at things inside out and upside down, they probably don't have what it takes to make sure this is right. And that's a warning sign.

But if, for example, some issues come up in that process, talk to us about what options are now available in light of the fact that we do have another voluntary disclosure program that was just recently announced. It's a slightly different program than originally, but it works in the same manner. So talk to us about that.

**Blickley:** Right, right. The mechanism is still the same. Again, you have to be in a situation where a claim was not paid. Let's say you had six quarters, they paid one quarter and they disallowed five quarters. You could make a voluntary disclosure about the five quarters, assuming you agree that you are entitled to zero dollars for those four quarters.

For any quarter in which you have been paid, and you are entitled to zero dollars for that quarter, you can make a voluntary disclosure for that quarter, assuming you are not under audit, not under criminal investigation. They have not already come to you and say, hey, your ERC is going to be recaptured. There is no notice and demand for payment.

Okay? So nobody's come to you. But you have figured out that you are not entitled to a particular quarter. You can come forward and you can do the voluntary disclosure for that quarter. And you pay back 85% of what you received.





If you have not been paid, then you still have the option to do a withdrawal. And again, that is the full amount. You are entitled to zero dollars. You got zero dollars. You withdraw your claim. If you were entitled, but the number is wrong, then you do an amended return. And there is a particular location that you sent your amended return. So there are still options. And for the people who are waiting to find out if they were going to get rejected, now your clock has started.

**Adams:** Yeah. I think the long and short of it is that if you filed the ERC and have not been paid and you have not taken a second, look or a third, fourth or fifth look at this particular application, now's the time to do it. Now is the time to do that with trusted counsel under the protections of the attorney client privilege.

Allow your counsel the opportunity to bring in any kind of accounting experts that they need to work on the math, so to speak, if necessary, under that blanket of protections that the attorney client relationship provides. And start to understand that there are options. You can go left. You can go right. You can mitigate against the problems. Or if you are ironclad 100% in the right and entitled to this money, you can push. And push through litigation, if necessary. And I think our firm and others have seen an influx in that type of litigation when it comes down to it. Because if that application was intended, this is what Congress wanted the American people to have access to in order to fend off economic calamity.

And wherever you fall on the ideological spectrum when it comes to the way that the law works, that's how it works. And we may all want to be a Monday-morning quarterback at this point and say, could have, should have, would have, as it relates to any one of these programs. But it's just a lesson learned for next time. This program, as constituted by Congress, is still alive and well. And I think that's really an important takeaway for our listeners.

In our waning moments together, today, Elizabeth, I want you to talk to me a little bit about what else that the IRS is up to. Because frankly, I think you've done a terrific job of setting this conflict between an administrative agency, a product of the executive branch of government, and what Congress enacted for this credit. I stopped short of saying it's deceptive what the IRS is doing, but it's kind of deceptive. And--

**Blickley:** They're being very clear about not being clear. They're acting without explanation. And that, I think, is what frustrates most taxpayers.

**Adams:** Yeah. And I think there's nothing more demonstrative of that very issue than these recapture letters. Explain for our audience, against this backdrop that we've just spent the better part of a half an hour talking about.

**Blickley:** So, these recapture letters. You may have gotten the ERC and patted yourself on the back. Gee, I claimed exactly what I was entitled to and the government agreed with me because it full paid my claim.

That is not true. IRS was trying to get money out the door. That is what Congress told them to do. And they were processing them as quickly as possible. The problem is, some claims, where they were

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never entitled to a payment, were paid. So, during the moratorium, they came up with some criteria to find claims that were not valid. And one of them was governmental orders. A lot of folks were relying on governmental orders. And during the moratorium, they created a spreadsheet so that they say, okay, where is your business? What governmental order were you under? Okay, great. You get the ERC for quarter one, but no other quarters.

So, if the ERC was paid to you for all four quarters and they've decided that the governmental order didn't apply for quarter two, three and four, you may get a letter to recapture quarters two, three and four. And that is also a point at which your spidey sense should go off and you should raise your hand and ask for help.

**Adams:** What does recapture really mean?

**Blickley:** It's like capture the flag. You come in, you try to recapture that money. They say, hey, you. We want it back. We want it back. And you'll have some options. We haven't seen too many of these, but there will be 30,000 of them, the IRS tells us. There will be 30,000 recapture letters. So that's not 30,000 claims. That's 30,000 businesses getting these letters for all of their claims that IRS has decided were never valid in the first instance. And this is becoming a problem because IRS issued some proposed regulations to make it even easier. So that they have to give taxpayers even less of an opportunity to come forward and fight back.

