

118TH CONGRESS  
2D SESSION

# S. 5079

To provide for special enforcement provisions with respect to COVID-related employee retention credit claims, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2024

Mr. ROMNEY (for himself, Mr. MANCHIN, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To provide for special enforcement provisions with respect to COVID-related employee retention credit claims, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ERTC Repeal Act of  
5 2024”.

1 **SEC. 2. ENFORCEMENT PROVISIONS WITH RESPECT TO**  
2 **COVID-RELATED EMPLOYEE RETENTION**  
3 **CREDITS.**

4 (a) INCREASE IN ASSESSABLE PENALTY ON COVID-  
5 ERTC PROMOTERS FOR AIDING AND ABETTING UNDER-  
6 STATEMENTS OF TAX LIABILITY.—

7 (1) IN GENERAL.—If any COVID-ERTC pro-  
8 moter is subject to penalty under section 6701(a) of  
9 the Internal Revenue Code of 1986 with respect to  
10 any COVID-ERTC document, notwithstanding  
11 paragraphs (1) and (2) of section 6701(b) of such  
12 Code, the amount of the penalty imposed under such  
13 section 6701(a) shall be the greater of—

14 (A) \$200,000 (\$10,000, in the case of a  
15 natural person), or

16 (B) 75 percent of the gross income derived  
17 (or to be derived) by such promoter with re-  
18 spect to the aid, assistance, or advice referred  
19 to in section 6701(a)(1) of such Code with re-  
20 spect to such document.

21 (2) NO INFERENCE.—Paragraph (1) shall not  
22 be construed to create any inference with respect to  
23 the proper application of the knowledge requirement  
24 of section 6701(a)(3) of the Internal Revenue Code  
25 of 1986.

1           (b) FAILURE TO COMPLY WITH DUE DILIGENCE RE-  
2     REQUIREMENTS TREATED AS KNOWLEDGE FOR PURPOSES  
3     OF ASSESSABLE PENALTY FOR AIDING AND ABETTING  
4     UNDERSTATEMENT OF TAX LIABILITY.—In the case of  
5     any COVID–ERTC promoter, the knowledge requirement  
6     of section 6701(a)(3) of the Internal Revenue Code of  
7     1986 shall be treated as satisfied with respect to any  
8     COVID–ERTC document with respect to which such pro-  
9     moter provided aid, assistance, or advice, if such promoter  
10    fails to comply with the due diligence requirements re-  
11    ferred to in subsection (c)(1).

12           (c) ASSESSABLE PENALTY FOR FAILURE TO COMPLY  
13    WITH DUE DILIGENCE REQUIREMENTS.—

14           (1) IN GENERAL.—Any COVID–ERTC pro-  
15    moter which provides aid, assistance, or advice with  
16    respect to any COVID–ERTC document and which  
17    fails to comply with due diligence requirements im-  
18    posed by the Secretary with respect to determining  
19    eligibility for, or the amount of, any COVID-related  
20    employee retention tax credit, shall pay a penalty of  
21    \$1,000 for each such failure.

22           (2) DUE DILIGENCE REQUIREMENTS.—Except  
23    as otherwise provided by the Secretary, the due dili-  
24    gence requirements referred to in paragraph (1)

1 shall be similar to the due diligence requirements  
2 imposed under section 6695(g).

3 (3) RESTRICTION TO DOCUMENTS USED IN  
4 CONNECTION WITH RETURNS OR CLAIMS FOR RE-  
5 FUND.—Paragraph (1) shall not apply with respect  
6 to any COVID–ERTC document unless such docu-  
7 ment constitutes, or relates to, a return or claim for  
8 refund.

9 (4) TREATMENT AS ASSESSABLE PENALTY,  
10 ETC.—For purposes of the Internal Revenue Code of  
11 1986, the penalty imposed under paragraph (1) shall  
12 be treated in the same manner as a penalty imposed  
13 under section 6695(g).

