



TaxNewsFlash

United States

No. 2024-061
February 16, 2024

GLAM: Liability of third-party payers for improperly claimed employee retention credits

The IRS today publicly released a generic legal advice memorandum (GLAM)* that addresses the liability of third-party payers (TPPs) for underpayments of employment tax when the employee retention credit (ERC) is improperly claimed by a common law employer client on an employment tax return filed by the TPP under its own employer identification number (EIN).

The GLAM concludes that the following categories of TPPs are liable for any underpayments resulting from any improperly claimed employment tax credit (including the ERC) that the TPP claims for a client on the TPP's employment tax return filed under the TPP's EIN based on wages paid by the TPP to the client's employees:

- Designated agent of the employer under section 3504
- Non-certified professional employer organization (PEO) subject to Treas. Reg. § 31.3504-2
- Certified PEO (CPEO) under section 3511

Read [GLAM 2024-001](#) [PDF 116 KB] (release date of February 16, 2024, and dated February 5, 2024)

*A generic legal advice memorandum constitutes internal IRS legal advice by the Office of Chief Counsel to assist IRS service personnel in administering their duties. It is not binding law and cannot be used or cited as precedent.

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