

United States Senate

WASHINGTON, DC 20510-3205

May 4, 2023

The Honorable Danny Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave. N.W.
Washington, D.C. 20224

Dear Commissioner Werfel,

I write today to express my concern with the backlog of unprocessed Employee Retention Credit (ERC) claims and to urge the Internal Revenue Service (IRS) to provide updates regarding its work on resolving this significant problem.

In the over three years since the passage of the bipartisan *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), I have continued to hear from New York businesses that have yet to receive their tax refunds for claims filed during the 2021 and 2022 tax seasons. The ERC was created as a payroll credit to ensure that the benefit could be delivered quickly, and, especially with increased funding from the *Inflation Reduction Act*, it is important that ERC refunds are sent with urgency.

As I stated in my prior letter to then-Commissioner Rettig on January 26, 2022, I understand that the backlog is caused in part because the 941-X form—which some taxpayers must file in order to claim this refund after overpaying estimated payroll taxes—must be submitted manually rather than electronically. I also recognize that chronic underfunding has left the IRS understaffed and reliant on outdated technology. That is one of the reasons I am proud to have fought to pass the *Inflation Reduction Act*, which includes historic funding for the IRS that will help improve customer service and modernize its systems. However, given that the backlog of unprocessed ERC payments has only increased since my letter last year, I ask for responses to the following questions by Thursday, May 18, 2023:

1. Can the IRS provide state-by-state numbers of the current ERC backlog?
2. Forms 941-X can only be submitted on paper as of now, which creates challenging both for taxpayers and the IRS.
 - a. Is the IRS planning on allowing the e-filing of 941-X forms?
 - b. Is the IRS planning to expand its digital scanning efforts to include scanning of Forms 941-X?
3. During the Senate Finance Committee hearing on April 19, 2023, you stated that it was your hope that the IRS would be able to resolve 40,000 of the unprocessed ERC claims per week following the end of the 2023 tax filing season.

- a. Has the IRS reached the goal of resolving 40,000 of the claims per week yet? If no, when do you expect to reach that goal?
 - b. Are additional staff needed to eliminate the backlog or do you find the current staffing levels adequate?
 - c. Can you provide Congress bi-monthly updates on the IRS ERC backlog until the backlog reaches under 10,000 in total?
4. Once a business' ETC claim is processed and approved, can the IRS transfer the refund to the business electronically?

Thank you for your attention to this matter and I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Kirsten Gillibrand". The signature is written in a cursive, flowing style.

Kirsten Gillibrand
United States Senator