

Congress of the United States
Washington, DC 20515

April 10, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C.

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

Dear Secretary Mnuchin and Commissioner Rettig:

We write with regard to Section 2301 (Employee Retention Credit) of the CARES Act to urge the Department of Treasury and Internal Revenue Service (IRS) to provide broad flexibility when defining eligibility for this credit. Businesses across the country have withstood extraordinary disruptions to their operations as a result of the COVID-19 pandemic. Specifically, the terms “eligible employer” and “qualified wages” should be interpreted by Treasury and IRS to provide maximum flexibility consistent with Congress’ intent to deliver broad support to businesses impacted during this crisis.

In order to limit the spread of COVID-19, state and local governments have appropriately enacted orders defining essential businesses, requiring social distancing, and placing limits on certain commercial activities. At the federal level, businesses have been relying on the Centers for Disease Control and Prevention’s recommendations to limit groups to no more than 10 individuals. In addition, the Department of Homeland Security’s March 28, 2020 “Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 2.0,” says that “All [commercial] decisions should appropriately balance public safety, the health and safety of the workforce, and the continued delivery of essential critical infrastructure services and functions.” Because of the patchwork of state and local orders scattered across the country and the federal-level recommendations, many national businesses (including those deemed essential in certain areas) have been forced to develop a consistent nationwide model that complies with applicable laws and also protects the health and safety of customers and employees.

Essential businesses open for retail sales have limited their normal store operations by closing their physical retail locations to public shopping and turning them into curbside pick-up only locations. These businesses have also had to adjust their distribution, home delivery and services offerings, all leading to massive interruptions with significant impacts to their employees. Although a business may not have been required by a specific local or state order to completely shutter its normal in-store operations, its wages paid with respect to which an employee is not providing services should still qualify for the Employee Retention Credit if its business changes were implemented in response to federal, state, or local recommendations and orders it is subject to.

In closing, thank you for your efforts to implement the CARES Act expeditiously so that it can deliver its intended support to individuals, businesses and other segments of the economy. As you draft more formal guidance to implement the Employee Retention Credit, we ask that you broadly interpret the definition of the terms “eligible employer” and “qualified wages” so that as many businesses as possible are able to take advantage of the assistance while dealing with the significant impacts of the COVID-19 pandemic.

Sincerely,



Tom Emmer
Member of Congress

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