



October 9, 2024

The Honorable Danny Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Werfel,

The Employee Retention Tax Credit (ERTC) program at the Internal Revenue Service (IRS) has been vital for small business owners nationwide and in my district. In my January 2024 letter, I raised concerns about the slow processing and payment of ERTC claims and the IRS's lack of clear communication with small business owners regarding the status of their claims. While I am heartened by the recent progress the IRS has made in processing and paying eligible claims, denying improper ones, and investigating potential fraud, I remain deeply concerned about the large number of ERTC claims filed since the COVID-19 pandemic that have still not been processed or paid.

On June 20, 2024, the IRS announced that a comprehensive review of ERTC claims had revealed tens of thousands of potentially improper claims, with an estimated 10 to 20 percent of the 1.4 million claims in the IRS backlog falling into this high-risk category.¹ Following this announcement, on August 8, 2024, the IRS issued 28,000 disallowance letters to businesses with claims deemed high-risk.² The agency also announced that it would begin processing and paying out 50,000 low-risk claims, which account for approximately 20 percent of the total claims.

Despite the IRS's actions to address both high- and low-risk claims, the majority of ERTC claims remain unprocessed. The June analysis also revealed a moderate-risk group of claims that the IRS indicated required further analysis. Alarming, this group represents 60 to 70 percent of total claims, leaving approximately 900,000 businesses—including several small businesses in my district—uncertain about the status of their claim years after the pandemic. Businesses with legitimate ERTC claims deserve prompt processing and payment of their claims. Unfortunately, the IRS has not yet communicated the status of these claims or outlined the process for the analysis needed to complete their processing and payment.

¹ Internal Revenue Service, *IRS enters next stage of Employee Retention Credit work; review indicates vast majority show risk of being improper* (June 20, 2024), <https://www.irs.gov/newsroom/irs-enters-next-stage-of-employee-retention-credit-work-review-indicates-vast-majority-show-risk-of-being-improper>

² Internal Revenue Service, *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* (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>

Additionally, following the recent issuance of disallowance letters, many businesses and tax professionals raised concerns about potential errors in the IRS's evaluations of their claims. Even worse, some IRS disallowance letters lacked information on how businesses could appeal to the IRS or federal court.³ On August 21, 2024, the National Taxpayer Advocate recommended that the IRS consider extending the 30-day deadline for taxpayers to submit a protest requesting a review of their claims.⁴ The Advocate's suggestion takes into account the concerns regarding the accuracy and completeness of the IRS's evaluation and challenges that some small business owners may face in navigating the appeals process. I agree with the Taxpayer Advocate and believe that the 30-day period should be extended.

The ERTC program was designed to provide crucial relief to businesses during the pandemic. While the steps the IRS has taken in recent months are essential for addressing these claims, I am concerned that the IRS response has been inadequate. I respectfully request answers to the following questions by October 31, 2024:

1. Will the IRS consider extending the 30-day period for taxpayers who received a disallowance letter to submit a protest? If not, why not?
2. How is the IRS reviewing the 60 to 70 percent of claims that have moderate level of risk? How is the IRS communicating the status of these claims with taxpayers?
3. In August, the IRS announced that 50,000 low-risk claims were moving into processing. Of these claims, how many have been paid?
4. Is the IRS working through ERTC cases that the Taxpayer Advocate Service is sending?

Thank you for your continued attention to this matter. I look forward to your response and working together on behalf of our nation's hard-working small businesses.

Sincerely,



David G. Valadao
Member of Congress

³ Internal Revenue Service, *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* (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>

⁴ Taxpayer Advocate Service, *Did You Receive a Notice of Claim Disallowance for Your Employee Retention Credit Refund Claim? If So, Now What?* (Aug. 21, 2024), <https://www.taxpayeradvocate.irs.gov/news/nta-blog/did-you-receive-a-notice-of-claim-disallowance-for-your-employee-retention-credit-refund-claim-if-so-now-what/2024/08/>