

United States Senate

June 13, 2024

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Commissioner Werfel,

I write concerning the over one million small businesses waiting for their Employee Retention Credit (ERC) claims to be reviewed or paid. As you are aware, the CARES Act reestablished the ERC, a refundable tax credit that afforded economic support to small businesses and job creators who weathered the pandemic and kept American workers on payroll as they faced financial challenges stemming from the COVID-19 pandemic. The moratorium on processing ERC claims the IRS implemented in September 2023 placed a severe strain on many small businesses across my state and the nation.

At a March 2024 House Ways and Means Committee hearing, you testified that the IRS is currently processing between 1,000-2,000 ERC claims per week. At that rate, it would take more than 10 years for outstanding ERC claims to be processed. It is unacceptable to continue punishing American employers who fought through an unprecedented disruption to their businesses while keeping employees on payroll. I continually hear from small- and medium-sized business owners in my state that circumstances have become dire. This important tax refund could mean the difference between laying off hard-working employees or closing their doors entirely. These outcomes were specifically what the ERC was intended to prevent.

Late last year, the IRS asserted that the moratorium on ERC claims processing would end at the beginning of this year. To date, we have seen no action taken, and the IRS appears to still be refusing to perform its most basic function of processing taxpayer refund claims in a timely manner. Additionally, in your April 2024 Senate Finance testimony, you said the IRS was developing a process to improve efficiency by digitizing pending ERC claims to expedite the processing by this spring. Since then, you have provided no update on the progress of implementation, and the moratorium remains in place.

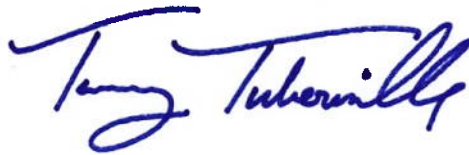
Given the unnecessary hardships faced by businesses across the country due to the Service's inaction, it is imperative you provide clarity regarding the status of the ERC backlog. Please provide a response to the following questions by July 12, 2024:

1. In September of 2023, the IRS imposed a moratorium on newly amended tax returns claiming the ERC for 2020 and 2021. The IRS also claimed this moratorium would end at the beginning of this year. However, nothing was publicly announced regarding the end to the moratorium nearly six months ago. When will the IRS formally announce that the ERC claims processing moratorium is over and signal a return to timely processing of these claims?
2. By what date does the IRS anticipate completing all adjudications for ERC claims in backlog?

3. Is there a process in place, or plans to create a process, to accelerate the review of ERC claims in backlog?
4. To my knowledge, the IRS has not issued Requests for Proposals for development of any electronic digitization process for ERC claims processing, as it had stated. To that end, what is the status of efforts to develop such a process?
5. Does the IRS have a process in place to expedite or prioritize claims and tax refunds for employers who demonstrate they are experiencing significant financial hardship and are in severe need of receiving their ERC claim refund? If not, are there plans to establish a process to ensure that businesses are not closed due to the significant delay in receipt of their ERC funds?

Each day that passes with outstanding ERC claims unprocessed is a disservice to taxpayers and a threat to small- and medium-sized businesses. I look forward to your timely reply.

Sincerely,

A handwritten signature in blue ink that reads "Tommy Tuberville". The signature is fluid and cursive, with the first name "Tommy" and last name "Tuberville" clearly legible.

Tommy Tuberville
United States Senator