

## Happy Halloween BTLG Friends

As we face the fourth and final quarter of this year, the October 15th tax extension deadline has slowly crept upon us. However, fear not as my team of tax attorneys and I are here to assist you with any IRS, FTB, EDD or CDTFA tax litigation issues you might have, so that you can survive this spooky season, unscathed.

In recent months we have had a resounding interest from several of our clients with regards to Employment Retention Credits (ERC). If your business has claimed the credit, then I encourage you to read our article on page 2, where I uncover the mysteries behind preparing for an ERC audit.

The prestigious UCLA 39th Annual Tax Controversy Institute Conference takes place this month. Delegates will be sharing insights and learning from a gathering of renowned tax law professionals. I will be personally moderating the portion on *'The New IRS Collection Process: The Best Ways to Resolve an IRS Debt.'*

While on the matter of forthcoming events, one of our tax Attorneys, Guy Glaser will be speaking at a Strafford Publications webinar later this month. Read more, under *'Save the Date'*.

Meet Lauren Rosas on page 4, our Administrative Assistant, the welcoming voice ensuring your interactions with us are smooth and pleasant. Lauren is your go-to person for any queries or concerns, dedicated to making your engagement with us as seamless as possible.

At Brager Tax Law Group, we believe that knowledge is never a waste and ignorance is definitely not bliss, well not when it comes to disputes with the IRS anyway. I'm thrilled to announce that I will be posting several informative videos — *"Tax Disputes Decoded"* offering valuable advice on tax litigation frequently asked questions. Read more on page 4.

If you or anyone you know have any tax ghosts and IRS skeletons in your closet feel free to contact us or visit our website at [www.bragertaxlaw.com](http://www.bragertaxlaw.com).

Until our winter holidays newsletter, I wish you all a delightful Halloween full of enchanting tax relief treats.

**Dennis N. Brager**



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## Fall 2023 E-Newsletter

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### Save the Date!

#### October 17th, 2023: Strafford Publications Webinar on Foreign Late Filing Notices and Effective Responses for Penalty Abatement.

Our Tax Attorney [Guy Glaser](#) and his co-panelists of international tax experts will review what constitutes reasonable cause, when first-time abatement applies, and will offer tips for working with the IRS to eliminate or lessen the penalties frequently and automatically assessed to international taxpayers. **CPA's:** Strafford is a NASBA CPE sponsor and this 110-minute webinar is accredited for 2.0 CPE credits. For more information or to register: [Click here](#)

#### October 26th, 2023: In-Person Event

**39th Annual UCLA Tax Controversy Institute Conference 2023**, the preeminent conference exclusively dedicated to tax controversy and tax litigation, moderated by [Dennis Brager](#). For more information or to register read more on Page 3.



## How to Prepare for an ERC Audit?



**The Employee Retention Credit (ERC)** has provided welcome relief to many businesses impacted by the COVID-19 pandemic. However, with billions in credits claimed, the IRS will be closely scrutinizing ERC filings. Indeed, the IRS has warned employers to be wary of companies promoting improper Employee Retention Credit claims. If your business has claimed the credit, you should prepare for a possible IRS **tax audit** in the next few years. Proper documentation is key to surviving the tax audit process. Here's what you need to know to prepare.

### Maintain Organized Documentation

The IRS provided a checklist of documentation to substantiate ERC eligibility in **Notice 2021-20**. Gather these records and keep them in an organized file or digital folder that's easily accessible.

#### Include documentation on:

- Government orders suspending operations or limiting capacity
- Revenue/gross receipts records showing significant decline
- Which employees received qualified wages and amounts paid
- Qualified health plan expenses allocated to wages
- Aggregated group determinations affecting the credit
- Completed Form 7200 Advance Payment applications
- Completed employment tax returns claiming the credit

In addition, keep records of your analysis and calculations used to determine credit amounts. Document any surveys, interviews, and data used in your determinations. Contemporaneous documentation created at the time of filing is ideal.

