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February 16, 2022

Senate Committee on Finance

Attn. Editorial and Document Section

Rm. SD-219

Dirksen Senate Office Bldg.

Washington, DC 20510-6200

**Hearing Title**: Spotlighting IRS Customer Service Challenges

**Hearing Date**: Thursday, February 17, 2022, 10:00AM

**Name / Address of Submitter**: Kenneth Dettman, CEO, EZERC LLC, 2550 N Federal Hwy, Ste 201, Fort Lauderdale, FL 33305

Dear Members of the Committee on Finance,

Considering the operational challenges already faced by the IRS, we respectfully ask that Congress and the IRS strongly consider offering certain “small employers” a safe harbor election that will permit cash-basis treatment of the receipt of Employee Retention Credit (“ERC”) refunds. At the time the CARES Act was drafted, it could not have been anticipated that the preponderance of ERC claims would be made through amended filing procedures, which in turn would require corollary amendments to ERC beneficiaries’ Federal income tax returns under the strict application of Section 280C. It is our view that this additional requirement imposes a significant unanticipated administrative and financial burden to both ERC recipients and the Internal Revenue Service and may possibly discourage small-and-medium-sized business owners under financial hardships from pursuing the stimulus program.

Considering the retroactive nature of the Consolidated Appropriations Act (released December 27, 2020) and the prolonged guidance from the IRS on the application of the ERC’s “*Interaction with Paycheck Protection Program (PPP) Loans*” in Notice 2021-20 (released March 1, 2020), the vast majority of employers wishing to take advantage of the ERC were not afforded adequate time and resources to have made an ERC claim in advance of filing their 2020 income tax return. Further, many closely held business owners were unsure of how to interpret the application of the “related party rules” to majority owner wages until the release of Notice 2021-49 on August 4, 2021, well after the original due date for 2020 income tax returns.

Based on the above and due to the overall disjointed and confusing IRS guidance over the life of the program[[1]](#footnote-1), it has been nearly impossible for most employers to have filed a timely filed Form 941 or Form 7200 to claim the ERC. Furthermore, it could not have been contemplated by Congress that this government stimulus program, intended to aid and reward businesses in a timely manner, would take over 6 months (and in many cases more than 12 months) to process and monetize.

As we approach the 2021 tax filing season, it will be imminent that any ERC claim will require any new applicants to also file an amended income tax return. This imposes an unwarranted administrative and financial burden on these new applicants, and without doubt, an unwelcomed, additional administrative and financial burden on the Internal Revenue Service in terms of an increased volume of amended income tax returns to review and process.

Further compounding the administrative burden to both employers and the IRS, it is our recent experience with the IRS that an automatic late-payment penalty would be administered due any amended income tax return presenting a greater income tax liability (i.e., due to the unfavorable 280C adjustment), regardless of any explanatory statements that have been attached to the return to explain the reasonable-cause-basis for the increased liability. As a result of the IRS’s current inability to comprehensively evaluate reasonable cause at the time of filing the amended returns, the automatic penalty procedures further result in an additional administrative, financial, and often emotional burden, of having to address and seek abatement for such penalties.

The IRS admittedly has been operating in a “critical mission” state since the beginning of the COVID-19 pandemic through the current day. With reports of many letters, notices, and other correspondence taking upwards of 24 months to receive the IRS’s attention, the outlook for employers looking to take advantage of the ERC at this juncture is overwhelmed with additional time, cost, and stress. Many, if not most, of these business owners are small-and-medium-sized business owners that may not be able to bear the current financial burden to be supported by an external CPA or other advisor, leaving them ill-equipped to address the significant unanticipated and unintended consequences of pursuing an ERC claim through the amended return process.

To remedy these aforementioned burdens that have been unintentionally imposed on employers and the IRS, we believe that it is appropriate for Congress and the IRS to devise a solution to allow for small employers to elect cash-basis treatment (i.e., a 280C adjustment in the year of receipt). Such election should be made by reflecting the 280C adjustment in the year the ERC was received. Of course, we acknowledge that in order for this treatment to be equitable from the perspective of the U.S. Treasury, any interest paid on an ERC should be immediately repayable by the recipient back to the IRS.

We appreciate the opportunity to provide our views on this matter and look forward to your comments. Please do not hesitate to contact me at (954) 461-7852 or [kenneth@ez-erc.com](mailto:kenneth@ez-erc.com).

Respectfully,

**Kenneth Dettman**

**CEO & Managing Director**

cc: [Statementsfortherecord@finance.senate.gov](mailto:Statementsfortherecord@finance.senate.gov)

1. In fact, the IRS continues to maintain an outdated FAQ page that has many small business owners under the belief that they are ineligible for the ERC as a result of taking a PPP loan (*See*: <https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-interaction-with-other-credit-and-relief-provisions-faqs>) [↑](#footnote-ref-1)