

Congress of the United States

Washington, DC 20515

March 23, 2023

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Commissioner Werfel:

We write to request that you provide the Committee on Ways and Means with details regarding the status of the Internal Revenue Service's (IRS) Employee Retention Tax Credit (ERTC) (also referred to as the Employee Retention Credit) processing efforts. We have received numerous inquiries and constituent complaints about the lengthy delays in processing the ERTC, and the lack of information being provided to those waiting on resolution of their claims. Therefore, we ask that you provide a status update briefing by April 3, 2023.

The ERTC is a refundable tax credit for businesses that was designed to encourage employers to keep employees on payroll during the COVID-19 pandemic.¹ Employers who are eligible for the ERTC are those who (1) sustained a full or partial suspension of operations limiting commerce, travel, or group meetings due to COVID-19 and orders from a governmental authority; (2) experienced a significant decline in gross receipts during 2020, or a decline in gross receipts during the first three quarters of 2021; and (3) qualified in the third or fourth quarters of 2021 as a recovery startup business.²

Unfortunately, many businesses that tried to take advantage of the ERTC are still waiting for their refunds. An August 2022, report from the Treasury Inspector General for Tax Administration (TIGTA) cites several factors that are contributing to the ongoing backlog of these unprocessed payments.³ One reason is that the IRS did not immediately begin processing the relevant forms—Forms 941-X—with pandemic relief claims.⁴ In addition, the IRS did not take immediate steps to prioritize Form 941-X claims that were suspended; the agency lacked trained staff, which caused additional delays to processing COVID-19 related employer credits; and the agency erroneously suspended Forms 941-X with COVID-19 related employer credit claims.⁵ Another challenge is that the Form 941-X is a paper form that employers had to file to claim the ERTC retroactively, and it is no secret that there has been an

¹ Internal Revenue Service, Employee Retention Credit, <https://www.irs.gov/coronavirus/employee-retention-credit>.

² *Id.*

³ Treasury Inspector General for Tax Administration, Delays Continue to Result in Businesses Not Receiving Pandemic Relief Benefits, Rep. No. 2022-46-059 (Aug. 31, 2022), <https://www.tigta.gov/sites/default/files/reports/2022-09/202246059fr.pdf>.

⁴ *Id.* at 7.

⁵ *Id.* at 10-11.

ongoing return processing backlog at the IRS. Thus, ERTC relief remains even further out of reach for many because these returns are stuck in the agency's backlog.

While TIGTA's report was issued over six months ago and one might hope that the challenges within the agency that are preventing these Forms from being processed have been resolved, IRS's website illustrates that there is still a substantial backlog of Forms 941-X. Specifically, IRS's website states that as of March 8, 2023, that the total inventory of unprocessed Forms 941-X was approximately 748,000.⁶

Such delays in processing Forms 941-X create very real impacts for businesses who are anxiously awaiting their ERTC refunds, and our offices regularly hear from businesses in our districts who continue to have issues with ERTC claims. Notably, the IRS received a massive infusion of \$80 billion in mandatory funding on top of its annual budget when the Inflation Reduction Act was signed into law on August 16, 2022.⁷ Therefore, a lack of funds is not an acceptable reason for the ongoing problems with processing ERTC claims. We are also aware that the IRS warned about the rise of ERTC "mills" last fall⁸ and we are concerned about the numerous reports of fraudulent claims being filed. Given these concerns, we would like an update on the IRS's efforts to process ERTC claims and ensure businesses who applied for and are entitled to ERTC refunds receive those refunds as soon as possible. We request that you provide a briefing that answers the following questions:

1. What are the reasons contributing to the delay of ERTC claims being processed, and what if anything has the IRS done to address these challenges?
2. What is the average wait time between when employers filed their ERTC claim and when they receive a refund from the IRS? How has the average wait time changed over the last six months?
3. Are there any restrictions that the IRS is placing on who is eligible for ERTC credits aside from the eligibility requirements detailed above? If so, please detail those restrictions and why the IRS has implemented those restrictions.
4. Are employers able to track their ERTC refund status with the IRS? If so, explain the process by which employers can track their ERTC refund status.
5. When does the IRS anticipate completing the processing of all ERTC claims and issuing all necessary refunds?

⁶ Internal Revenue Service, IRS Operations: Status of Mission-Critical Functions, <https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions> (last visited Mar. 13, 2023). The IRS notes that while not all of these returns involve a COVID-19 credit, the inventory is being worked at two sites—Cincinnati and Ogden—that have trained staff to work possible COVID-19 credits.

⁷ Inflation Reduction Act of 2022, Pub. L. No. 117-169.

⁸ Internal Revenue Service, Employers warned to beware of third parties promoting improper Employee Retention Credit claims (Oct. 19, 2022), <https://www.irs.gov/newsroom/employers-warned-to-beware-of-third-parties-promoting-improper-employee-retention-credit-claims>.

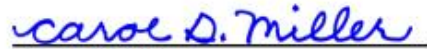
6. What is the IRS doing to address potentially fraudulent ERTC claims from ERTC “mills”?

Thank you for your attention to this request. Please provide a response to this letter by March 31st, 2023. Please contact Sean Clerget of the Ways and Means Committee staff to schedule a staff-level briefing to be held on or before April 3, 2023.

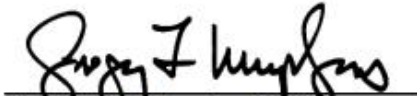
Sincerely,



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Member of Congress



Carol D. Miller
Member of Congress



Gregory F. Murphy, M.D.
Member of Congress




Adrian Smith
Member of Congress



A. Drew Ferguson IV
Member of Congress



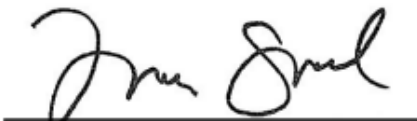
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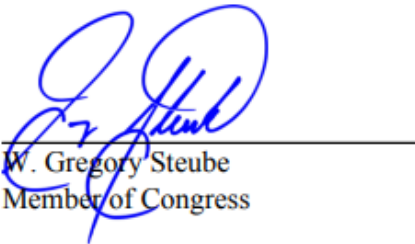
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