Thorough documentation allows anyone in your organization to reconstruct how you calculated the credit if the person who originally determined it is no longer available. Organized records also facilitate efficient responses to IRS requests.

### Retain Records for at Least 6 Years

The statute of limitations for the IRS to review your ERC claim is either three years, or five years depending upon which quarter is being audited. If the tax audit is for any quarter during 2020, or the first two quarters of 2021 the statute of limitations is 3 years. However, if the tax audit relates to the second two quarters of 2021 the statute of limitations is 5 years. In calculating the 3 or 5 year period it is calculated from (1) the date on which the original return that includes the calendar quarter with respect to which the ERC is determined is filed, or (2) the April 15 date of the following year on which the original return is treated as filed. To be safe, retain ERC documentation for at least 6 years from the filing date. Keep digital copies indefinitely since storage space is generally not a constraint. Proper documentation provides proof if your credit determination is questioned down the road.

### Review Government Orders and Revenue Records

#### The two primary ERC eligibility requirements are:

1. Full or partial suspension of operations due to a COVID-19 related governmental order
2. Significant decline in gross receipts

Expect the IRS to thoroughly review the orders and revenue records you relied on to claim the credit. Revisit these materials and make sure your compliance is air-tight. Keep notes on how the orders specifically impacted your operations.

For the decline in gross receipts, double check your calculations and determine if any adjustments are necessary. The IRS may detect minor calculation errors that could call your good faith effort into question if uncorrected.

### Substantiate FTE and Wage Reduction Calculations

The 2020 CARES Act limited the ERC for employers who reduced full-time equivalent employees (FTEs) or wages.

The 2021 extension of the credit eliminated these reduction limits, but they still applied in 2020. Be prepared to walk through your FTE calculations and document why any reductions were exempt from limitation. Also verify any wage decrease determinations in 2020. Miscalculations here could trigger IRS scrutiny of your entire 2020 ERC claim.

### Reconstruct Qualified Wage Determinations

The IRS will look closely at which employees received qualified wages and in what amounts. Be ready to explain your reasoning for paying qualified wages to specific employees. For 2020, qualified wages applied narrowly to employees not providing services. In 2021, this restriction was lifted, but determinations still must be documented. Review your employee-by-employee wage analysis to ensure proper qualified wage designations.

### Verify Health Plan Allocations

Employers who sponsored health plans could allocate qualified health expenses toward determining maximum qualified wages per employee. Verify your health plan records and cost documents support the amounts allocated. Any discrepancy could place your other documentation into question.

### Evaluate Consistency Across Returns

The IRS will review ERC claims across all your employment tax returns for consistency. Ensure your credit determinations and claimed amounts align appropriately from quarter to quarter. Also confirm proper quarterly gross receipts calculations that support credit eligibility. Document any changes impacting the credit across quarters, such as updated government orders or operating conditions. Evolving circumstances can justify credit fluctuations, but only with proper documentation.

### Use Available IRS Guidance

The IRS portal provides helpful resources on ERC documentation and audits. Leverage FAQs, user guides, audit techniques, and other guidance to evaluate your documentation. Identify any potential gaps and strengthen your support before an IRS exam. Thoroughly prepared documentation can help turn an IRS tax audit from an adversarial process into a collaborative review. Comprehensive records demonstrate good faith credit determinations in a complex environment. With proper substantiation, your business can re-affirm qualification for this important relief program, or at a minimum avoid costly tax penalties if errors were made.

As always, we recommend that you seek the advice of a specialist tax attorney when dealing with any tax litigation matters.



