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NAPEO Requests Meeting with Secretary Bessent to get Clarity on Tax Credit Liability and OBBBA

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The National Association of Professional Employer Organizations ("NAPEO") wrote to Secretary of the Treasury Scott Bessent, who is also Acting Commissioner of the Internal Revenue Service, on August 26, 2025. The letter, penned by Casey Clark, the President and CEO of NAPEO, focused on two main areas of concerns for PEOs. First, liability concerns surrounding incorrectly paid Employee Retention Tax Credit ("ERTC" or "ERC") claims. Second, the implications of the retroactive provisions of the One Big Beautiful Bill Act ("OBBBA").1 As the letter indicates, the answers to these questions affect around 200,000 small businesses, representing 4.5 million employees, that rely on PEOs for their payroll tax obligations.

As to the first issue, the letter points out the difference in treatment between Internal Revenue Service ("IRS") "certified" PEOs ("CPEO") and non-certified PEOs.2 Generally, the IRS will assess liability for improper claims to CPEOs, solely, while asserting joint and several liability between the non-certified PEOs and the underlying business for improper claims made by non-certified PEO. NAPEO believes this interpretation is incorrect. Specifically, NAPEO contends that the plain meaning in the CARES Act and the Internal Revenue Code ("I.R.C.") indicates that the Credit, and the responsibility thereof, is one that is meant to belong to the underlying employer and therefore a PEO should not be liable for any potentially improper claim.3 The letter alleges that the uncertainty, and incorrectness, surrounding the IRS's interpretation has caused unnecessary delays in PEO customer's receiving their ERC refunds.

These delays in refunds are causing PEO clients great frustration. Some clients are even turning to lawsuits against their current or former PEOs to force the release of refunds that rightfully belong to the underlying taxpayer. While the PEO may be acting it what it perceives as its best interest, that does not mean that its actions are permissible under its client service agreements or the law. Taxpayers who utilized a PEO in filing for their ERC claims should consider their own best interests. It may make the most sense for Taxpayers to demand a refund from their PEO. Therefore, a Taxpayer in this situation should speak with a

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knowledgeable team of tax attorneys and litigators to determine what course of action is best in their individual circumstances.

The second issue raises a concern that we previously explored in an article late last year.4 Until the passage of the OBBBA, ERC claims for the third and fourth quarters of 2021 could be filed until April 15, 2025. The IRS, in anticipation of a potential legislative change to the due date of the return, issued a moratorium in September of 2023 on the processing of new ERC claims. Later the IRS, again in preparation for potential legislative changes, moved its target date to January 31, 2024, and declared that it would not process any returns filed after that date. Ultimately Congress did not pass the act that would have changed the filing deadline to that date. However, Congress, over a year later, through the OBBBA retroactively changed the filing deadlines for third and fourth quarter ERC filings to January 31, 2024.

This change created a conundrum for PEOs which NAPEO highlights in its letter. At the behest of the IRS, PEOs across the country made so-called “supplemental filings” for their customers. In theory, these filings were meant to address concerns the IRS had surrounding ineligible taxpayers claiming the ERC. The IRS purported to allow PEOs to “withdraw” their prior claims while maintaining their clients’ claims which were included on resubmitted supplemental claims. Procedurally, this is a mess. There are many questions surrounding the procedures the IRS set up for this program, not least of which is: Could the IRS allow PEOs to unilaterally withdraw their clients’ claims? NAPEO, in its letter, is not as concerned about what ability its associated organizations may have had, rather it is concerned about when the claims will be considered filed. The IRS at the time of announcing its supplemental filing program informally indicated that all claims filed using its procedures would not be deemed as new filings. Rather, such claims would relate back and maintain the filing date the original amended claims were filed. Since the passage of OBBBA the IRS has not publicly recommitted to that interpretation.

Along those same lines, NAPEO stresses that other claims not affected by the retroactive provisions of OBBBA remain as a part of their associated organizations’ filings. They stress the need for the IRS to process the complete returns and allow all elements of a return that would not be affected by OBBBA provisions. Furthermore, returns purporting to reduce the amount of ERC claimed by the taxpayer should be allowed to be processed in accordance with the Joint Committee on Taxation’s understanding of the retroactive provisions of OBBBA.

As of the writing of this article, it is unclear whether Secretary Bessent has agreed to meet with NAPEO to discuss the issues it raised. Additionally, in the months after the passage of the OBBBA, the IRS has failed to offer meaningful guidance to PEOs or taxpayers concerning the retroactive provisions in the OBBBA. Hopefully Secretary Bessent and the IRS will take the initiative that taxpayers and PEOs desperately need in order to bring a close to the saga that continues to surround the processing of ERC claims. If you have questions or concerns please reach out to our team at (410) 724-1313 or schedule confidential consultation.

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