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839 Bestgate Road Suite 400
Annapolis, MD 21401
Phone: 410-497-5947
Fax: 888-235-8405

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July 17, 2026

Honorable Frank J. Bisignano
Chief Executive Officer
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Honorable Erin M. Collins
National Taxpayer Advocate
Taxpayer Advocate Service
Room 3031 TA
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Mr. Bisignano & Ms. Collins:

The undersigned attorneys, Enrolled Agents, and other tax and accounting professionals of Frost Law's tax controversy practice group collectively represent hundreds of small-business employers in Employee Retention Credit ("ERC") matters before the Internal Revenue Service. We write to you today regarding the Independent Office of Appeals and the changes we have observed in its approach to adjudicating matters before it, especially those involving ERC-related issues. These changes, we believe, are unintentionally harming well-meaning taxpayers and preventing access to the safety net that Appeals was designed to provide. And we believe that these changes run contrary to established IRS principles, and the intentions of Congress expressed in the Taxpayer First Act of 2019.

The key takeaway is that when Appeals Officers work underdeveloped cases received from IRS business units, it erodes the independence of the Office of Appeals. Such efforts are contrary to the policies and procedures memorialized in the Internal Revenue Manual and other agency documents, including those developed by the Appeals Judicial Approach and Culture ("AJAC") Project. Taxpayers and tax administration alike suffer in consequence: Hard-working taxpayers lose the independent review to which they are entitled, and tax administration is hindered by the erosion of credibility that independence exists to secure.

This approach has contributed to the high volume of cases that have been clogging the Appeals pipeline, which is a major concern of tax practitioners nationwide. We applaud CEO Bisignano's focus on addressing the Appeals backlog, and we believe addressing the issue identified in this letter will help streamline the work of Appeals in the future.

As background, the Office of Appeals has functioned for nearly a century as the forum in which taxpayers resolve disputes with the IRS. In 2014, the Service memorialized the operating principle of such independence through the AJAC Project which it described as "reinforcing Appeals'

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quasi-judicial approach to the way it handles cases, with the goal of enhancing internal and external customer perceptions of a fair, impartial and independent Office of Appeals."[1]

The framework rests on a clear division of function: IRS Examination develops a case and, if necessary, Appeals resolves disputes on the record that the exam function produced. IRM 8.2.1.5 provides that "Appeals will not return cases to Examination for further development," and IRM 8.7.11.6.3 provides that Appeals Officers "are not investigators or examining officers and may not act as such." Where Exam has not fully developed a case, AJAC directs Appeals to resolve it on the basis of the factual hazards of litigation—not to develop the record itself. And Congress affirmed this design in the Taxpayer First Act of 2019, codifying the Independent Office of Appeals at IRC § 7803(e) and guaranteeing taxpayers the right to appeal in an independent forum under IRC § 7803(a)(3).

In 2024, the IRS disallowed tens of thousands of ERC refund claims under circumstances that have placed Appeals in an extraordinarily difficult position. As Ms. Collins confirmed in her 2025 Annual Report to Congress, as of August 30, 2024, the Service had issued 83,000 notices of disallowance.[2] The decision to disallow the overwhelming majority of these claims were based on a risk-filter analysis rather than substantive examination of the underlying facts and grounds. And so taxpayers protesting Examination's decision arrive at Appeals with no developed administrative record, because no real audit was ever conducted.

In this posture, Appeals is being asked to do precisely what the AJAC framework was designed to prevent—to develop the factual record itself. We do not fault the well-meaning Appeals Officers who, confronted by a taxpayer and an undeveloped file, follow the natural professional impulse to solicit substantiation and engage on the merits. That impulse reflects conscientiousness, not error. But that work is, by design, not theirs to perform. When Appeals develops the record, it ceases to function as the quasi-judicial forum Congress codified. As a result, a taxpayer's right to independent appellate review is, in practice, replaced by a second-line examination. And so what the IRS procedures were specifically designed to prevent, has in the ERC context, become routine practice. The Service's own 2014 framework is being abandoned in tens of thousands of cases—not by any failure within the Office of Appeals, but by the agency's administrative posture that has been imposed upon it by sending forward underdeveloped cases.

We respectfully ask that the Chief Executive Officer take immediate steps to protect the rights of taxpayers by reviving the principles established by the AJAC Project and restore the quasi-judicial approach intended to ensure an independent forum.[3]

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[1] AJAC Project Memorandum, AP-08-0714-0004 (July 2, 2014).

[2] National Taxpayer Advocate, 2025 Annual Report to Congress (Jan. 28, 2026).

[3] We note as a related benefit that restoring this division of function would also reduce Appeals' non-docketed cycle times—a publicly reported performance metric under the IRS Balanced Performance Measurement System.

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In addition, we respectfully ask the National Taxpayer Advocate to consider designating the systemic administration of ERC refund claim disallowances—and its unfortunate effect on the Independent Office of Appeals—as a Most Serious Problem in her 2026 Annual Report to Congress, and to recommend immediate corrective action.

The attorneys, Enrolled Agents, and other tax and accounting professionals at Frost Law want to help the IRS conclude its administration of this important pandemic-era program. We stand ready to provide further information and the perspective of tax practitioners who have a longstanding respect for the IRS and its Independent Office of Appeals, the institution Congress has charged with the impartial resolution of tax disputes.

Respectfully,

Glen Frost, Esq.
Founding Partner

Rebecca Sheppard, Esq.
Partner

Justin Elanjian, CPA
Tax Director

Carleen Dadeboe, Esq.
Associate

Zachary Lyda, Esq.
Associate

Hunter Scott, Esq.
Associate

Peter Haukebo, Esq.
Partner

Matthew Hunter, Esq.
Director

Robert Braland, Esq.
Senior Associate

Madeline Lee, Esq.
Associate

Heather Posey, Esq.
Associate

Reid Burrows, Esq.
Staff Attorney

Kaitlyn Loughner, Esq.
Partner

Matt Eddleman, EA
Tax Director

Leslie Cueva, EA
Senior Enrolled Agen

Jacob Linn, Esq.
Associate

Micah Schroder, EA
Senior Enrolled Agent

Cc: Honorable Mike Crapo
Chairman
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Honorable Jason Smith
Chairman
Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515