*Image, courtesy of UCLA Extension, taken at the 38th Annual UCLA Tax Controversy Institute Conference held in 2022*

## 39th Annual UCLA Tax Controversy Institute 2023

**“The New IRS Collection Process:  
The Best Ways to Resolve an IRS Debt.”**

**Thursday, October 26th, 2023  
2:30pm-3:30pm EST**

**Full Day Program Commences  
at 8:30 to 5pm  
at the Beverly Hills Hotel in Beverly Hills, CA**

Dennis Brager will once again be moderating at the UCLA Annual Tax Controversy Conference, which is the preeminent conference exclusively dedicated to tax controversy and tax litigation. The conference provides an open forum for distinguished presenters and panelists to discuss, and often debate, sensitive tax practice issues with an engaged audience. This conference is ideal for tax attorneys, accountants, CPAs, enrolled agents, financial advisors, and other tax professionals.

### What you can expect:

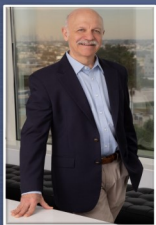
- Attend high-quality keynote presentations and panel discussions to learn the latest trends and practices surrounding tax controversy issues.
- Speakers include top IRS representatives and private practitioners.
- Convenient, day-long format held at the prestigious Beverly Hills Hotel that includes continental breakfast, Annual Bruce I. Hochman Award Luncheon, and evening reception.
- Networking opportunities with leading tax professionals.

For more information or to register for this event, visit:  
<https://www.uclaextension.edu/tax-controversy-conference>



**“Mind if I Go In First”**

## Tax Disputes Decoded



Insights from Tax Litigation Attorney  
**Dennis Brager**



We are pleased to announce the launch of a new educational online video series, titled **Tax Disputes Decoded - Insights from Tax Litigation Attorney Dennis Brager**. Each month, Dennis will post a new 5-minute video on our website and YouTube channel to address concerns on tax litigation matters and IRS disputes.

In the inaugural video titled "Is it Necessary to Report Gifts from Foreign Assets?", Dennis will discuss common misconceptions and pitfalls related to this issue. Considering the significant number of immigrants residing in the United States, this is an important topic, since many may unknowingly face large penalties on inheritances and gifts received from their non-U.S. relatives if not properly reported to the IRS.

To stay updated on upcoming episodes and to gain access to a wealth of knowledge on tax litigation issues, subscribe to our **@Brager Tax Law YouTube** channel and regularly visit our website's Newsroom and Events page at: [www.bragertaxlaw.com/video-radio-tv](http://www.bragertaxlaw.com/video-radio-tv).

We welcome your feedback and inquiries. Please feel free to reach out to our Communications Director, Ana-Paula Ferreira with any suggestions or topics that you would like to see covered in future episodes at: [afferreira@bragertaxlaw.com](mailto:afferreira@bragertaxlaw.com)



## Have You Met Lauren Rosas?

Lauren joined Brager Tax Law Group in 2019 as an administrative assistant. Her role focuses on client services and support to the firm's attorneys and enrolled agent. She handles tasks such as drafting retainer agreements and power of attorney documents, while remaining the go-between the attorneys and our valued clients.

Our versatile and dynamic administrative assistant commenced her career as a licensed cosmetologist and managed companies in this space. Lauren later moved on to real estate as a manager of several property management companies while handling financials and payroll as well as property acquisitions.

In her spare time, Lauren enjoys traveling and engaging with new people and experiencing new cultures. This animal lover is unashamedly a binge watcher of crime documentaries as a means to relax. It's a wonder that this 'foodie' can maintain her svelte figure as she frequently tries new restaurants and enjoys baking — and eating.

## Dennis Brager Interviewed on Good Morning America on the Shakira Tax Evasion Matter - Again!



**DENNIS BRAGER**  
TAX LITIGATION ATTORNEY

[Click here to watch the video](#)

On September 27th, 2023, ABC7 News ran another segment on 'Waka-Waka' star Shakira's tax evasion saga. Dennis told GMA that simply writing a check to the Spanish government doesn't necessarily resolve Shakira's alleged tax issues. Dennis added that the Grammy Award-winning singer and four-time VMAs recipient, who was recently honored with MTV's Video Vanguard Award at the 2023 MTV Video Music Awards, is accused of committing two distinct crimes.

"The fact that she is going to court means it's going to be a big fight," Dennis concluded.