14 (5) SECRETARY.—For purposes of this sub-  
15 section, the term “Secretary” means the Secretary  
16 of the Treasury or the Secretary’s delegate.

17 (d) ASSESSABLE PENALTIES FOR FAILURE TO DIS-  
18 CLOSE INFORMATION, MAINTAIN CLIENT LISTS, ETC.—  
19 For purposes of sections 6111, 6112, 6707 and 6708 of  
20 the Internal Revenue Code of 1986—

21 (1) any COVID-related employee retention tax  
22 credit (whether or not the taxpayer claims such  
23 COVID-related employee retention tax credit) shall  
24 be treated as a listed transaction (and as a report-  
25 able transaction) with respect to any COVID–ERTC

1 promoter if such promoter provides any aid, assist-  
2 ance, or advice with respect to any COVID-ERTC  
3 document relating to such COVID-related employee  
4 retention tax credit, and

5 (2) such COVID-ERTC promoter shall be  
6 treated as a material advisor with respect to such  
7 transaction.

8 (e) COVID-ERTC PROMOTER.—For purposes of  
9 this section—

10 (1) IN GENERAL.—The term “COVID-ERTC  
11 promoter” means, with respect to any COVID-  
12 ERTC document, any person which provides aid, as-  
13 sistance, or advice with respect to such document  
14 if—

15 (A) such person charges or receives a fee  
16 for such aid, assistance, or advice which is  
17 based on the amount of the refund or credit  
18 with respect to such document and, with respect  
19 to such person’s taxable year in which such per-  
20 son provided such assistance or the preceding  
21 taxable year, the aggregate gross receipts of  
22 such person for aid, assistance, and advice with  
23 respect to all COVID-ERTC documents exceeds  
24 20 percent of the gross receipts of such person  
25 for such taxable year, or

1 (B) with respect to such person's taxable  
2 year in which such person provided such assist-  
3 ance or the preceding taxable year—

4 (i) the aggregate gross receipts of  
5 such person for aid, assistance, and advice  
6 with respect to all COVID-ERTC docu-  
7 ments exceeds 50 percent of the gross re-  
8 ceipts of such person for such taxable year,  
9 or

10 (ii) both—

11 (I) such aggregate gross receipts  
12 exceeds 20 percent of the gross re-  
13 ceipts of such person for such taxable  
14 year, and

15 (II) the aggregate gross receipts  
16 of such person for aid, assistance, and  
17 advice with respect to all COVID-  
18 ERTC documents (determined after  
19 application of paragraph (3)) exceeds  
20 \$500,000.

21 (2) EXCEPTION FOR CERTIFIED PROFESSIONAL  
22 EMPLOYER ORGANIZATIONS.—The term “COVID-  
23 ERTC promoter” shall not include a certified profes-  
24 sional employer organization (as defined in section  
25 7705).

1           (3) AGGREGATION RULE.—For purposes of  
2 paragraph (1)(B)(ii)(II), all persons treated as a  
3 single employer under subsection (a) or (b) of sec-  
4 tion 52 of the Internal Revenue Code of 1986, or  
5 subsection (m) or (o) of section 414 of such Code,  
6 shall be treated as 1 person.

7           (4) SHORT TAXABLE YEARS.—In the case of  
8 any taxable year of less than 12 months, paragraph  
9 (1) shall be applied with respect to the calendar year  
10 in which such taxable year begins (in addition to ap-  
11 plying to such taxable year).

12          (f) COVID-ERTC DOCUMENT.—For purposes of  
13 this section, the term “COVID-ERTC document” means  
14 any return, affidavit, claim, or other document related to  
15 any COVID-related employee retention tax credit, includ-  
16 ing any document related to eligibility for, or the calcula-  
17 tion or determination of any amount directly related to  
18 any COVID-related employee retention tax credit.

