

United States Senate

September 23, 2024

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Commissioner Werfel,

The Employee Retention Tax Credit (ERC) was an important lifeline that kept workers employed during the unprecedented economic downturn following the COVID-19 outbreak. But ERC claims have faced processing delays that have now pushed many non-profits and small businesses in Massachusetts to their breaking point. We urge the Internal Revenue Service (IRS) to expedite payment of ERC claims, prioritizing low-risk claims from taxpayers experiencing financial hardship.

In 2020, Congress included the ERC in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The tax credit — measured as a percentage of wages paid by an employer whose business suffered because of COVID-19 — was designed to encourage employers to keep employees on their payrolls. The ERC was discontinued for most businesses after September 30, 2021, but can be claimed retroactively.

We understand that due to the volume of ERC claims, including a substantial number of fraudulent or erroneous claims, the IRS slowed or halted ERC processing so that it could engage in stricter claim review. On September 14, 2023, the IRS imposed a moratorium on processing new claims.¹ On August 8, 2024, the agency announced that, going forward, it would start processing claims filed between September 14, 2023, and January 31, 2024.² It also disclosed that it had identified 50,000 valid ERC claims, would expedite those payments, and would pay another large block of low-risk claims this fall.³

Although we support the agency's effort to prevent improper payments, both the slow pace of review and the moratorium have caused significant delays and hardship for those with legitimate claims. During the moratorium, the IRS backlog doubled to around 1.4 million claims. The long delay and backlog have put many nonprofits and businesses in jeopardy of shutting down before the IRS even considers their ERC claim.

¹ News Release, IRS moves forward with Employee Retention Credit claims: Agency accelerates work on complex credit as more payments move into processing; vigilance, monitoring continues on potentially improper claims, Internal Revenue Serv. (Aug. 8, 2024), <https://www.irs.gov/newsroom/irs-moves-forward-with-employee-retention-credit-claims-agency-accelerates-work-on-complex-credit-as-more-payments-move-into-processing-vigilance-monitoring-continues-on-potentially-improper-claims>.

² *Id.*

³ *Id.*

Our offices have heard directly from schools that need the credit in order to offer their students educational opportunities; a community theatre that needs the credit to continue to put on productions in a small town; grocery stores that need the credit to stay open so they can provide healthy foods to their communities; and restaurants and hotels that need the credit to just to survive. These Massachusetts residents followed the IRS guidelines in applying for the ERC credit and are now suffering through no fault of their own.

The agency's recent announcements are a positive step towards providing the relief Congress intended for taxpayer employers. But there are a significant number of claims that the IRS has identified as low risk, which the IRS is not currently processing. This means that many claimants likely will have to wait several more months to receive the benefit to which they are entitled. We believe that, as soon as possible, the IRS should approve and pay low-risk ERC claims from struggling nonprofits and small businesses. Immediately approving and paying low-risk ERC claims would greatly benefit the hundreds of thousands who are still operating in a challenging economic environment.

We understand that the IRS has been persistently underfunded for years, impairing the agency's ability to fully meet the needs of taxpayers.⁴ That is why we have supported efforts to increase IRS funding through legislation like the Inflation Reduction Act — the benefits of which have already been realized through an improvement to taxpayer services and an expansion of the agency's compliance work on high-income taxpayers.⁵ We therefore appreciate IRS' efforts to balance fraud prevention and taxpayer service with ERC claims, especially at current funding levels, but we urge the agency to more quickly process legitimate claims, prioritize taxpayers with financial hardship, and provide maximum transparency on when taxpayers can reasonably expect to receive their ERC benefit.

To help us better understand how the IRS expects to process outstanding ERC claims, we ask that you respond to the following questions in writing by October 15, 2024:

1. Will the IRS immediately approve and pay low-risk ERC claims? If not, why not?
2. Will the decision to lift the moratorium and process new claims filed between September 14, 2023, and January 31, 2024 hinder the agency's ability to reduce the current ERC claim backlog. If so, what steps will the IRS take to ensure that there are no unnecessary delays in clearing the backlog? How many backlog claims will be processed before the start of the 2025 filing season?
3. Are cases where the taxpayer has a significant hardship and qualifies for Taxpayer Advocate Service — the independent organization within the IRS that ensures fair

⁴ Taxpayer Advocate Service, *IRS BUDGET: The IRS Desperately Needs More Funding to Serve Taxpayers and Increase Voluntary Compliance* (Aug. 2020),

https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC_VOL-1_S1-MSP-2.pdf.

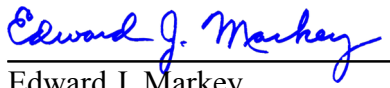
⁵ News Release, IRS, IRS ramps up new initiatives using Inflation Reduction Act funding to ensure complex partnerships, large corporations pay taxes owed, continues to close millionaire tax debt cases (Jan. 12, 2024), <https://www.irs.gov/newsroom/irs-ramps-up-new-initiatives-using-inflation-reduction-act-funding-to-ensure-complex-partnerships-large-corporations-pay-taxes-owed-continues-to-close-millionaire-tax-debt-cases>.

taxpayer treatment — being prioritized for payment? If not, why not? Will they be prioritized in the future? What is the number of ERC cases open in TAS case inventory as of September 15, 2024? What is the average and median number of days these cases have been open in TAS? Will these cases be prioritized in the future?

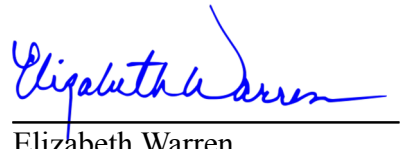
4. How will the IRS keep taxpayers informed about the status of their ERC claims? What changes, if any, is the IRS making to increase transparency on processing timelines? Will the IRS provide weekly updates of cycle times for ERC claims and what submissions, by date, are currently being processed? Will it provide an online tracker where taxpayers can see the status of their ERC claims?

Thank you in advance for your attention to this important taxpayer issue.

Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator