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*Delivered via email*

December 5, 2022

Rachel Levy, Associate Chief Counsel  
Employee Benefits, Exempt Organizations, and Employment Tax  
Office of Chief Counsel  
Internal Revenue Service

**RE: Request for Assistance in Ensuring the Fair and Consistent Processing of Small Businesses' ERTC Claims Reported on Schedule R**

Dear Rachel:

The National Association of Professional Employer Organizations (NAPEO) is writing to request your urgent assistance in ensuring that small businesses claiming the employee retention tax credit (ERTC) on Form 941-X are treated fairly and consistently by the Internal Revenue Service (IRS). Specifically, we ask that an ERTC claim made by a small business should be subject to the same IRS level of review that is applied to other small businesses, **regardless of whether the claim is reported on Schedule R by an aggregate filer, such as a professional employer organization or certified professional employer organization (PEO/CPEO).**

It is our understanding that refund claims reflecting tax credits not previously reported, such as ERTC claims made on Form 941-X, are subject to the IRS's General Claims Procedures. Claims meeting certain criteria denoting high audit potential are classified by the IRS as "Category A" (CAT-A). CAT-A claims are referred for additional review and may be selected for audit. Although the CAT-A criteria are not publicly available, we understand from the Internal Revenue Manual and our members' experience that there is a dollar threshold above which all claims are automatically classified as CAT-A.

NAPEO is very concerned that the IRS appears to be classifying Forms 941-X filed by aggregate filers as CAT-A when the total amount claimed on the aggregate return exceeds the dollar threshold for CAT-A. This application of CAT-A criteria at the aggregate return level has the potential to cause further delays in the processing of much-needed pandemic relief for small businesses whose ERTC claims would not, on their own, be classified as CAT-A. Although we appreciate that the IRS strives to treat similarly situated taxpayers fairly and consistently, the practical effect of applying CAT-A criteria to aggregate returns in this manner could have the unintended result of the disparate treatment of small businesses.

To assure that all small businesses are treated more fairly, **we urge the IRS to apply the CAT-A dollar threshold at the Schedule R level in the case of an aggregate Form 941-X.** Unless other criteria are present that warrant CAT-A classification, the IRS should promptly process all ERTC claims on Schedule R that are below the dollar threshold in the same manner as any other small business ERTC claim that is not made on an aggregate return. Only those ERTC claims reported on Schedule R that exceed the dollar threshold should be subject to the additional CAT-A review.

As you are aware, the continuing delays in the processing of ERTC claims have already created substantial hardships for many small businesses. We ask for your assistance in ensuring that these delays are not unfairly extended for certain small businesses just because their ERTC claims are reported on an aggregate return. As IRS guidance makes clear, the entities that are entitled to the ERTC are the eligible small business clients of PEO/CPEOs and other third-party payers—not the third-party payer itself. This warrants a corresponding change in how the IRS otherwise views aggregate filers and processes aggregate returns; namely, the IRS should review and process ERTC claims at the Schedule R level.

NAPEO respectfully requests a call with you and any appropriate colleagues to discuss our concerns and request. In the event that Congress continues to enact credits against employment tax, ensuring the fair application of CAT-A review procedures will continue to be a critical element of treating small businesses consistently.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pat Cleary', with a horizontal line underneath.

Pat Cleary  
President and CEO

Cc: Crystal Stinson, IRS