

Congress of the United States
Washington, DC 20515

October 6, 2022

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

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen and Commissioner Rettig,

We write to you regarding the Internal Revenue Service's (IRS) administration of employer tax credits that were authorized through COVID-19 relief legislation. The CARES Act, as well as additional legislation, created several tax relief programs to help businesses that were struggling financially due to the COVID-19 pandemic. These programs, such as the Employee Retention Tax Credit (ERTC), were designed to provide immediate relief to businesses so they could keep their doors open and keep employees on payroll. Per IRS guidance, ERTC eligible employers that did not initially claim ERTC funds on their Form 941, as well as employers wishing to modify past claims, are required to file Form 941-X.

It is our understanding that there have been significant problems with the timely distribution of ERTC funds. We have heard from countless employers who filed Form 941-X that continue to have difficulty accessing ERTC funds. These stories seem to support the findings of a Treasury Inspector General for Tax Administration (TIGTA) audit report published on August 31, 2022, regarding the IRS's administration COVID-19 tax relief. The report found that "ongoing and considerable delays in the processing of amended Forms 941 filed by businesses resulted in businesses not timely receiving the immediate financial relief for which this legislation was enacted." The report cites a "lack of updated programming and procedural guidance, lack of training, erroneously suspended claims, and a lack of necessary prioritization of claims" as the primary causes for the delay. As of August 31st, the IRS had a backlog of 207,000 unprocessed Form 941-Xs.

The IRS's processing delays and general mismanagement of the ERTC have led to financial hardship for thousands of small businesses and their employees across the nation. This hardship has been exacerbated by the tax liabilities that many businesses are having to pay for ERTC funds that they have not even received. Further, the IRS's slow and dysfunctional implementation deviates from Congress's intent that the ERTC be a fast and immediate form of relief.

As such, we request the IRS provide detailed information on the following:

1. Metrics on the number of unprocessed or pending 941-Xs, the number of payments and the dollar amount of those payments for ERTC claims already made and paid out.
2. A plan as soon as possible detailing how it will address the backlog of Form 941-Xs.
3. We also request that the IRS provide a list of specific administrative changes it will make to ensure a more timely and efficient distribution of COVID-19 relief going forward.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "David Kustoff". The signature is written in a cursive, slightly slanted style.

David Kustoff
Member of Congress

A handwritten signature in blue ink that reads "Tom Rice". The signature is written in a cursive, slightly slanted style.

Tom Rice
Member of Congress

A handwritten signature in black ink that reads "A. Drew Ferguson, IV". The signature is written in a cursive, slightly slanted style.

A. Drew Ferguson, IV
Member of Congress