

June 29, 2023

ERC Statute of Limitations

Employee Retention Tax Credit claims are filed with the IRS through the filing of a Form 941-X, an Adjusted Employer’s Quarterly Federal Tax Return. While original Forms 941 are due by the last day of the month that follows the end of each quarter, and amendments to federal tax returns generally need to be filed within three years of the original due dates, 941-X amendments are different.

The instructions to Form 941-X state:

Is There a Deadline for Filing Form 941-X? Generally, you may correct overreported taxes on a previously filed Form 941 if you file Form 941-X within 3 years of the date Form 941 was filed or 2 years from the date you paid the tax reported on Form 941, whichever is later. You may correct underreported taxes on a previously filed Form 941 if you file Form 941-X within 3 years of the date the Form 941 was filed. We call each of these time frames a “period of limitations.” For purposes of the period of limitations, Forms 941 for a calendar year are considered filed on April 15 of the succeeding year if filed before that date.

That last sentence is the key, “For purposes of the period of limitations, Forms 941 for a calendar year *are considered filed on April 15 of the succeeding year if filed before that date.*” This rule is derived from Section 6513 of the Code in which subsection (c) “Return and payment of Social Security taxes and income tax withholding,” includes the rule that, “(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year.” For example, while the Form 941 for the second quarter of 2020 was originally due on 7/31/2020; the third quarter was due on 10/31/2020; and the fourth quarter was due on 1/31/2021, all of those returns are *considered filed on 4/15/2021*, setting the three-year statute of limitations for amending any of those returns as 4/15/2024. An illustration of the applicable statute of limitations for the filing of 941-X forms for ERC claims is below:.

QUARTERS	STATUTE DATE
Q1 - Q4 2020	April 15, 2024
Q1 - Q4 2021	April 15, 2025

Sincerely,
DAJ