19          (g) COVID-RELATED EMPLOYEE RETENTION TAX  
20 CREDIT.—For purposes of this section, the term  
21 “COVID-related employee retention tax credit” means—

22           (1) any credit, or advance payment, under sec-  
23 tion 3134 of the Internal Revenue Code of 1986,  
24 and

1           (2) any credit, or advance payment, under sec-  
2           tion 2301 of the CARES Act.

3           (h) LIMITATION ON CREDIT AND REFUND OF  
4 COVID-RELATED EMPLOYEE RETENTION TAX CRED-  
5 ITS.—Notwithstanding section 6511 of the Internal Rev-  
6 enue Code of 1986 or any other provision of law, no credit  
7 or refund of any COVID-related employee retention tax  
8 credit shall be allowed or made after January 31, 2024,  
9 unless a claim for such credit or refund is filed by the  
10 taxpayer on or before such date.

11          (i) AMENDMENTS TO EXTEND LIMITATION ON AS-  
12 SESSMENT.—

13           (1) IN GENERAL.—Section 3134(l) of the Inter-  
14           nal Revenue Code of 1986 is amended to read as fol-  
15           lows:

16           “(l) EXTENSION OF LIMITATION ON ASSESSMENT.—

17           “(1) IN GENERAL.—Notwithstanding section  
18           6501, the limitation on the time period for the as-  
19           sessment of any amount attributable to a credit  
20           claimed under this section shall not expire before the  
21           date that is 6 years after the latest of—

22           “(A) the date on which the original return  
23           which includes the calendar quarter with re-  
24           spect to which such credit is determined is filed,



1           “(B) the date on which such return is  
2 treated as filed under section 6501(b)(2), or

3           “(C) the date on which the claim for credit  
4 or refund with respect to such credit is made.

5           “(2) DEDUCTION FOR WAGES TAKEN INTO AC-  
6 COUNT IN DETERMINING IMPROPERLY CLAIMED  
7 CREDIT.—

8           “(A) IN GENERAL.—Notwithstanding sec-  
9 tion 6511, in the case of an assessment attrib-  
10 utable to a credit claimed under this section,  
11 the limitation on the time period for credit or  
12 refund of any amount attributable to a deduc-  
13 tion for improperly claimed ERTC wages shall  
14 not expire before the time period for such as-  
15 sessment expires under paragraph (1).

16           “(B) IMPROPERLY CLAIMED ERTC  
17 WAGES.—For purposes of this paragraph, the  
18 term ‘improperly claimed ERTC wages’ means,  
19 with respect to an assessment attributable to a  
20 credit claimed under this section, the wages  
21 with respect to which a deduction would not  
22 have been allowed if the portion of the credit to  
23 which such assessment relates had been prop-  
24 erly claimed.”.

1           (2) APPLICATION TO CARES ACT CREDIT.—Sec-  
2           tion 2301 of the CARES Act is amended by adding  
3           at the end the following new subsection:

4           “(o) EXTENSION OF LIMITATION ON ASSESSMENT.—

5           “(1) IN GENERAL.—Notwithstanding section  
6           6501 of the Internal Revenue Code of 1986, the lim-  
7           itation on the time period for the assessment of any  
8           amount attributable to a credit claimed under this  
9           section shall not expire before the date that is 6  
10          years after the latest of—

11           “(A) the date on which the original return  
12           which includes the calendar quarter with re-  
13           spect to which such credit is determined is filed,

14           “(B) the date on which such return is  
15           treated as filed under section 6501(b)(2) of  
16           such Code, or

17           “(C) the date on which the claim for credit  
18           or refund with respect to such credit is made.

19          “(2) DEDUCTION FOR WAGES TAKEN INTO AC-  
20          COUNT IN DETERMINING IMPROPERLY CLAIMED  
21          CREDIT.—

22           “(A) IN GENERAL.—Notwithstanding sec-  
23           tion 6511 of such Code, in the case of an as-  
24           sessment attributable to a credit claimed under  
25           this section, the limitation on the time period

1 for credit or refund of any amount attributable  
2 to a deduction for improperly claimed ERTC  
3 wages shall not expire before the time period  
4 for such assessment expires under paragraph  
5 (1).

