

United States Senate
WASHINGTON, DC 20510

February 10, 2021

The Honorable Janet Yellen
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

The Honorable Charles Rettig
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Yellen and Commissioner Rettig:

We write to urge the Treasury Department and Internal Revenue Service to quickly issue guidance to ensure that struggling employers who have participated in the Paycheck Protection Program (PPP) can make full use of the Employee Retention Tax Credit (ERTC). As highlighted in recent reporting,¹ employers require guidance clarifying that certain wages paid in 2020 are eligible for the ERTC. Clarification from your agencies will ensure that small employers receive the full economic assistance for which they are eligible as soon as possible.

The bipartisan relief package passed into law in December contained our bill, the *Employer Assistance Coordination Act*, which made small employers eligible for both the PPP and the ERTC. Our bill allows employers to use PPP and ERTC assistance to help keep workers on payroll, as long as employers do not “double dip” by receiving PPP forgiveness and claiming the ERTC for the same wages paid to employees. Prior to this change, struggling employers could either participate in the PPP or claim the ERTC, but could not benefit from both forms of assistance.

Since small employers who participated in PPP in 2020 were not eligible to claim the ERTC, the bipartisan year-end package also allowed these employers to retroactively claim the ERTC for wages paid in 2020. However, many employers who filed PPP forgiveness applications in 2020 reported wages over and above the wages necessary to receive maximum PPP loan forgiveness. Although employers did not receive PPP forgiveness covering these wages, the wages were reported on PPP forgiveness applications. As result, employers now require guidance clarifying that “double dipping” rules do not prevent them from retroactively claiming the ERTC for 2020 wages that, though reported on PPP forgiveness applications, were not covered by PPP forgiveness.²

¹ “PPP Advisers Clamor for IRS Guidance to Harness New Tax Perks.” February 1, 2021. Bloomberg Tax. <https://news.bloombergtax.com/daily-tax-report/ppp-advisers-clamor-for-irs-guidance-to-harness-new-tax-perks>

² “Re: Employee Retention Credit – Sections 206 of the Taxpayer Certainty and Disaster Relief Act of 2020.” January 15, 2020. American Institute of Certified Public Accountants. <https://www.journalofaccountancy.com/content/dam/jofa/news/aicpa-comments-ppp-erc.pdf>

Treasury and IRS should provide guidance stating that the filing of a PPP loan forgiveness application does not constitute an election to forgo the ERTC with respect to the amount of wages reported on the application exceeding the amount of wages necessary for loan forgiveness. This guidance would reflect Congressional intent, and we urge you to take this into consideration as your agencies aim to quickly provide clarity on this issue.

We thank you for your attention to urgent issue.

Sincerely,

A handwritten signature in blue ink that reads "Maggie Hassan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Margaret Wood Hassan
United States Senator

/s/

Richard Burr
United States Senator