They would like to just go ahead and assess. Which means, you owe, come for me and try to collect. Because once it's assessed, maybe they can put a lien on your business. Maybe they can, you know, attach a bank account, whatever. Once it is there, once it is assessed, then you have to come back and fight back.

**Adams:** Talk about trying to change the rules to the game in the middle.

**Blickley:** Not even at the middle. After the game is over.

**Adams:** Sorry, you lost the Super Bowl, but you know what, I get 14 points for a touchdown instead of seven.

**Blickley:** Exactly. This could be for claims that were paid two years ago. And they could now be saying, I didn't really mean it. I get a second bite at the apple, but not you.

**Adams:** How can the taxpayer fight back? Talk to us about what that litigation would look like. The forums, the players, the actors. And how a bona fide recipient of the ERC that's getting whipsawed by the IRS, battling Congress, so to speak, about administering this mandate.

Talk to us about how we can fight back.

**Blickley:** Easiest way: file your claim in District Court. You explain right in your complaint how you were eligible, when you made your request, when it was rejected or when they came back for the recapture. And you say, I was always eligible. Let me count the ways. And then you get Department



of Justice. And why do you get Department of Justice? Because IRS does not practice in District Court.

**Adams:** The civil division.

**Blickley:** Right. You get Department of Justice that is now outside the building and says, maybe you're entitled, let me actually look. And some people have gotten, finally gotten their payment the moment Department of Justice looked at their claim. Because they're taking a fresh look and they said, oh, we shouldn't, no, we shouldn't be doing that because they're on the back foot. They have to respond to the claim. And so there's a lot fewer people working at Department of Justice on ERC than there are at IRS working on ERC.

**Adams:** That, I think, is going to be the next wave. If defending audits and responding to some of these letters has been what's brought us to this point, it sounds to me a whole lot like what we're going to see -- and I think we're already seeing it, from a lot of respects -- is an influx of litigation and District Court and taxpayer versus the IRS. And let an impartial judge decide exactly the way that this has to play out.

And at the end of the day, I'm fairly confident that judges will hold up the will of Congress over the will of an administrative agency that's sort of mucking up the works on what Congress intended. Particularly against the backdrop of some recent Supreme Court law that really hamstring administrative agencies when this issue of rulemaking versus a very clear statute.

**Blickley:** Yeah. Think about what district court is: juries. Juries don't like the IRS. So you don't necessarily just have to convince the judge, but a jury is going to potentially help your claims.

But there has been this change in the law. For many years, what, 40 years, there was the Chevron Doctrine that said, you know, if the agency created a regulation we would give deference of some sort to that agency based on their expertise in the area. And back in June, *Loper Bright* came out saying, you know what? Agencies don't have any particular expertise. Congress says what the law is. And it really curtailed what agencies--

**Adams:** Exactly what the IRS is trying to do here. It clipped its wings.

**Blickley:** Absolutely. So, IRS does this from time to time where they don't like the rule and they would like to administratively change it. And *Loper Bright* says no.

So there will be litigation about any of the Cares Act legislation. They're trying to propose regulations, reclassifying interest on erroneous ERC payments as instead underpayments of tax in order to withhold an opportunity to fight back. And so there will be litigation on this.

There are scholars and lawyers who are salivating at the idea. We are also salivating at the idea of litigating this issue. It is something new and interesting and fundamentally unfair in my opinion.



Generally, DOJ brought suit for erroneous refunds under 26 USC 7405 to recover the funds. Now, with the recapture letters and the proposed regulations, the IRS is trying to exclude ERC recaptures from 7405 and simply assessing the amount and starting to collect. And taxpayers will fight back, arguing, using *Loper Bright* to say IRS cannot change the law by regulation. And there will be litigation on this.

But again, IRS will simply start acting and hope you don't fight back. Those who do fight back will be making new case law under *Loper Bright*.

**Adams:** Yeah. Well, I think if one thing we can all take away from our discussion today, Elizabeth, is that our ERC Task Force here at the firm is going to be busy for the foreseeable future. And that could include, but not be limited to, a new front in this war going into to federal court.

I can't thank you enough for being with me today. Elizabeth, thanks so much for being with us.

**Blickley:** Thank you, Matt.

**Adams:** That's all the time we have here today on "The Presumption of Innocence," but until next time, I'm your host, Matt Adams. We'll see you, take care. Bye-bye.

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