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August 26, 2025

The Honorable Scott Bessent
United States Secretary of the Treasury
Acting Commissioner, Internal Revenue Service
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Bessent:

In light of your recent appointment as acting commissioner of the Internal Revenue Service (IRS), I'm writing to request a meeting to discuss two pressing issues we would like to work with you to resolve: the need for clarification on tax credit liability and the need for guidance on the implementation of certain provisions of the One Big Beautiful Bill Act (OBBA). As president and CEO of the National Association of Professional Employer Organizations (NAPEO), I know these issues are of critical importance to the 200,000 small businesses and 4.5 million employees that rely on professional employer organizations (PEOs) for payroll processing, employee benefits, HR expertise, tax administration and regulatory compliance.

Currently, the IRS holds IRS-certified PEOs (CPEOs) solely liable and non-certified PEOs jointly liable for the payroll tax credits taken by their small business clients. We believe this misinterpretation is contrary to Congressional intent and the statutory language in the CARES Act which was signed into law by President Trump in 2020¹.

I urge you to quickly rescind this interpretation and clarify that liability belongs with the business that benefits from the claim. If not, thousands of small businesses could face financial hardship as tax credits they are lawfully entitled to are needlessly held up. This clarification would also save the government billions of dollars by deterring tax fraud and discouraging the improper claims that overburden the IRS and cause processing backlogs.

American small business owners also need timely guidance on the provision in the OBBA that retroactively terminates the employee retention tax credit (ERTC) under Internal Revenue Code (Code) section 3134 as of January 31, 2024.

Section 70605(d) of OBBA provides that no credit or refund of any ERTC under Code section 3134 shall be allowed or made after the date of enactment unless a claim for such credit or refund was filed by the taxpayer on or before January 31, 2024. Section 70605(d) therefore affects all employers with ERTC claims for Q3 and/or Q4 2021 that were filed after January 31, 2024 and that remained pending with the IRS as of July 5, 2025 (i.e., the day after the act's date of enactment),

¹ Congress explicitly provided that the ERTC is to be treated as a credit described in Internal Revenue Code (Code) section 3511(d)(2). Code section 3511(d)(2) clarifies that the listed tax credits apply to the customer of a CPEO and not to the CPEO. CARES Act § 2301(h)(3); Code § 3134(i).

including those small businesses whose claims were made on a Form 941-X filed by a PEO² or other type of aggregate filer. Our requests for guidance on section 70605(d) are particularly important for PEOs and other aggregate filers due to the number of small businesses that could be impacted with respect to each affected aggregate Form 941-X.

On behalf of NAEPO members, I ask the IRS to promptly address the following:

- **Adjusted returns that include other adjustments in addition to ERTC claims.**

An adjusted employment tax return that was filed after January 31, 2024, to claim the ERTC under Code section 3134 may include other adjustments to the original return (or previously filed adjusted return) in addition to the ERTC claim(s). For example, a PEO-filed aggregate Form 941-X with respect to Q3 2021 on March 1, 2024 to claim the ERTC on behalf of a client may also include a claim for the qualified small business R&D payroll tax credit on behalf of another client, and a wage adjustment with respect to a third, independent entity.

For those instances in which an adjusted employment tax return filed after January 31, 2024, includes other adjustments in addition to the ERTC claim(s), **the IRS must proceed with processing the non-ERTC items reported on the adjusted return without requiring further action by the filer.** We urge the IRS to take this approach to avoid further disruption to PEO small business clients and other similarly affected employers.

Although we believe the IRS should have the ability to continue processing such adjusted returns as though the ERTC claim(s) were not included, it is critical that affected taxpayers be notified as soon as possible if the IRS determines it is necessary for taxpayers to take additional steps. Of course, if the IRS requires affected taxpayers to refile any information, any such refiling should be treated as filed on the filing date of the previously submitted adjusted return to which the information relates.

- **Supplemental claims process for aggregate filers.**

In September 2024, the IRS announced a supplemental claims process for aggregate filers, including PEOs and CPEOs, to correct or consolidate outstanding ERTC claims with respect to a particular quarter by packaging and refiling them as part of one single submission.³ (This process was initially made available solely to CPEOs in late 2023 before being expanded to other aggregate filers in fall 2024.) Although this process was voluntary, the IRS encouraged third-party payers to participate, indicating that participation would assist the IRS in its review of ERTC claims filed by aggregate filers and could ultimately increase the pace at which the aggregate filers' Forms 941-X were processed. This was discussed by IRS officials at industry meetings, and individual PEOs were urged to participate in the process by their IRS contact.

When the supplemental claims process was made available, NAEPO and its members that participated in the process had a clear understanding from the IRS that, in the event Congress enacted what was then a legislative proposal to terminate the ERTC early, the filing of a supplemental claim pursuant to the IRS program for aggregate filers would not affect the date on which the ERTC claims were treated as having been made. Because the change made by

² Unless indicated otherwise, all references in this letter to "PEOs" include both non-certified PEOs and IRS-certified PEOs (CPEOs).

³ <https://www.irs.gov/newsroom/irs-opens-new-process-for-payroll-companies-third-party-payers-to-help-clients-resolve-incorrect-claims-for-the-employee-retention-credit>.

section 70605(d) is no longer merely a proposal but is now enacted law, and for the avoidance of any doubt, **please reconfirm that any supplemental claims relating to Q3 and Q4 2021 that were submitted by aggregate filers after January 31, 2024, are not treated as a new filing for purposes of section 70605(d) of the act.**

- **Adjusted returns that reduce or reverse a prior ERTC claim.**

As noted above, section 70605(d) of the act prohibits the *allowance or making of* an ERTC credit or refund under Code section 3134 after the date of enactment unless a claim for such credit or refund was filed by the taxpayer on or before January 31, 2024. Although not explicitly addressed by H.R. 1, a Joint Committee on Taxation (JCT) summary of this provision states, “To the extent that [ERTC] claims were later amended to reduce otherwise excessive claims, the amended claim is considered to be part of the timely submitted original claim.”

Many NAPEO members have indicated that their clients contacted them to request an amendment to an ERTC claim that was filed on or before January 31, 2024, either because the client subsequently determined the claim to be invalid or believed the amount had been calculated improperly. Some of these amendments to reverse or reduce a previously made ERTC claim under Code section 3134 may have been included on Forms 941-X that were filed by PEOs after January 31, 2024.

Please issue guidance confirming the JCT summary in this regard, which we read as meaning that reversals and/or reductions of ERTC claims filed by a PEO on behalf of one or more of its clients after January 31, 2024, are not affected by section 70605(d) of the act and therefore remain eligible for processing by the IRS if otherwise timely filed.⁴

I appreciate your prompt attention to these questions raised by OBBB’s retroactive early termination of the ERTC and the need for tax credit liability clarification. I look forward to meeting with you to discuss these issues further.

Sincerely,



Casey M. Clark
President & CEO
NAPEO

Cc:

Helen Morrison (Treasury)
Melissa Duce (IRS)
John McInelly (IRS)
John Rossmiller (IRS)
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⁴ It is also important that the IRS’s systems not be programmed to reject an ERTC claim filed after January 31, 2024 while also accepting and applying a subsequent filing in which the taxpayer sought to reduce that claim, because doing so would create a negative balance on a PEO’s account for a claim that the IRS will not pay anyway because of section 70605(d).