6 “(B) IMPROPERLY CLAIMED ERTC  
7 WAGES.—For purposes of this paragraph, the  
8 term ‘improperly claimed ERTC wages’ means,  
9 with respect to an assessment attributable to a  
10 credit claimed under this section, the wages  
11 with respect to which a deduction would not  
12 have been allowed if the portion of the credit to  
13 which such assessment relates had been prop-  
14 erly claimed.”.

15 (j) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as otherwise pro-  
17 vided in this subsection, the provisions of this sec-  
18 tion shall apply to aid, assistance, and advice pro-  
19 vided after March 12, 2020.

20 (2) DUE DILIGENCE REQUIREMENTS.—Sub-  
21 sections (b) and (c) shall apply to aid, assistance,  
22 and advice provided after the date of the enactment  
23 of this Act.

24 (3) LIMITATION ON CREDIT AND REFUND OF  
25 COVID-RELATED EMPLOYEE RETENTION TAX CRED-

1       ITS.—Subsection (h) shall apply to credits and re-  
2       funds allowed or made after January 31, 2024.

3           (4) AMENDMENTS TO EXTEND LIMITATION ON  
4       ASSESSMENT.—The amendments made by subsection  
5       (i) shall apply to assessments made after the date of  
6       the enactment of this Act.

7           (k) TRANSITION RULE WITH RESPECT TO REQUIRE-  
8       MENTS TO DISCLOSE INFORMATION, MAINTAIN CLIENT  
9       LISTS, ETC.—Any return under section 6111 of the Inter-  
10      nal Revenue Code of 1986, or list under section 6112 of  
11      such Code, required by reason of subsection (d) of this  
12      section to be filed or maintained, respectively, with respect  
13      to any aid, assistance, or advice provided by a COVID-  
14      ERTC promoter with respect to a COVID-ERTC docu-  
15      ment before the date of the enactment of this Act, shall  
16      not be required to be so filed or maintained (with respect  
17      to such aid, assistance or advice) before the date which  
18      is 90 days after such date.

19           (l) PROVISIONS NOT TO BE CONSTRUED TO CREATE  
20      NEGATIVE INFERENCES.—

21           (1) NO INFERENCE WITH RESPECT TO APPLICA-  
22      TION OF KNOWLEDGE REQUIREMENT TO PRE-EN-  
23      ACTMENT CONDUCT OF COVID-ERTC PROMOTERS,  
24      ETC.—Subsection (b) shall not be construed to cre-  
25      ate any inference with respect to the proper applica-

1       tion of section 6701(a)(3) of the Internal Revenue  
2       Code of 1986 with respect to any aid, assistance, or  
3       advice provided by any COVID-ERTC promoter on  
4       or before the date of the enactment of this Act (or  
5       with respect to any other aid, assistance, or advice  
6       to which such subsection does not apply).

7               (2) REQUIREMENTS TO DISCLOSE INFORMA-  
8       TION, MAINTAIN CLIENT LISTS, ETC.—Subsections  
9       (d) and (k) shall not be construed to create any in-  
10      ference with respect to whether any COVID-related  
11      employee retention tax credit is (without regard to  
12      subsection (d)) a listed transaction (or reportable  
13      transaction) with respect to any COVID–ERTC pro-  
14      moter; and, for purposes of subsection (j), a return  
15      or list shall not be treated as required (with respect  
16      to such aid, assistance, or advice) by reason of sub-  
17      section (d) if such return or list would be so re-  
18      quired without regard to subsection (d).

19      (m) REGULATIONS.—The Secretary (as defined in  
20      subsection (c)(5)) shall issue such regulations or other  
21      guidance as may be necessary or appropriate to carry out  
22      the purposes of this section (and the amendments made  
23      by this section).

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